

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

CRIMINAL APPLICATION NO.2076 OF 2021

INDRAJA W/O BHUSHAN THAKUR

VERSUS

BHUSHAN CHANDRAKANT THAKUR AND OTHERS

...

Miss. Preeti R. Wankhede, Advocate for the applicant

Mr. S.M. Ganachari, Advocate for respondent Nos.1 to 6

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 04th FEBRUARY, 2022

PRONOUNCED ON : 11th MARCH, 2022

ORDER :

1 Present application has been filed under Section 407 and 482 of the Code of Criminal Procedure, 1973, for transfer of PWDVA Application No.154/2019 and Regular Criminal Case No.1139/2019, pending before learned Judicial Magistrate First Class, Kalyan, Dist. Thane to the Court of Judicial Magistrate First Class, Aurangabad.

2 Heard learned Advocate Miss. PR. Wankhede for the applicant and learned Advocate Mr. S.M. Ganachari for respondent Nos.1 to 6.

3 It has been vehemently submitted on behalf of the applicant-wife that on the basis of First Information Report lodged by the applicant offence vide Crime No.136/2019 has been registered with Tilak Nagar (Dombiwali) Police Station, Dist. Thane, for the offence punishable under Section 498-A, 406, 323, 504 of the Indian Penal Code, 1860 against the respondents. The respondent No.1 is the husband, respondent Nos.2 and 3 are the parents-in-law, respondent Nos.4 and 6 are the brothers-in-law of the applicant and respondent No.5 is wife of respondent No.4. Thereafter, the applicant has also filed application under Section 12 of the Domestic Violence Act before Judicial Magistrate First Class, Kalyan, Dist. Thane, for various reliefs under Section 18 onwards of the Domestic Violence Act i.e. PWDVA Application No.154/2019. Further, by additional affidavit the applicant has explained that when the in-laws were harassing and husband was also harassing her, husband used to go frequently to visit foreign countries in connection with his job. The applicant and respondent No.1 started residing separately in Kalyan. Since the applicant's daughter was one year old, she had called her mother from Aurangabad to stay with her in Kalyan for some days and in the meantime she has filed the said PWDVA Application by giving the address of Kalyan. In fact, her mother is permanent resident of Aurangabad. Even prior to the marriage the applicant was permanent resident of Aurangabad. She has taken education and Post Graduation from Aurangabad district. It is not

possible for her to attend the dates before Judicial Magistrate First Class, Kalyan in connection with Regular Criminal Case No.1139/2019 and, therefore, it would be convenient if the said matter is transferred to the file of Judicial Magistrate First Class, Aurangabad for its further adjudication. She relied on the decision in **Sangmitra w/o Ramakant Royalwar vs. Ramakant Gangaram Royalwar, 2008 (6) ALL MR 1** to support her contention that this application is maintainable before this Court.

4 Per contra, the learned Advocate for the respondents strongly opposed the application and submitted that only convenience of the wife cannot be considered. The applicant has intentionally filed the present application in order to harass the respondents. She as well as her mother had given their address of Thakurli, Dombiwali, Kalyan, Dist. Thane before the investigation authorities. So also, the PWDVA application is filed by giving that address. Therefore, there is no question of transfer of only one case to the Court of Judicial Magistrate First Class.

4.1 He relied on the decision of **Jyoti Mishra vs. Dhananjaya Mishra, 2010 AIR (SC) (Supp) 70 : 2010 (8) SCC 803**. It has been observed by Hon'ble Apex Court that -

“In cases of dissolution of marriage, restitution of conjugal rights or

maintenance, Supreme Court shows much indulgence to the wife and ordinarily transfer the case to a place where it would be more convenient for her to prosecute the case. But a criminal case is on a somewhat different footing. Accused may not be able to attend the proceedings at Indore for many reasons, one of which may be financial constraints, but consequence of non-appearance of accused before Indore Court would be quite drastic. In criminal proceedings, right of accused to a fair trial and proper opportunity to defend himself cannot be ignored for the convenience of the complainant, simply because she happens to be estranged wife.”

and, therefore, the prayer for transfer was rejected by the Hon’ble Apex Court.

4.2 He also relied on the decisions in -

- 1) **Manoj Parmar vs. Union of India and others, 2021 SCC OnLine MP 2365.**
- 2) **Mrs. Snehal w/o Swapnil Pathak vs. Swapnil Arun Pathan in Miscellaneous Civil Application No.146 of 2019 decided on 01.09.2021, Bombay High Court (Aurangabad Bench).**
- 3) **Sau. Utkarsha w/o Swaresh Pawar vs. Swaresh Vijay Pawar in Miscellaneous Civil Application No.88 of 2020 decided on 10.12.2020, Bombay High Court (Aurangabad Bench).**
- 4) **Smita Vivek Bhurkapalle vs. Vivek Ramakant Bhurkapalle in Miscellaneous Civil Application No.40 of 2020 decided on**

17.01.2020, Bombay High Court (Aurangabad Bench).

Learned Advocate submitted that this application should also be rejected.

5 At the outset, it is to be noted that now, in this application the applicant-wife has given her address of Aurangabad. However, in the First Information Report lodged by her she had given her address of Thakurli, Dombiwali (E). There is no whisper about her Aurangabad connection. Similarly, in the statement dated 20.08.2019 under Section 161 of the Code of Criminal Procedure her mother Sou. Sangita Umakant Thakur has also given her address of Thakurli, Dombiwali (E), Dist. Thane. In her statement also she had absolutely not stated that she is permanent resident of Aurangabad and only to support her daughter she is residing with the daughter. No doubt, it is mentioned in her statement that on 11.12.2018 she as well as informant were given ticket from Nagpur to Aurangabad.

6 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.

7 The language of the provision contained in Section 27 of the Act 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 under PWDVA, as aforesaid, she has stated in para No.20 that since she is residing at Thakurli, Kalyan in the house of her mother, the said Court is having

jurisdiction to try and entertain the said application. Now, she wants both the cases i.e. Application under PWDVA bearing No.154/2019 as well as Regular Criminal Case No.1139/2019 under Section 498-A etc. of the Indian Penal Code be transferred to Judicial Magistrate First Class, Aurangabad. In her additional affidavit also she has not stated when she has shifted to Aurangabad. Change of her address will not give right to her to seek transfer of the cases.

8 As regards the maintainability of the application before this Court is concerned, it can be definitely said that the decision relied by the learned Advocate for the applicant would be applicable and though the cases are presently pending before Judicial Magistrate First Class, Kalyan, Dist. Thane, which place is not within the local jurisdiction of this Bench; yet, the applicant is residing within the jurisdiction of this Court and, therefore, the interpretation of Rule 1 of Chapter XXXI of Bombay High Court Appellate Side Rules, 1960 made in the decision of the **Sangmitra** (supra) will have to be considered. The cases are pending within the jurisdiction of the High Court of Bombay, may be under different Bench. There is no question of difference in the Benches as regards the exercise of powers of the High Court is concerned. Therefore, definitely, the application is maintainable.

9 If we consider the charge sheet, which has been supplied by the applicant herself, it can be seen that only two witnesses i.e. Raju Thansingh Wagh and Krishna Thansingh Wagh are from Aurangabad. As aforesaid, even the mother of the applicant Sou. Sangita Umakant Thakur has not given her address of Aurangabad. However, she makes statement about some incident dated 18.02.2019, which is in respect of a tempo, which had arrived at the Aurangabad address. These are the only witnesses apart from the applicant herself. The other statements appear to be that of accused. Therefore, it cannot be stated that it would be only for the convenience of the informant that the cases should be transferred from Kalyan to Aurangabad. Further, the ratio laid down in **Jyoti Mishra** (supra) would be applicable. In **Mrs. Snehal w/o Swapnil Pathak** (supra) it has been observed by this Court that since except showing convenience, applicant is not coming with any other ground, the transfer cannot be effected. This Court rather directed the respondent to pay charges for every date attendance to the Court. Same course was adopted in **Sou. Utkarsha w/o Swaresh Pawar vs. Swaresh Vijay Pawar**. In **Smita Vivek Bhurkapalle** (supra) the Court was directed to take the evidence of the wife by video conference. The applicant in this case also may ask for the expenses for travelling as well as prayer for recording her evidence through video conference. The concerned Court may decide such applications on its own merits. Transfer of the case is not the only option.

Further, it is also to be noted that though in PWDVA application all the respondents in this application are the respondents; yet, the prayer clause would show that she is asking relief from respondent Nos.1 to 3 only. Therefore, the application deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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