

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

CRIMINAL APPLICATION NO.2565 OF 2021

Sow. Archana W/o Sachin Deshmukh

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Sachin S/o Vijayrao Deshmukh,
- 3) Vijayrao S/o Champakrao Deshmukh,
- 4) Swati W/o Shivaji Chavan

...RESPONDENTS

...
Mr.Yogesh D. Kale Advocate for Applicant.
Mr.B.V. Virdhe, 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.277 of 2017 pending before the learned Judicial Magistrate First Class, at Chikhli, District-Buldhana arising out of Crime

No.243 of 2017 registered with Chikhli Police Station for the offence punishable under Sections 498-A, 323, 504 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 Jalna.

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 4.

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 Jalna on 6th December 2015 as per Hindu rites and thereafter the applicant went for cohabitation at her matrimonial home at Chikhli in Buldhana District. 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 Jalna. Though she filed complaint application with Women's Complaint Redressal Forum, Chikhli, she could have filed it at Jalna also but when there was no settlement or redressal, Chikhli Police lodged the report. After the investigation, Regular Criminal Case No.277 of 2017 is pending

before the learned Judicial Magistrate First Class, Chikhli, District-Buldhana. The applicant has filed Petition bearing No. A-66 of 2019 (old HMP No.237 of 2017) before the Family Court, Jalna for restitution of conjugal rights, under Section 9 of Hindu Marriage Act. She has also filed Petition No. E-263 of 2019 (old M.A. No.889 of 2018) under Section 125 of the Code of Criminal Procedure for maintenance. Learned Family Court, Jalna by its common Judgment and order dated 6th March 2020 allowed her Petition for restitution of conjugal rights and partly allowed the maintenance Petition directing respondent No.2 to pay maintenance at the rate of Rs.5000/- per month. Respondent No.2 has challenged the said order before this Court by filing Family Court Appeal No.36 of 2020 and it is pending before this Court. It is also submitted that respondent No.2 has filed Hindu Marriage Petition No.43 of 2019 before the learned Civil Judge Senior Division, Buldhana for dissolution of marriage and it is then stated that separate Misc. Civil Application has been filed by the applicant before this Court for transfer of said Hindu Marriage Petition from Buldhana to Jalna.

4. As regards transfer of the criminal case bearing Regular Criminal Case No.277 of 2017 pending before the learned Judicial Magistrate First Class, Chikhli is concerned, it has been

stated that father and mother of the applicant are old aged persons and due to Covid-19 pandemic situation, it is difficult for them to attend the proceedings at Chikhli. Learned Advocate for the applicant submitted that convenience of the wife is paramount consideration while considering the request of transfer of proceedings from one Court to another Court. He has then referred to following Cases, wherein the transfer of the case was allowed:-

- I) ***Vennangot Anuradha Samir vs. Vennangot Mohandas Samir, 2016(1) Bom.C.R. 250,***
- II) ***Soma Chaudhari vs. Gulab Chaudhari, (2004), 13 SCC 462,***
- III) ***Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani, AIR 2009 SC 1374,***
- IV) ***Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, 2016, AIR(SC) 3584,***
- V) ***Sayali Swapnil Kuber vs. Swapnil Harishchandra Kuber, 2014(1) Mh.L.J. 584,***
- VI) ***Nilima vs. Pavansingh, LEX (BOM) 2011 (9) 93***
- VII) ***Shila Nitin Rajure vs. Nitin Marotiappa Rajure, MCA No.184/2017 (Aurangabad Bench) dated 9th January 2018.***

5. Learned Advocate for the applicant also relied on the decision in ***Siku Industries and others vs. C. D'souza and***

others, 1971 Mh.L.J. 172, wherein it has been held that this Court can use its discretionary powers under Article 226 of the Constitution of India and transfer the case. Learned Advocate also 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 Advocate 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 Advocate 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 Indian Penal Code. Learned Advocate 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.

6. At the outset, it is to be noted that Regular Criminal Case No.277 of 2017 was filed in the year 2017 and till 2021 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, Chikhli. Now, all of a sudden, applicant says that her parents are old and cannot attend Chikhli Court. It is pertinent to note that respondent No.3 is also 63 years old person. So only old age cannot be the criteria and now the pandemic situation is improved and the Courts are functioning full fledged. 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 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 two cases which the applicant had filed before the Family Court at Jalna have been decided and the appeal filed by respondent No.2 is pending before this Court. The convenience of the wife can be considered in civil cases and not in criminal cases as observed in ***Jyoti Mishra*** (supra). There is no question of use of constitutional powers of this Court under Article 226 of the Constitution of India or even the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. The ratio laid down in ***Siku Industries*** (supra) will not be applicable here. It was the case for the offences under paragraph 76(a) of the Employees Provident Funds Scheme, 1952 read with Sections 14(2) and 14-A (1) and/or Section 14-A (2) of the Employees Provident Funds Act, 1952. The Division Bench had then concluded that the cause of action for the prosecution of the petitioners for the alleged contravention of the provisions of the Provident Funds Scheme has wholly arisen at Nagpur and the opponent No.1 was not authorized to initiate the criminal prosecutions against the petitioners before a Magistrate at Bombay and therefore writ of mandamus was issued to opponent No.1 refraining opponent No.1 from proceeding with the criminal

prosecutions against the petitioners in Bombay. The liberty was given to opponent No.1 or any other person authorized by the Provident Fund Commissioner to initiate prosecution against the petitioners in a Court at Nagpur. Here in the present case, we are not considering the jurisdiction of the Court. Definitely the Court at Chikhli as well as Court at Jalna [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 2017 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.]**