

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.439 OF 2021

BHAGYASHREE SWAPNIL PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. P.P. Dhorde, Advocate for the applicant

Mr. V.N. Patil-Jadhav, APP for the respondent No.1

Mr. S.B. Kadu, Advocate for respondent Nos.2 to 6

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 01st FEBRUARY, 2022

PRONOUNCED ON : 28th FEBRUARY, 2022

ORDER :

1 Present application has been filed under Section 407 and 482 of the Code of Criminal Procedure, 1973 for transfer of two cases from Pune Courts to Court at Jalgaon.

2 Heard learned Advocate Mr. P.P. Dhorde for the applicant, learned APP Mrs. V.N. Patil-Jadhav for the respondent No.1 and learned Advocate Mr. S.B. Kadu for 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, respondent Nos.3 and 4 are the parents-in-law, respondent No.5 is sister-in-law and respondent No.6 is the relative of the husband. The applicant is the informant, who filed First Information Report vide Crime No.181/2020 before Chinchwad Police Station, Pimpri Chinchwad, Pune, for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, 1860. After the investigation has been done, the charge sheet has been filed and the case is registered vide Regular Criminal Case No.1342/2020 and it is pending before Judicial Magistrate First Class, Pimpri, Pune. It is then also stated that she has also filed an application under Section 12 of the Domestic Violence Act bearing Criminal Miscellaneous Application No.2222/2020 and is pending before Judicial Magistrate First Class (Court No.9), Pune. It is then submitted that the applicant has been forced and driven out of the matrimonial home and she is constrained to reside along with her father at parental home at Jalgaon. The respondent No.2-husband is highly educated and serving in a reputed company at Pune. The applicant has lost her temporary job and now she is jobless and it is difficult for her to earn for maintain herself. It is also stated that she has filed Criminal Miscellaneous Application FCA No.83/2021 on 06.02.2021 before Family Court, Jalgaon on 06.03.2021 under Section 125 of the Code of Criminal Procedure, for grant

of maintenance. In view of the fact that her financial condition is precarious and she is depending on her father for her daily needs, it is not possible for her to attend the dates in the matters, which are pending before Pune Courts. The distance between Jalgaon and Pune is nearly about 420 k.ms. and it is difficult for her to travel. Therefore, she is seeking transfer of those two cases at Jalgaon.

4 Learned Advocate Mr. S.B. Kadu appearing for respondent Nos.2 to 6 has strongly opposed the application and submitted that in her application under Section 12 of the Domestic Violence Act, she has given her residential address of Pune. With the change in address, the wife cannot seek transfer of cases. In her said applications she had stated that since she is resident of the place which is within the jurisdiction of Court of Judicial Magistrate First Class, that Court has jurisdiction to try and entertain the application. That application was filed on 14.07.2020 and now she is coming with a case that in 2021 she has filed another application under Section 125 of the Code of Criminal Procedure at Jalgaon. The wife cannot pick and choose the jurisdiction of the Court.

5 Learned Advocate for the applicant has relied on the decision in **Rupali Devi vs. State of Uttar Pradesh and other, AIR 2019 SC 1790**, in which

it has been held that - “Complaint alleging cruelty can be filed in Courts where wife takes shelter after leaving or driven away from matrimonial home.”

5.1 He also relied on **Shreya Prashant Agale vs. Prashant Prakash Agale, 2012 (5) Bom.C.R. 676**. In this case, this Court held relying upon *Sumita Singh vs. Kumar Sanjay, 2001(10) SCC 41*, it is the wife’s convenience that, therefore, must be looked at and then the transfer of the case of the husband to the place where the wife had filed other proceeding has been allowed.

6 At the outset, it is to be noted that when the First Information Report was given by the present applicant, she had given her residential address as - “Flat No.301, B-Wing, Ramsrushti, Vishal Nagar, Sy.No.18/1/1, Pimplenilakh, Dist. Pune”. The same address was given by her to the application under Section 12 of the Domestic Violence Act. While describing the jurisdiction to learned Judicial Magistrate First Class, Pune in respect of application under Section 12 of the Domestic Violence Act, she had pleaded that now she is residing at her parental home, which is within the jurisdiction of the Court (अर्जदार हे सध्या माहेरी रहात असून सदर ठिकाण हे मे. न्यायालयाच्या स्थळसीमेत आहे.). In the entire application, she had not stated that her parents are residing at

Jalgaon. No doubt, she has stated that the marriage was performed at Jalgaon, but a specific statement has not be made that her parents are residing at Jalgaon. Now, in her application under Section 125 of the Code of Criminal Procedure before Family Court at Jalgaon, she states that when she had filed the application under Domestic Violence Act, she was residing along with her brother at Pune. Section 27 of the Domestic Violence Act provides for the jurisdiction. It runs thus -

27. **Jurisdiction.**- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.

is clear and unambiguous. It gives jurisdiction to the Court where the person aggrieved either permanently or temporarily resides or carries on the business or is employed. Here, we are concerned with the aggrieved person. No doubt, we cannot employ a restricted meaning to the word “temporary” and it cannot include the casual stay or a flying visit to a particular place. In **Adv. Ramesh vs. State of Maharashtra, 2011 Cri.L.J. 4074** this Court has explained the expression “reside” as implying something more than a casual stay and would include concrete intention to remain at a particular place but not merely to pay a casual or a flying visit. In her application before Family Court at Jalgaon, she has stated that now, she has lost the temporary job which she was doing at Pune and due to pandemic situation/lock-down she lost that job, and cannot continue to stay with her brother and, therefore, she came to her parental house at Jalgaon. Under this circumstance, we can take the meaning that she was temporarily residing at Pune after she was allegedly driven out of the matrimonial home. Therefore, she had filed application under Domestic Violence Act at that place, so also, the First Information Report came to be lodged by her with the concerned Police Station. Under such circumstance, definitely, the ratio laid down in **Rupali Devi** (supra) would be applicable in respect of the case, for the offence punishable under Section 498-A of the Indian Penal Code. In the said case, the precise question that arose for determination before the Hon’ble Supreme

Court was - “Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the parents or other family members”. After taking note of catena of Judgments and also explaining the object behind enactment of Section 498-A of the Indian Penal Code, definition of cruelty and also the object behind enactment of protection of woman from Domestic Violence Act, it was 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 498A of the Indian Penal Code.* Though in **Shreya Agale**’s case (supra) this Court had transferred the cases and had also relied on **Sumita Singh** (supra), it had a restricted meaning. If the wife goes on changing the places of residence, then only her convenience cannot be considered. But that would depend upon the facts.

8 Further reliance can be placed on the decision in **Sangmitra w/o Ramakant Royalwar and others vs. Ramakant Gangaram Royalwar and others**, 2009 (1) M.L.J. 303, wherein the Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 have been interpreted. The

question before the Nagpur Bench of this Court was – Whether the said Bench has jurisdiction to transfer the matrimonial petition filed by the husband against the wife to another Court, which is pending in a Judicial District which comes under the exclusive jurisdiction of the Bench at Aurangabad and the Principal Seat at Mumbai. It has been held that the said Bench has jurisdiction, in view of the said Rule 1 of Chapter XXXI of Appellate Side Rules to take cognizance of such applications and then the cases were transferred. Thereafter, the said Judgment has been relied by various Courts at different Benches of this Court. There is no need to take any other view in respect of interpretation of the said rule. The further aspect, which will have to be considered from the angle of Section 407 of the Code of Criminal Procedure is regarding the convenience. Section 407 deals with the power of this Court to transfer cases and appeals. It provides that whenever it is made to appear to this Court that an order under this section is required by any provision of the Code of Criminal Procedure, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, then, the order of transfer of a case can be passed. It is so provided in Section 407(1)(c) of the Code of Criminal Procedure. Already one case is pending before Family Court at Jalgaon and two cases are pending before the Courts at Pune, however, still there is difference, because the case under Section 498-A of the Indian Penal Code is with the Court of

Judicial Magistrate First Class, Pimpri, whereas the application under Section 12 of the Domestic Violence Act is with the Court of Judicial Magistrate First Class (Court No.9), Pune and these two Courts are situated far away from each other. It was not the case that they are under one roof or in one complex. When the respondent No.2 has not disputed that he is handsomely earning, then, the convenience of the wife will have to be considered. Further, if we consider the list of witnesses given in the case under Section 498-A of the Indian Penal Code, most of the witnesses are from Jalgaon. It can be then stated that they are the relatives of the applicant, but the fact remains that most of them are from Jalgaon. Therefore, it is definitely convenient and within the powers of this Court under Section 407(1)(c) of the Code of Criminal Procedure to exercise the jurisdiction. Therefore, the application deserves to be allowed. Accordingly, following order is passed.

ORDER

- 1 The application stands allowed.
- 2 Regular Criminal Case No.1342/2020 under Section 498-A read with Section 34 of the Indian Penal Code, pending before Judicial Magistrate First Class, Pimpri, Pune and Criminal Miscellaneous Application No.2222/2020 under Section 12 of the Protection of Women from Domestic

Violence Act, 2005 pending before Judicial Magistrate First Class (Court No.9), Pune are hereby stand transferred to the Court of Chief Judicial Magistrate First Class, Jalgaon, who may assign it to any competent Judicial Magistrate First Class for its trial and disposal, according to law.

3 The Record and Proceedings of both the Courts before Judicial Magistrate First Class, Pimpri and Judicial Magistrate First Class (Court No.9), Pune be transferred to Chief Judicial Magistrate, Jalgaon.

4 Registry to inform the concerned Courts and after their transfer to the Court of Chief Judicial Magistrate/Judicial Magistrate First Class, Jalgaon, fresh notices be issued to the concerned persons, informing them the date of appearance and then the matters be proceeded.

(Smt. Vibha Kankanwadi, J.)

agd