

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3868 OF 2018

DR. SAURABH S/O. SHIVHAR YELURKAR AND OTHERS
VERSUS
DR. MAYURI SAURABH YELURKAR

...
Advocate for Applicants : Mr. Hanmant V. Patil
Advocate for Respondent : Mr. Subhash V. Mundhe
...

CORAM : S. G. MEHARE, J.

DATE : 03-08-2022

Order :-

1. Heard the learned counsel for the applicants and the respondent. Applicant No.2, a practicing lawyer, is also present in the Court. The learned counsel for the applicants has advanced the arguments in her presence.
2. The respondent/non-applicant has filed a case under the Protection of Women from Domestic Violence Act 2005 ("D.V.Act") against the present applicants at Gangakhed.
3. The learned counsel for the applicants has argued that RCC No. 26 of 2015 under section 498 A of IPC was filed at Gangakhed. However, by order of this Court, it has been transferred from the Gangakhed to the Court at Latur. The present respondent is attending the said case at Latur. The application of the D.V.Act has

been filed on the same allegations. Hence, transferring the D.V. case to the Court at Latur would be appropriate.

4. The applicants seek transfer of the petition pending before the Court of learned Judicial Magistrate, First Class, Gangakhed, on the ground that all the three petitioners must come from Latur to Gangakhed. Respondent had filed an affidavit of examination-in-chief before the Court of the learned Judicial Magistrate, First Class at Gangakhed. However, for about 27 dates, the respondent did not attend the Court for cross-examination. The learned Magistrate also passed the orders against the present respondent to remain present in the Court, but she did not obey the orders. It has also been alleged against the respondent that she has threatened the petitioners. They have lodged the report of an assault at the Police Station Gangakhed. The applicants have also contended in the application that the administration and court atmosphere are prejudicial against them, and they may be harassed again. There is no possibility of a proper hearing and justice from the Court in favour of the applicants. Since the criminal case has been transferred to Latur Court, the present case may also be transferred to the Court at Latur.

5. Applicant No.3 is retired from service and suffering from rheumatoid arthritis. Hence, he cannot travel. He is also suffering from hypertension and a diabetic. Petitioner No.2 is a heart

patient. It has also been a ground that the respondent/wife is not residing at Gangakhed, but to harass the applicants, she is pulling her case before the Court at Gangakhed.

6. The learned counsel for the applicants has vehemently argued that considering the history of litigation and the conduct of the respondent, the case pending before the learned Magistrate at Gangakhed may be transferred to Court at Latur. It has also been argued that since the criminal case under Section 498A of IPC has been transferred to Gangakhed, it will be convenient for her to attend the case under the D.V.Act. The learned counsel for the applicants has referred to various papers and the orders passed by the learned Magistrate in this case. He has also referred to a complaint made against applicant No.2 by the staff of the Gangakhed Court and argued that not only the Presiding Officer but the entire staff was against her; therefore, she has no confidence that her matter would be decided on merits.

7. The learned counsel for the respondent has vehemently argued that the applicants were never threatened. The applicants have no trust in the trial court and the staff. Therefore, they have created a ground for the transfer of the case. Applicant No.2 is a practicing Advocate; therefore, she attended the case on every date. The allegations have been levelled against the Presiding Officer and the staff of the Court. The present applicants have filed

various applications in the proceeding. Hence, the respondent was attending the case on material dates. T. Hence, the time has been spent deciding the interlocutory applications. The respondent has faced cross-examination.

8. The respondent/original applicant is a lady with no income source, and it would be more inconvenient for her to come from Latur, which is 450 km away. He referred to the case, of ***Rupali Devi Versus State of Uttar Pradesh, 2019(2) SCC (Cri) 558.*** This case pertains to the transfer of the case under Section 498A of IPC. Considering Section 177 of the Code of Criminal Procedure, the Honourable Apex Court held that the jurisdiction of courts situated at such other place to entertain a complaint under Section 498A of IPC, where no overt act of cruelty or harassment alleged to have been committed by the husband or his relatives at parental home or such other place where the wife had taken shelter. It is further held that adverse effects on mental health in the parental home or other places of shelter, though on account of acts committed in the matrimonial home, would amount to commission of cruelty within the meaning of Section 498A of IPC at parental home or such other place.

9. The record reveals that there were complaints against the Judicial Officer and the staff of the Court. The allegations have also been levelled against the Principal District and Sessions Judge.

That the then Presiding Officer was insisting for her settle the dispute. After clarifying the stay order, the subsequent developments have been incorporated in the said application, which shows that applicant No.2 has filed application Exhibit-65 for awarding Rs.2000/- per trip to her towards to and fro expenses. She has contended the counsel for non-applicants remained absent on 25 dates. The learned Magistrate considered the facts of the case and observed that the present applicant had filed applications on record because of which the evidence of the respondent could not begin. Therefore, the respondent was not expected to come before the Court from time to time. The learned Magistrate has also observed that the present respondent was present before the Court to face cross-examination on that day. The learned Magistrate was pleased to dismiss the said application. The record also reveals that the present applicant was unsatisfied with the then Judicial Officer. Now, the said Judicial Officer has been transferred. The learned counsel for the applicant submits that since the Judicial Officers have been transferred, the applicants have no reason to make the grievance and seek the transfer of the case. The learned counsel for the respondent also states that the evidence of the present respondent has been completed. He would co-operate with the trial of the case.

10. The respondents in the D.V.Act case, i.e. applicants, need not attend the Court each date. It is not the case where the absence

will result in the arrest of the respondents. It is a quasi-civil proceeding. It appears that the relations between the parties are bitter. The interest of the weaker is to be protected. The learned counsel for the present respondent made a statement that she would co-operate with the Court to conclude the case as early as possible. The situation has changed. The grounds for transfer do not appeal to the mind of the Court.

11. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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