

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1295 OF 2019

Priyanka Rameshwar Kedar

Applicant

Versus

The State of Maharashtra & others

Respondents

Mr. N.C. Garud, Advocate holding for Mr. Ashok Mundhe, Advocate for the applicant.

Mr. S.D. Ghayal, APP for respondent/State.

Mr. A.A. Phad, Advocate for respondents No. 2 to 6.

CORAM : M.G. SEWLIKAR, J.

DATE : 7th December, 2021.

PER COURT :

1. This is an application for transfer of proceedings from the Court of Judicial Magistrate First Class, Khalapur, Dist. Raigad to the Court of Chief Judicial Magistrate, Aurangabad.

2. Facts in brief are that applicant is the wife of respondent No. 2. Respondents No. 3 and 4 are the parents of respondent No. 2, respondent No. 5 is the brother and respondent No. 6 is the married sister of respondent No.2.

3. Applicant lodged First Information Report in Khopoli police station on the basis of which RCC No. 127/2018 came to be filed against the respondents under Sections 498A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code.

4. Applicant filed this application for transfer of RCC No. 127/2018 to the Court of Chief Judicial Magistrate, Aurangabad contending therein that at the time of lodging of the First Information Report, she was staying at Khalapur. It is contended that applicant lodged this First Information Report bearing No. 0/2018 with Chempur police station, Mumbai and then it was transferred to Khopoli police station and it was registered as Crime No. 54/2018. At the time of lodging First Information Report, she was living with her father at Chembur, Mumbai. Since March 2018, the applicant has been residing at Aurangabad with her brother. She is taking medical treatment at Aurangabad as she suffered mental trauma because of the harassment caused by respondent No. 2. It is further contended that Criminal Cases No. 261/18 and 262/2018 are pending at Aurangabad. It is further contended that petition for restitution of conjugal rights bearing No.567/2018 is pending at Aurangabad. She, therefore, prays for transfer of the proceedings i.e.

RCC No. 127/2018 at Aurangabad.

5. Respondents No. 2 to 6 filed their reply. They denied all the allegations. It is contended by them that divorce proceedings are pending at Panvel. They further submit that respondents No. 3 and 4 are old aged parents of respondent No. 2. Respondents No. 5 and 6 are the brother and sister of respondent No. 2. It is further contended that respondent No. 6 is staying at Pune and being a lady, it will not be possible for her to travel to Aurangabad on each and every date. They, therefore, request for dismissal of the application.

6. Heard Shri Garud, learned counsel for the applicant, Shri Ghayal, learned APP for the State and Shri Phad, learned counsel for respondents No. 2 to 6.

7. It is not in dispute that three proceedings i.e. Criminal Cases No. 261/2018, 262/2018 and H.M.P. No. 567/2018 are pending at Aurangabad. Learned counsel Shri Garud submits that when these three proceedings are pending at Aurangabad, there cannot be any obstacle for respondent No. 2 to remain present at Aurangabad. Learned counsel Shri Garud further submits that when First Information Report was lodged under Section 498A of the Indian

Penal Code, applicant was staying at Chembur with her father. Now, she is staying at Aurangabad. Being a lady, it will not be possible for her to remain present at Khalapur, Dist. Raigad.

8. Learned counsel Shri Phad submits that all these proceedings are against respondent No. 2 only whereas in RCC No. 127/2018, not only respondent No. 2 is party but his parents, brother and sister are also party. He submits that it will be difficult for respondents No. 2 to 6 to remain present at Aurangabad. Learned counsel Shri Garud submits that in Criminal Case No. 261/2018, parents of respondent No. 2 are also party. Therefore, they are required to remain present at Aurangabad. He further submits that considering the age of parents, they can seek exemption from attending the Court at Aurangabad. If exemption application is filed by parents, he will not object to their exemption. Learned counsel Shri Phad submits that applicant No. 6 is a lady and it will be difficult for her to attend the Court every time. Learned counsel Shri Gardu submits that if applicants No. 5 and 6 also file application for exemption, he will not object for the same. Learned counsel Shri Phad further submits that if all these proceedings are kept on different dates, it will be inconvenient for respondents No. 2 to 6 to

attending the Court.

9. Admittedly, all the proceedings are pending against respondent No. 2 and his parents. On this background, I do not see any impediment in transferring RCC No. 127/2018 to Aurangabad from Khalapur. It is admitted position that parents of respondent No. 2 are old. Respondent No. 6 is a married woman and respondent No. 5 is a student. Considering the fact that parties are relatives of each other, there will be no question of identification of the accused. Therefore, as submitted by learned counsel Shri Garud, respondents No. 3 to 6 can seek exemption from attending the Court. As and when necessary, the Court can direct respondents No. 3 to 6 to remain present before it. Having regard to this, I am inclined to allow the application on certain conditions. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) RCC No. 127/2018 pending on the file of Judicial Magistrate, First Class, Khalapur is withdrawn and transferred to the Court of Chief Judicial Magistrate, Aurangabad, for disposal according to law.

iii) In case application for exemption is filed by respondents No. 3 to 6, the learned Trial Court can deal with the application in view of the submissions made by learned counsel for the applicant in paragraph No. 8.

iv) As and when required, learned Trial Court can direct respondents No. 3 to 6 to remain present before it.

v) The Court in which all these proceedings are pending, shall, as far as possible, keep all these proceedings on one date convenient to both the parties.

vi) All these proceedings shall be disposed of by the Trial Court within a year.

vii) Application stands disposed of.

(M. G. SEWLIKAR)
Judge