

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.57 OF 2022

Shreyas Shrikant Desai
versus
Ashwini Shreyas Desai and another

Applicant

Respondents

Ms.Sangeeta Salvi, Advocate for applicant.
Ms.Priyanka Dubey with Ms.Megha Gupta with Ms.Dimple Ashau
i/by Hedgehog and Fox, Advocate for respondent no.1.
Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th September 2022

PC :

1. The applicant is seeking transfer of Criminal Case No.118/DV/2020 from the Court of Metropolitan Magistrate, 34th Court, Vikroli Court, Mumbai to Family Court, Bandra, Mumbai and for hearing of the complaint with Petition (C) No.448 of 2022. The applicant is husband of respondent no.1.

2. Learned advocate for applicant submitted that proceedings pending before learned Magistrate at Vikroli are initiated by respondent no.1 under Protection of Women from Domestic Violence Act ('D.V.Act') and divorce petition which is pending at Family Court at Bandra is filed by applicant. No prejudice will be caused to respondent no.1 if proceedings are transferred to Family Court. Parties are common. There should not be conflict of decision. The relief prayed in the application under D.V.Act and can also be considered by Family Court. Respondent no.1 is residing at Vikroli.

3. Advocate for respondent no.1 opposed transfer of matter from the Court at Vikroli to Family Court at Bandra. It is submitted that transfer of proceedings to Bandra Court would cause inconvenience. The grievance in both the proceedings is different. The parties are not common. In the proceedings under D.V.Act, the respondent no.1 had impleaded the parents of applicant. The evidence will not be common. Proceedings under D.V.Act are pending since 2020. Learned Magistrate has granted certain relief. The application for transfer is preferred to delay the proceedings. No maintenance has been given by applicant and since the application for maintenance is preferred by respondent no.1 before the Court of learned Magistrate, transfer is sought by applicant. The relief prayed u/s.12 of D.V.Act cannot be granted by Family Court. The proceedings are pending in the Magistrate Court since last two years. It is the settled law that convenience of family is required to be considered. Reliance is placed on the decision of Rajasthan High Court in the case of Smt.Ekta Dhadhich w/o Sh.Rajendra Prasad Sharma, d/o.Giriraj Mishra Vs. Rajendra Prasad Sharma s/o Ghanshyam Sharma (S.B.Civil Transfer Application No.72 of 2021, decided on 30th September 2021) and in case of Madras High Court in case of PRajendran Vs. Sasikala (Criminal Original Petition No.29522 of 2013, dated 14th September 2017. Learned counsel adverted to the observations made in the said decisions and submitted that proceedings pending before Magistrate under D.V.Act need not be transferred to Family Court.

4. Perused the documents on record. It is pertinent to note that respondent no.1 had initiated proceedings under D.V.Act in the year

2020 and the divorce petition is filed by respondent no.1 which is at the primary stage. The Court of Magistrate has proceeded with hearing of some of applications and granted certain relief to respondent no.1. The application for maintenance preferred by respondent no.1 is due for hearing before the Court of Magistrate. It is not mandatory that proceedings pending before the Court of Magistrate initiated u/s.12 of D.V.Act should be transferred to Family Court. In the light of factual aspects of the matter, no case is made out for transfer of case.

ORDER

(i) Criminal Application is rejected and disposed of.

5. At this stage learned advocate for applicant seeks extension of interim relief. Prayer is opposed by learned advocate for respondent no.1. No case is made out for extension of interim relief. The prayer is rejected.

(PRAKASH D. NAIK, J.)

MST