

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.237 OF 2022

BHAGYASHRI W/O. SACHIN KONDHALKAR AND ANOTHER
VERSUS
SACHIN DILIP KONDHALKAR AND OTHERS

...
Advocate for Applicants : Mr. Sandip Ramnath Andhale
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CORAM : S. G. MEHARE, J.

DATE : 11-07-2022

PER COURT :-

1. Heard the learned counsel for the applicants. The respondents were served but did not prefer to enter their appearance. Hence, the applicant is heard.

2. Learned counsel for the applicants states that the applicants have filed an application under Section 407 of the Code of Criminal Procedure ("Cr.P.C.", for short) to transfer their Miscellaneous Application No. 173 of 2018 pending before the learned Judicial Magistrate at Parner, District Ahmednagar. The applicants have claimed maintenance and many other reliefs under the Protection of Women from Domestic Violence Act, 2005 ("D.V.Act", for short). The respondents were served in the said proceedings. The applicants are residing at Parner, District Ahmednagar, with the father of applicant No.1. He was the Headmaster at Parner. Since the applicants were residing with their father/grandfather, the

proceeding was filed before the learned Judicial Magistrate, First Class at Parner. However, father of the applicant No.1 has been retired from service on 20.05.2021, and he has shifted to Mathachiwadi, Taluka Phaltan, District Satara. The applicants have also shifted to Mathachiwadi with him. It would be most inconvenient to the applicants to go with the trial at Parner. The applicants have no source of income. The distance between Partner and Phaltan is too far, and it would be most inconvenient for the applicants to attend the proceedings before the Court of learned Judicial Magistrate at Parner. Therefore, in view of this change in the place of residence of the applicants, their case may be transferred to the Court of learned Judicial Magistrate, First Class at Phaltan, District Satara, from the Court of learned Judicial Magistrate, First Class at Parner, District Ahmedngar.

3. The record shows that the applicants have filed the proceeding out of the matrimonial relations against the husband and his relatives under Section 12 of the D.V.Act. The father of applicant No.1 was in service at Parner; therefore, both the applicants were residing with him at Parner. The document dated 20.05.2021 is evidence that the father of applicant No.1 has been retired on 31.07.2021. The contention of the applicants that the father of applicant No.1 has been shifted to village Mathachiwadi, Taluka Phaltan, District Satara, after his retirement, has gone unchallenged.

4. The grounds for transfer of the cases and appeals by the High Courts have been given in Section 407 of the Code of Criminal Procedure. Considering the grounds put forth by the applicants, this Court is of the view that clause (c) of Sub-Section (1) of Section 407 of the Cr.P.C. would come into play. It has been provided in the said clause that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, the Court may transfer the application/case or the appeal from a Criminal court subordinate to its authority to any other such Criminal Court or superior jurisdiction.

5. The applicants undisputedly have no source of income. They have filed a proceeding under Section 12 of the D.V.Act. In the said application, they have also claimed the maintenance as well as the damages.

6. The applicants were residing at Parner (town) under the shelter of the father of applicant No.1, who has been retired and shifted to Mathachiwadi, Taluka Phaltan, District Satara. Therefore, the applicants have also shifted from Parner. The place where the applicants are residing, i.e. Mathachiwadi falls under the jurisdiction of the learned Judicial Magistrate, First Class, Phaltan.

7. Considering the situation, distance between Parner and Phaltan, it would definitely be inconvenient for the applicants to

conduct the case by going from Phaltan to Parner. The case is still pending and has not finally been adjudicated.

8. applicant No.2 is the minor son and resides with his mother/ applicant No.1. On examining the aspects of the case, it can safely be held that continuing proceeding with the learned Judicial Magistrate First Class at Parner would cause inconvenience to the applicants. Therefore, the application deserves to be allowed. Hence, the following order -

ORDER

- (i) The application is allowed.
- (ii) Criminal Miscellaneous Application No. 173 of 2018 (Sou. Bhagyashri Sachin Kondhalkar and another Versus Sachin Dilip Kondhalkar and others), pending on the file of learned Judicial Magistrate First Class at Parner, is transferred to the Court of Judicial Magistrate First Class, Phaltan, District Satara, for the trial according to the law.
- (iii) The necessary entry be taken in the register of registration of cases and inform the same to the learned Chief Judicial Magistrate, Ahmednagar, accordingly.
- (iv) After the case is transferred to the Court of learned Judicial Magistrate First Class, Phaltan, notices be issued to the respondents afresh.

- (v) The learned Judicial Magistrate, First Class, Phaltan should proceed with the proceeding from the stage at which the file was pending before the learned Judicial Magistrate, First Class at Parner.

(S. G. MEHARE)
JUDGE

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