

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

CRIMINAL APPLICATION NO.535 OF 2022

Shama W/o Elias Shaikh

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Elias S/o Gulam Shaikh,
- 3) Shaikh Gulam S/o Shaikh,
- 4) Shamim Begum W/o Shaikh Gulam,
- 5) Parvin W/o Shaikh Ayyub,
- 6) Yasmin Begum S/o Shaikh Ali

...RESPONDENTS

...
Mr.G.K. Muneshwar Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1 -State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 24th MARCH 2022

DATE OF PRONOUNCING ORDER : 25th APRIL 2022

ORDER :

1. The applicant is the informant in Regular Criminal Case

No.473 of 2019 pending before the learned Vith Judicial Magistrate First Class, Parbhani, District-Parbhani arising out of Crime No.146 of 2019 registered with Koparkhairane Police Station, Navi Mumbai for the offence punishable under Sections 498-A, 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 Vashi, C.B.D. Belapur, District-Thane.

2. Heard learned Advocate for the applicant and learned APP for respondent No.1 – State. Taking into consideration the submissions advanced, it is not necessary to issue notice to respondent Nos. 2 to 6.

3. It has been vehemently submitted on behalf of the applicant that the applicant is the wife of respondent No.2 and their marriage was solemnized at Kasudi, Taluka-Jintur, District-Parbhani on 9th July 2017 as per Muslim rites and thereafter the applicant went for cohabitation at her matrimonial home at Parbhani. However, because of the ill-treatment and desertion by the husband and his family members, she has been forced to live with her parents at Ghansoli, Navi Mumbai. Though she filed

complaint application with Women's Grievance Redressal Forum, C.B.D., Belapur but when there was no settlement or redressal, Koparkhairane Police lodged the report. Thereafter the Investigating Officer, Koparkhairane Police Station transferred the said complaint to Nanalpeth Police Station, Parbhani. After the investigation, Regular Criminal Case No.473 of 2019 is pending before learned VIth Judicial Magistrate First Class, Parbhani. The applicant has filed Criminal Misc. Application No.159 of 2019 before the learned Judicial Magistrate First Class at Vashi, C.B.D. Belapur, District-Thane under the provisions of Protection of Women from Domestic Violence Act, 2005 which came to be allowed and learned Judicial Magistrate First Class, Vashi directed respondent Nos. 2 to 6 to pay an amount of Rs.5,000/- per month as maintenance and also given protection to the applicant from the domestic violence. As the said respondents had not paid the maintenance, the applicant has filed execution application for recovery of maintenance bearing Criminal Misc. Application No.294 of 2021, which is pending for adjudication before the learned Judicial Magistrate First Class, Vashi.

4. As regards transfer of the criminal case bearing Regular Criminal Case No.473 of 2019 pending before the learned

Judicial Magistrate First Class, Parbhani is concerned, it has been vehemently submitted on behalf of the applicant that almost all the prosecution witnesses in the said case reside at Mumbai and they will have to attend the Court at Parbhani. It has been further submitted that applicant is the wife of respondent No.2, however, because of desertion and the ill-treatment by the husband and his family members, she was forced to live with her parents at Ghansoli, Navi Mumbai. The distance between Navi Mumbai to Parbhani is about 500 Kms., and it is inconvenient for the applicant and the prosecution witnesses to travel. The execution application filed by the applicant against her husband and in-laws for recovery of maintenance is pending in the Court at Vashi. Learned Advocate for the applicant 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 Section 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.

5. 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 Advocate for the applicant submitted that convenience of the wife is paramount consideration while considering the request for transfer of proceedings from one Court to another.

6. At the outset, it is to be noted that Regular Criminal Case No.473 of 2019 was filed in the year 2019 and till 2022 there was no problem for the applicant with the said case. She allowed it to be continued with the Court of learned Judicial Magistrate First Class, Parbhani. Now, all of a sudden, applicant says that the distance between Navi Mumbai to Parbhani is about 500 Kms., and that it is inconvenient for the applicant and the prosecution witnesses to travel. The plea of inconvenience for transferring the case from one Court to another on the basis of time taken to travel to the Court conducting the criminal trial cannot be accepted. The ratio laid down in ***Rupali Devi*** (supra) cannot be denied, however, it is to be noted that the said decision had considered whether the place where wife takes shelter after she leaves the matrimonial home or driven away by the in-laws, would get jurisdiction or not. Whether to transfer the said case from one Court to another, would definitely be in the discretion of the Courts in view of Section 406 and 407 of the Code of Criminal Procedure.

7. Further, other decisions of the Apex Court are also required to be considered. 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. In ***Rajesh Talwar (supra)***, it is further 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.”

8. 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."

9. In ***Jyoti Mishra*** (supra) wife was asking for transfer of case which was under Section 498-A of the Indian Penal Code and it was rejected and therefore, the ratio in ***Jyoti Mishra*** (supra) would be applicable here.

10. The case filed by the applicant for maintenance before the Court of Judicial Magistrate First Class at Vashi has been decided and the execution application for recovery of maintenance is pending. The convenience of the wife can be considered in civil cases and not in criminal cases as observed in ***Jyoti Mishra*** (supra). Definitely the Court at Parbhani as well as the Court at Vashi [in view of decision in ***Rupali Devi*** (supra)] will have jurisdictions. But when already the proceedings were launched, investigation was complete and charge-sheet is filed in the year 2019 itself, whether transfer of the said case on the reasons so stated by the applicant is justified, is a question and therefore, the decision of ***Jyoti Mishra*** (supra) would prevail and therefore the application deserves to be rejected at the threshold.

11. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]