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

CRIMINAL APPLICATION NO.2341 OF 2021

**HARSHALI NILESH NEHETE
VERSUS
NILESH SURESH NEHETE AND OTHERS**

Mr. Shaikh Mohammad Naseer A, Advocate for applicant;
Mr. M. M. Bhokarikar, Advocate for respondents no. 1 to 4;
Mr. V.M. Kagne, A.P.P. for respondent no.5

CORAM : S. G. MEHARE, J.

DATE : 6th October, 2022

PC.

1. Heard the learned counsel for the applicant, learned counsel for respondents no.1 to 4 and learned counsel for respondent no.5.

2. The applicant, the wife of respondent no.1, has filed an application under Sections 12, 17 and 23 of the Prevention of Women from Domestic Violence Act, 2005. Her case is pending before the learned Judicial Magistrate First Class, Bhusawal, District Jalgaon. The notices have been issued in the said matter. The said case was registered as P.W.D.V Application No.20 of 2019.

3. The applicant has a case that she has been shifted permanently to Mumbai. She is serving in Railway Department. She got

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transferred on request, since her son by birth is suffering from mental health disorder and is under treatment at Mumbai. To prove her claim that she has been shifted permanently to Mumbai, she has filed the transfer order dated 6.9.2021 as well as her latest Aadhar card showing that she has been shifted to Mumbai.

4. The learned counsel for the applicant would submit that it would be most inconvenient for the applicant to attend the case at Bhusawal and pursue her case. The claim under the D.V. Act does not end. After passing the orders, the execution goes on for the life. She is helpless. She cannot leave her son alone. Therefore, her application may be transferred to the Family Court at Mumbai.

5. The respondents have strongly opposed the application contending that the applicant has deliberately got transferred to Mumbai. The application filed by the applicant is pending for evidence and it is likely to be finished shortly. The ground of health of her son is incorrect, false and misleading. The said ground has been raised to grab sympathy of the Court, which is not permissible. She can easily take her son to Mumbai for treatment. Regular Criminal Case No.48 of 2020 for the offences punishable under Sections 498-A, 323, 504, 507 of the Indian Penal Code and marriage petition is also pending before the Court at Bhusawal. It has also

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been argued that filing such an application is nothing but an additional attempt to harass the respondents and their old aged parents. He would also submit that the applicant may attend the Court through video conferencing. The video conferencing is available throughout the State. Therefore, also case need not be transferred. He prayed to dismiss the application.

6. No doubt, the video conferencing facility is available throughout the State. However, the nature to the proceedings, cannot be ignored. If the applicant has to attend the case filed under Section 498-A, 323, 504, 507 of the Indian Penal Code at Bhusawal, she may have to attend the Court only once for recording the evidence. However, that may not be the case in the cases under Section 12 of the D.V. Act or 125 of the Code of Criminal Procedure. In such cases, the applicant has to spend many years in Court. The recovery proceedings goes for years together. Therefore, the prayer of the learned counsel for the respondents that she may attend the Court through video conferencing in this case cannot be accepted. The reasons assigned by the applicant for transferring the petition appears sound, legal and justifiable. She being mother has to take care of her ailing child who needs regular treatment for mental diseases.

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The Court is satisfied that the applicant has a good case for transferring her petition to Mumbai. Hence, the following order:-

- i) Criminal Application is allowed.
- ii) PWDV Application No.20 of 2019 (Sou. Harshali Nilesh Nehete vs. Nilesh Suresh Nehete & others), pending on the file of the learned Judicial Magistrate, First Class, Bhusawal shall stand transferred to the Family Court at Mumbai.
- iii) The learned Judicial Magistrate First Class, Bhusawal, shall transfer the petition through the learned Principal District and Sessions Judge, Jalgaon.
- iv) After receiving the case, the learned Judge, Family Court at Bombay shall deal with the matter according to law.

(S. G. MEHARE, J.)

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