

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

MISC.CIVIL APPLICATION NO.34 OF 2022

**SNEHA ADARSH WATAGE ALIAS SNEHA BAWANNAPPA
PATRIKE
VERSUS
ADARSH AMARNATH WATAGE**

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Mr. S.V. Gundre, Advocate for the applicant.
Mr. Amit Yadkikar, Advocate for respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 22.12.2022.

ORDER:-

1. The applicant – wife is seeking transfer of HMP No.513/2021 filed by the respondent – husband for getting divorce, from the Family Court, Aurangabad to the Family Court at Latur.

2. The learned Counsel for the applicant submits that the applicant is Doctor by profession and it was learnt that the respondent is having illicit relations with his colleague Dr. Kanika, and therefore, deserted her. He further submits that the distance between Latur, where the applicant is presently residing and Aurangabad, is 270 kms. Moreover, the applicant has also filed petition for restitution of conjugal rights in Family Court, Latur and also lodged criminal prosecution

under Sections 377, 343 and 498-A of the Indian Penal Code against the respondent and his family members at Latur itself. Further, according to him, the applicant is not having any independent source of income, and therefore, the aforesaid petition filed by the respondent for getting divorce can be conveniently transferred to the Family Court at Latur.

3. On the contrary, learned Counsel for the respondent strongly opposed the submissions made by learned Counsel for the applicant, on the ground that the proceeding filed by the applicant at Latur is in fact counter-blast to the proceeding of the respondent filed at Aurngabad. He pointed out that the divorce petition, which is sought to be transferred in this application, has been filed on 16.09.2021 at Aurangabad Family Court and thereafter this transfer petition is filed on 21.11.2021. Further, the F.I.R. in respect of the aforesaid criminal prosecution was lodged by the applicant on 16.10.2022 and the petition for restitution of conjugal rights was filed just in the last week. He further pointed out that the F.I.R. lodged by the applicant itself indicates that since March 2019 she is separately residing from the respondent. Learned counsel further submitted that at present the respondent being M.D. (Medicine) is In-charge of two Intensive Care Units

and therefore, it is highly difficult for him to attend the dates at Family Court, Latur. In the alternative, he submitted that the applicant can attend the dates at Family Court, Aurangabad through Video Conferencing.

4. Heard rival submissions. Also perused the documents on record.

5. Learned Counsel for the applicant – wife relied on the judgments in the cases of (1) ***Rajni Kumari vs Raghvinder Sahay*** reported in ***(2011) 11 SCC 176*** and (2) ***Vaishali Shridhar Jagtap vs Shridhar Vishwanath Jagtap*** reported in ***2016 (6) All. M.R. 449***.

6. As against this, learned Counsel for the respondent – husband relied on the judgment in the case of ***Amruta Ben Himanshu Kumar Shah vs Himanshu Kuar Pravinchandra Shah*** reported in ***AIR 2021 (SC) 688***.

7. It is significant to note that both the rival parties are in medical field and are doctors by profession. It is settled position that in transfer cases, convenience of the wife is to be seen prior to the convenience of husband. In the instant matter, it is not in dispute that the divorce petition filed by the respondent – husband is pending in the Family Court at

Aurangabad whereas criminal prosecution and petition for restitution of conjugal rights are filed by applicant – wife in the Courts at Latur.

8. Though it is observed by the Hon'ble Apex Court in the case of ***Amruta Ben Himanshu Kumar Shah vs Himanshu Kuar Pravinchandra Shah*** (supra), relied upon by the learned Counsel for the respondent, that wife can be directed to attend the dates of the petition filed by her husband through Video Conferencing and wherever her physical presence is required then on the expenses of husband, however, the Supreme Court has also recently taken a view that if the petitions are filed by husband and wife against each other on the same set of facts, then it would be appropriate that both such petitions should be dealt by one and the same Court.

9. Definitely, the petition is filed by the wife and the criminal prosecution is lodged by her against the respondent husband and his family members after filing of the petition by respondent for getting divorce, but now considering the pendency of the proceedings filed by the applicant at Latur, the respondent will have to attend the same at Latur. Moreover, as per the recent observation of the Hon'ble Apex Court, as mentioned above, if the petitions filed by the applicant and

respondent against each other are based on the same set of facts, those need to be disposed of by one and the same Court. The direction given by the Hon'ble Apex Court in the judgment relied upon by the respondent is also applicable to him, if he is required to attend the proceedings at Latur. Therefore, considering all these aspects, the following order is passed.

ORDER

- (i) The application is hereby allowed.
- (ii) HMP No. 513/2021 pending in the Family Court at Aurangabad is hereby transferred to the Family Court at Latur for its simultaneous disposal, alongwith the petition filed by the applicant for restitution of conjugal rights, according to law.
- (iii) The respondent may be permitted by the learned Family Court, Latur to be represented by his Counsel without being present on all such occasions, except the date on which his physical presence is required.
- (iv) The respondent may be permitted to use the facility of Video Conferencing subject to its availability.
- (v) The learned Family Court, Latur is directed to dispose of both the petitions as early as possible.

- (vi) The respondent is directed to appear before the learned Family Court, Latur on or before 25th January 2023.
- (vii) The application is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)