

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPLICATION NO.3173 OF 2019

MASARAT JAHAN W/O DR. SYED JAVED

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. M.S. Choudhary, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent Nos.1 and 2

Mr. Amey Sabnis, Advocate for respondent Nos.3 to 6

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th APRIL, 2022

ORDER :

1 By this application the applicant seeks transfer of Regular Criminal Case No.36/2010 (The State vs. Syed Javed and others) to be transferred from the Court of learned Judicial Magistrate First Class, Deoni, Dist. Latur to the Court of Judicial Magistrate First Class, Aurangabad.

2 Heard learned Advocate Mr. M.S. Choudhary for the applicant, learned APP Mrs. V.N. Patil-Jadhav for respondent Nos.1 and 2 and learned Advocate Mr. Amey Sabnis for respondent Nos.3 to 6.

3 The applicant is the informant-wife of respondent No.3. They got married on 19.05.2008 as per Muslim rites and custom. They have a girl child. The applicant-informant has lodged First Information Report vide Crime No.39/2010 under Section 498-A, 323, 504 read with Section 34 of the Indian Penal Code, 1860 against the present respondent Nos.3 to 6 on 15.05.2010 with Deoni Police Station. It has been stated that personal exemption was sought by some of the respondents and, therefore, the evidence could be started only two years ago before learned Judicial Magistrate First Class. The applicant says that she being the parda nashin lady is unable to attend Court of Judicial Magistrate First Class, Deoni from Aurangabad on each and every date. She has apprehension at the hands of the respondent Nos.3 to 6, as they had given threats to kill her. The respondent No.3 has performed second marriage and thereby committed offence under Section 494 of the Indian Penal Code also. The summons was not served on her Aurangabad address, which was her old address and she has changed the address since 2014. She has engaged Advocate to assist the prosecution and also to represent her. When the fact was brought to the notice of learned Magistrate it was observed by the learned Magistrate that the applicant is not interested in prosecuting the matter and, therefore, discharged her from adducing her evidence. The applicant says that she has filed an application before the concerned Court for recalling of the order. It is

stated that the attitude of the learned Magistrate is not fair and, therefore, she wants transfer of the case.

4 The learned Advocate Mr. Amey Sabnis appearing for respondent Nos.3 to 6 opposed the application and submitted that whatever the grounds have been given are false. There was no such hurdle placed by the accused persons in respect of their trial before the concerned Court. The application cannot be treated under Section 407 and/or 482 of the Code of Criminal Procedure.

5 At the outset, it is to be noted that the case is pending since long. Who was responsible for the delay is not a question in this case, because the applicant wants only the transfer. She has not challenged the impugned order passed by learned Magistrate in this petition. First of all, if she had changed her address, then, it was for her to inform the Court or the prosecuting agency about the same. How the Court supposed to know the change of the address of the informant in each and every case, is a question. It would be a very much difficult task to keep a track of the addresses of the witnesses and the informant. At no earlier point of time since 2010 the applicant had any grievance against the Magistrate. When it appears that repeated summonses were given and the witnesses were not appearing and it

had taken long time for the trial, the learned Magistrate would have passed the order and in fact, he had recalled his previous order and directed the applicant to remain present for the evidence on 05.10.2019. Now, a statement has not be made by the learned Advocate for the applicant that whether in pursuant to that order the applicant had appeared on that day and her evidence has been recorded or not. This application is also kept pending by the applicant for two years. Therefore, the application appears to be filed with mala fide intention. Respondent Nos.3 to 6 are from village Walandi, Tq. Deoni, Dist. Latur. Merely because the informant resides at Aurangabad she cannot ask for the transfer of the case to Aurangabad. No doubt, Hon'ble Apex Court in **Rupali Devi vs. State of Uttar Pradesh and others, (2019) 5 SCC 384** observed 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. Therefore, it was held that the place where the wife takes shelter that Court will have jurisdiction to entertain the complaint alleging commission of offence under Section 498-A of the Indian Penal Code. But at the same time, it is to be noted that the present application has not been filed on the basis of

ratio in **Rupali Devi** (supra) but it is on the basis of same order that has been passed by learned Judicial Magistrate First Class, Deoni, which is not challenged at all. Further, the case is pending since 2010 and the transfer is asked only in 2019. Reliance can be 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.”

6 It was pointed out that **Jyoti Mishra** (supra) was the case wherein the wife was asking for transfer of case under Section 498-A of the

Indian Penal Code but it has been rejected with the aforesaid reasons. Therefore, this is not a fit case for transfer of case and exercise of powers of this Court under Section 407 and/or 482 of the Code of Criminal Procedure. The application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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