

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.106 OF 2021

Madhuri W/o Shyam Yesmod

...APPLICANT

VERSUS

- 1) Shyam S/o Mashnaji Yesmod,
- 2) Mashnaji Govind Yesmod,
- 3) Kavita D/o Mashnaji Yesmod

...RESPONDENTS

...
Mr.Shaikh Wajeed Ahmed Advocate for Applicant.
Mr.N.G. Kale Advocate for Respondent Nos. 1 to 3.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 14th MARCH 2022

DATE OF PRONOUNCING ORDER : 12th APRIL 2022

ORDER :

1. The applicant is the informant in R.C.C. No.203 of 2020 pending before the Court of learned Judicial Magistrate First Class, Chakur, District-Latur arising out of Crime No.374 of 2020 registered with Chakur Police Station for the offence punishable

under Sections 498-A, 354-A, 327, 324, 504, 506 read with Section 34 of the Indian Penal Code. She has prayed for transfer of the said case to the Court of learned Judicial Magistrate First Class, at Nanded.

2. Heard learned Advocate for the applicant and learned Advocate for the respondents.

3. It has been vehemently submitted on behalf of the applicant that the applicant is the wife of respondent No.1, however, because of desertion and the ill-treatment by the husband and his family members, she was forced to live with her parents at Nanded. There are cases pending between both the parties which are out of matrimonial disputes. The distance between Nanded to Chakur is about 120 Kms., and it is inconvenient for her to travel. Two more cases filed by the applicant against her husband and in-laws are pending in the Courts of Nanded, which are under the Domestic Violence Act and under the Guardians and Wards Act for claiming custody of minor. Learned Advocate relied on ***Rupali Devi vs. State of Uttar Pradesh and others, (2019) 5 SCC 384*** and submitted that in this case it has been held that, the impact on mental health of wife by overt acts on part of husband or his relatives;

mental stress and trauma of being driven away from matrimonial home and her helplessness to go back to same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of expression "cruelty" appearing in S.498-A of the Indian Penal Code. Learned counsel also relied on the observations in ***Rupali Devi*** (supra), wherein it is held that, even if the acts of physical cruelty committed in matrimonial house may have ceased and such acts do not occur at parental home, there can be no doubt that the mental trauma and psychological distress caused by acts of husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Learned counsel further submits that in ***Rupali Devi*** (supra), it is further held that, the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code.

4. Learned counsel for the applicant further submits that the said decision in ***Rupali Devi*** (supra) has been recently reiterated

in ***Ruhi vs. Anees Ahmed and others*** [Criminal Appeal No.7 of 2020 (@ SLP (Criminal) No.106 OF 2017)], decided on 6th January 2020. Learned counsel further relied on ***Sumita Singh vs. Kumar Sanjay and another, (2001) 10 SCC 41***, wherein it has been observed that convenience of the wife must be looked into. Further, reliance has been placed on the decision of this Court in ***Indu W/o Amey Oza @ Indu Gudgila vs. The State of Maharashtra and others*** (Criminal Application No.2774 of 2021), decided on 27th January 2022, wherein, relying on the decision in ***Rupali Devi*** (supra), this Court had transferred the case. Similarly, in ***Priyanka Rameshwar Kedar vs. The State of Maharashtra and others*** (Criminal Application No.1295 of 2019) this Court (**Coram: M.G. SEWLIKAR, J.**), on 7th December 2021, allowed the application of the wife for transfer of the case.

5. Per contra, learned Advocate appearing for the respondents submitted that only the convenience of the wife cannot be seen when it is a State case. Observations in ***Sumita Singh vs. Kumar Sanjay and another*** (supra) would be applicable to the civil cases and not for the criminal cases. At the time when the First Information Report (for short "FIR") was lodged, the informant had given her address as "S.T. Colony,

Udgir, Taluka-Udgir, District-Latur” and her occupation is stated to be the Gramsevak of Gadewadi, Taluka-Ahmedpur. Some of the witnesses are from Gadewadi, Taluka-Ahmedpur, three witnesses are from Sambhaji Nagar, Nanded, one is from Brahmanwada, Taluka and District-Nanded, the medical officer is from Rural Hosiptal, Chakur and the investigating officers were also attached to Police Station, Chakur. Therefore, taking into consideration the list of the witnesses and their addresses, it cannot be said that only the convenience of the wife should be taken into consideration.

6. Learned Advocate for the respondents relied on the decision in ***Rajesh Talwar vs. Central Bureau of Investigation and others with companion matter, (2012) 4 SCC 217***, wherein observations have been made that, inconvenience cannot be valid basis for transfer of “criminal proceedings” from one Court to another under Section 406 of the Code of Criminal Procedure. Learned counsel also relied on the further observations in ***Rajesh Talwar (supra)***, wherein it is held that:

“Jurisdiction of a Court to conduct criminal prosecution is based on the provisions of CrPC. Often either the complainant or the accused have to travel across an

entire State to attend to criminal proceedings before a jurisdictional Court. In some cases to reach the venue of the trial Court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances, in order to depose before the jurisdictional Court. If the plea of inconvenience for transferring the cases from one Court to another, on the basis of time taken to travel to the Court conducting the criminal trial is accepted, the provisions contained in CrPC earmarking the Courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned."

7. In the case of **Rajesh Talwar** (*supra*) itself, reliance has been placed on the decision in **Jyoti Mishra vs. Dhananjaya Mishra, (2010) 8 SCC 803**, wherein it has been observed in Para No.5 and 6:-

"5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-

appearance of the accused before the Indore Court would be quite drastic.”

“6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner’s prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

8. It was pointed out that ***Jyoti Mishra*** (supra) was the case wherein the wife was asking for transfer of case under Section 498-A of the Indian Penal Code but it has been rejected with the aforesaid reasons. Herein present case also, father-in-law, respondent No.2 – Mashnaji Govind Yesmod, is 69 years of age and therefore, the learned counsel for the respondents submits that the reasons stated for transfer cannot be accepted.

9. At the outset, it is to be noted that the entire charge-sheet has been made available before this Court, which states that at the time when the FIR was lodged, the informant, who told her occupation as Gramsevak, gave her residential address as “Gadewadi, Taluka-Ahmedpur”. But then further address of the place where she was then residing was stated as “S.T. Colony, Udgir, Taluka-Udgir”. In whose house informant was residing,

was not disclosed. The contents of the FIR would show that she was appointed as Gramsevak for the Grampanchayat, Daregaon, Taluka-Mudkhed, District-Nanded and she states that she is serving there for last about twelve years. In the present application, applicant – informant has given her address as “Shri Krishna Nagar, Nanded, District-Nanded”. Her application is silent as to since when she has come to stay at Nanded. Applicant states that her parental house as well as residential house is at Nanded and her service is also in Panchayat Samitee, Nanded. This was the position at the time when she gave the FIR also, but then she allowed the investigation to be carried out by Police Station, Chakur. The charge-sheet itself bifurcates that, as against accused No.1 – husband, the offence charged are under Sections 498-A, 324, 504 read with Section 34 of the Indian Penal Code. As against accused No.2 – father-in-law, it is under Sections 498-A, 354-A, 324, 504, 506 read with Section 34 of the Indian Penal Code. As against accused No.3 – sister-in-law, it is under Sections 327, 324, 504, 506 read with Section 34 of the Indian Penal Code. Out of these Sections, trial for the offence under Section 354-A, 324 as against accused No.2 and for the offence under Sections 327, 324 etc. of Indian Penal Code as against accused No.3 would be at the place where the offence

had taken place and as per the contents of the FIR, it was at Gadewadi. Therefore, the observations in **Rajesh Talwar** (*supra*) would be applicable here and we cannot go only by the decision in **Rupali Devi** (*supra*) and **Ruhi vs. Anees Ahmed and others** (*supra*).

10. Even if for the sake of arguments it is accepted that the Court of Judicial Magistrate First Class at Nanded will have the jurisdiction, yet the fact remains that only the convenience of the wife cannot be the criteria to transfer the case. As aforesaid, only the informant – wife and her parents and cousin uncle appear to be resident of Nanded District. In fact even the cousin uncle is also not resident of proper Nanded. The other witnesses are from Latur District and therefore, the decision in **Jyoti Mishra** (*supra*) would be applicable. No case is made out for transfer of case and exercise of the powers of this Court under Sections 407, 482 of the Code of Criminal Procedure.

11. The Application, therefore, stands rejected.

[**SMT. VIBHA KANKANWADI , J.]**