

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1746 OF 2022

Shri. Durgaprasad Rajeshwarrao Deshpande
and Others ...Applicants

Versus

Smt. Sarika Durgaprasad Deshpande ...Respondent

ALONG WITH
MISCELLANEOUS CIVIL APPLICATION NO. 252 OF 2022

Smt. Sarika Durgaprasad Deshpande ...Applicant

Versus

Shri. Durgaprasad Rajeshwarrao Deshpande ...Respondent

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Mr. Rajendra Deshmukh, Senior Advocate i/by. Ms. A.S. Jadhav
for applicant in Criminal Application No. 1746/2022.

Mr. N.K. Tungar, Advocate for the applicant in Misc. Civil
Application No. 252/2022.

Mr. Rajendra Deshmukh, Senior Advocate i/by. Mr. Joslyn
Menezes for respondent in Misc. Civil Application No. 252/2022.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 19th DECEMBER, 2022

PRONOUNCED ON: 22nd DECEMBER, 2022

ORDER :

1. Criminal Application No. 1746/2022 is filed by the applicant-husband under section 407 and 482 of Code of Criminal Procedure, 1973, against the wife seeking transfer of matrimonial proceedings pending at Nanded to any other Court in adjoining district preferably at Aurangabad or any other

district except Nanded and Parbhani. Miscellaneous Civil Application No. 252/2022 is filed by wife seeking transfer of pending matrimonial proceeding at Family Court, Aurangabad to Family Court, Nanded. Both these matters are clubbed together under the orders of Senior most Judge.

2. The learned senior advocate for the husband on instructions makes a statement that husband has no objection if the matters are transferred to Nanded district. A request is made that all matrimonial proceedings be clubbed together and transferred to Nanded, and they may be placed before Family Court, Nanded.

3. During the course of hearing of these matters a disturbing fact is revealed that both the children i.e. Abhinav aged 13 years and Advait aged 10 years are not attending the school. The husband on his transfer from Nanded to Sangamner, District- Ahmednagar, under the orders of Child Welfare Committee had taken away transfer certificates of both the children from Oxford International School, Nanded. The husband claims that his wife is suffering from Schizophrenia and therefore he has taken admission of children to Pravara Center Public Boarding School, Loni, Ahmednagar.

4. The husband is insisting that the children should attend the boarding school at Ahmednagar, as the wife is suffering from Schizophrenia and he does not want children to be with her. The wife on the other hand contends that the husband has created documents to show that she is suffering from Schizophrenia and she is not suffering from the said disease.

5. This Court called the parties and children in chamber and interacted with them. Husband is insisting that since the wife is suffering from Schizophrenia, children should be admitted in boarding school. The wife on the other hand does not want to leave the children. Even the children want to stay with their mother and continue education in their school at Nanded i.e. Oxford International School, Nanded.

6. Because of adamant approach on the part of husband and wife, children are suffering. They are kept away from education since last more than six months. The husband has taken away transfer certificates of children under the orders of Child Welfare Committee, which does not appear to have jurisdiction to pass such orders. Subsequently, the Child Welfare

Committee recalled the order passed in favour of husband and held that it has no jurisdiction to entertain the prayers of husband.

7. On the last date of hearing learned advocate representing the wife has informed this Court that the children have now joined the Oxford International School, Nanded.

8. Considering the peculiar facts of the case and the fact that husband has approached Family Court under section 26 of Hindu Marriage Act, 1955, and keeping in mind welfare of children, in my opinion following order would meet the ends of justice.

ORDER

- I) PWDVA No. 211/2021 pending before the Court of learned Judicial Magistrate First Class, Nanded and Marriage Petition No. A-489/2022 pending before learned Principal Judge, Family Court, Aurangabad, are transferred to Family Court, Nanded.
- II) Both the children are allowed to continue their education at Nanded for the present, till the Family Court takes decision in that behalf.

- III) Family Court, Nanded shall pass appropriate interim orders, after hearing the parties and the children, and keeping in view educational interest of the children, within a period of two weeks from today.
- IV) The Family Court shall decide the proceeding under section 26 of Hindu Marriage Act, 1955, on its own merits, in accordance with law.
- V) The applications are disposed of in terms of above order.
- VI) Needless to state that the observations in the present order are prima facie and Family Court shall not be influenced by the observations, while passing the interim orders or final orders on merits.

[NITIN B. SURYAWANSHI, J.]