

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3860 OF 2019

SANA W/O ALTAF PATHAN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Sayyed Tauseef Yaseen, Advocate for the applicant

Mr. B.V. Virdhe, APP for the respondent No.1

Mr. A.B. Hawale, Advocate for respondent Nos.2 to 4

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 25th FEBRUARY, 2022

PRONOUNCED ON : 04th MARCH, 2022

ORDER :

1 Present application has been filed under Section 407 and 482 of the Code of Criminal Procedure, 1973, for transfer of Regular Criminal Case No.511/2019, pending before learned Judicial Magistrate First Class, Vasai, Dist. Palghar to the Court of Judicial Magistrate First Class, Beed.

2 Heard learned Advocate Mr. Sayyed Tauseef Yaseen for the applicant, learned APP Mr. B.V. Virdhe for the respondent No.1 and learned Advocate Mr. A.B. Hawale for respondent Nos.2 to 4

3 It has been vehemently submitted on behalf of the applicant that the applicant had filed First Information Report bearing Crime No.169/2018 on 15.05.2018 before Manikpur Police Station, Dist. Palghar, for the offence punishable under Section 498-A, 354, 420, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 against the respondent Nos.2 to 4. The investigation is complete and charge sheet was filed before learned Judicial Magistrate First Class, Vasai. The applicant has again reiterated the contents of the First Information Report, which need not be reproduced here. However, suffice it to say that she contends that the respondent Nos.2 to 4 were persistently demanding amount of dowry and upon her denial she was brutally beaten and it was told by the husband that he is not interested in pursuing marital life with her. Applicant called her cousin brother to take her to her paternal home and accordingly she was brought to Beed on 12.11.2017. The respondent No.2 went to Beed along with his relatives on 18.12.2017 and had asked the applicant to sign divorce agreement, which was brought by him. Her father had asked the respondent No.2 to return the dowry amount of Rs.3,50,000/- and in pursuing to the same the respondent No.2 had given two post dated cheques, issued of Bank of Baroda, Branch Vasai for Rs.1,50,000/- and Rs.2,00,000/- respectively. After receiving the cheques the applicant had signed on the divorce agreement and then the respondent No.2 went to Vasai. Those cheques, which were given by the

respondent No.2, were dishonoured. The applicant thereafter got married to one Samir Ruhul Amin and is now residing at Beed. She is facing serious inconvenience to travel Vasai. The witnesses are also residing at Beed and, therefore, it would be inconvenience for them to stand the said case. She, therefore, asked for transfer. Learned Advocate for the applicant has relied on following cases :

- 1) **Sakshi Krishnanath Gosavi vs. Krishna Marutinath Gosavi**, MANU/MH/1991/2021.
- 2) **Irene Blanch Khera and others vs. Glenn John Vijay Ambrose e Sousa Ticlo**, MANU/MH/2216/2018.
- 3) **Snehal Omprakash Kothekar vs. Omprakash Domaji Kothekar**, 2013 (6) Mh.L.J. 711.
- 4) **Sangamitra w/o Ramakant Royalwar and others vs. Ramakant Gangaram Royalwar and ors**, 2009 (1) Mh.L.J. 303.
- 5) **Sayali vs. Swapnil**, 2014 (1) Mh.L.J. 584.

Learned Advocate for the applicant has submitted that the present application is maintainable before this Bench. He submits that taking into consideration the convenience of the witnesses the said case be transferred to the competent Court at Beed.

strongly opposed the application and the affidavit-in-reply has been filed by the respondent No.2 on behalf of all, wherein mainly he has denied the allegations regarding cruelty, outraging of modesty, cheating etc. He also submits that the father of the applicant has filed criminal complaint under Section 138 of the Negotiable Instruments Act bearing Summary Criminal Case No.1420/2018 before Judicial Magistrate First Class, Beed. It is hard to respondent Nos.2 to 4 also to come down to Beed on each and every date. Respondent No.3 and 4 are heart patients as well as old aged. Their convenience is also required to be considered.

5 Learned APP relied on the decision in **Deepa w/o Piyush Khatri vs. Piyush Bandulal Khatri, 2019 (4) Mh.L.J. 872** decided by this Court, to object entertainment of the present application by this Bench.

6 At the outset, as regards the maintainability of the application before this Court is concerned, it can be definitely said that the decisions relied by the learned Advocate for the applicant would be applicable and though the case is presently pending before Judicial Magistrate First Class, Vasai, Dist. Palghar, which place is not within the local jurisdiction of this Bench; yet, the applicant is residing within the jurisdiction of this Court and, therefore, the interpretation of Rule 1 of Chapter XXXI of Bombay High Court Appellate Side Rules, 1960 made in the decision of the **Sangmitra** (supra)

will have to be considered. However, further, it is to be noted that the decision in **Deepa Khatri** (supra) will not be applicable to this case, as in that case the case to be transferred was within the jurisdiction of another State i.e. within the jurisdiction of another High Court and, therefore, it was held that this Bench had no jurisdiction to entertain the said application. But, here, in this case, the case is pending within the jurisdiction of the High Court of Bombay, may be under different Bench. There is no question of difference in the Benches as regards the exercise of powers of the High Court is concerned. Therefore, definitely, the application is maintainable.

7 Question is, whether the application can be allowed for the grounds stated in the application. In all those cases which have been relied by the learned Advocate for the applicant, one of the proceedings between the same parties was in the jurisdiction of the concerned Bench and the relationship of husband and wife was still subsisting. Here, in this case, it can be seen that the relationship between informant and respondent No.2 had come to an end on 18.11.2017 when she signed on the Talaqnama. Though she says that since the cheques were bounced her husband had cheated them, but then she does not say that since the signature on the Talaq Agreement was taken by fraud, that is not binding on her. Rather she considered herself to be a divorced woman appears to have married to

another person. Now, this is the only case i.e. Regular Criminal Case No.511/2019 pending between them. The case under Section 138 of the Negotiable Instruments Act is by her father and not by the applicant. Question of transfer of that case will not arise in this application. When she is no longer the wife of respondent No.2, there is no necessity to consider her convenience. Further, it is a State case and, therefore, she need not attend each and every date, so also, the witnesses. They will have to remain present after the summons is served. If we consider particulars of witnesses to be examined at paragraph No.13 of the charge sheet, then, it gives list of nine witnesses; out of which two witnesses are from Vasai and only two witnesses are from Beed including the informant, two witnesses are from Rajunagar Dhanora road, Dist. Ahmednagar and three police persons are from Manikpur Police Station, Dist. Palghar. Therefore, taking into consideration this account, it cannot be said that only for two witnesses, who are from Beed, the case should be transferred to the Court of Judicial Magistrate First Class, Beed. No case is made out to exercise the powers of this Court under Section 407, much less 482 of the Code of Criminal Procedure. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)