

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 102 OF 2021

SHRADDHA
KAMLESH
TALEKAR

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Date: 2022.04.22
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Amol Bhausahab Mali

...Applicant

Vs.

1. Mrs. Swapnali Amol Mali
& Anr.

... Respondents

Mr.Nitin P. Deshpande a/w. Ms. Kanchan Phatak for applicant.

Mr.A.R. Patil, APP for respondent No.2-State.

CORAM : N. J. JAMADAR, J.

DATE : 20th APRIL, 2022

P.C.:

1. Heard Mr.Deshpande, the learned counsel for the applicant.
2. The respondent No.1-wife has not appeared, despite service of notice of this application.
3. In the order dated 9th December 2021, this Court recorded that in order to afford one more opportunity to the respondent No.1, the application came to be adjourned to 28th January 2022. None appeared for the respondent No.1 eventually.
4. The applicant has preferred this application under section 407(1)(c) of the Code of Criminal Procedure, 1973 ('the Code') seeking transfer of proceedings in Criminal Misc. Application No.65 of 2018 pending on the file of the Court of Judicial Magistrate, First Class, Chikhali, District-Buldana to the Joint

Judicial Magistrate, First Class, Cantonment Court, Pune, where the respondent No.1 has instituted a proceeding under section 23 of the Protection of Women from Domestic Violence Act, 2005. It is averred in the application that the respondent No.1 has been residing in Pune and, therefore, it is necessary to transfer the proceedings from the Court of Judicial Magistrate, First Class, Chikhali, District-Buldana to Pune, as the respondent No.1 no longer resides at Chikhali.

5. Mr.Deshpande invited the attention of the Court to an order passed in Misc. Civil Application (St.) No. 2381 of 2021 dated 18th August 2021, wherein this Court recorded that on 13th September 2019, the learned JMFC, Cantonment Court, Pune passed the following order :

“O R D E R

[1] The respondents are hereby directed not to restrain applicant and her minor son from residing in the house property i.e. Flat no.503, Building F, Amit Kalori, Katraj Kondhwa Bypass, Near Bishop School, Pune.

[2] The respondents are further directed not to cause any kind of domestic violence on the applicant and minor son in any manner and not to disposes them from the house property i.e. Flat no. 503, Building F, Amit Kalori, Katraj Kondhwa Bypass, Near Bishop School Pune.

[3] The respondents are further directed that not to enter into the Flat no.503, Building F, Amit Kalori, Katraj Kondhwa Bypass, Near Bishop School, Pune, until further

orders and not to create any third party interest in the said property.

[4] Rest of the claims in prayer clause will be decided after hearing both the parties and on merits.

[5] Issue notice to respondents and called Domestic Incident Report on or before 05/10/2019.

[6] Copy of the Interim order be given to the parties free of costs as per Section 24 of the said Act.

[7] Copy of the interim order also be given to the concerned police station. Protection Officers and service provider, if any, for implementation and necessary action.”

6. Evidently, the aforesaid order recorded that the respondent is residing at Flat No.503, Building F, Amit Kalori, Katraj Kondhwa Bypass, Near Bishop School, Pune (‘the said premises’) and the respondents in the said proceeding were restrained from causing obstruction and/or disturbing the respondent therein and her minor son from residing in the said premises and also committing any kind of domestic violence and from dispossessing them from the said premises.

7. Taking note of the aforesaid fact, this Court transferred the proceeding, being Hindu Marriage Petition No.237 of 2019, which was filed by the applicant, from the Court of Civil Judge, Senior Division, Buldhana to the file of Civil Judge, Senior Division, Pune.

8. The position which, thus, emerges is that the Marriage Petition between the parties has been transferred to the Court at Pune, the respondent has filed Criminal M.A. No.829 of 2019 under the provisions of Protection of Women from Domestic Violence Act, 2005 in the Court of Judicial Magistrate, First Class, at Cantonment Court, Pune and an order is passed therein granting protective reliefs to the respondent No.1. The afore-extracted order implies that the respondent No.1 is residing at Pune.

9. In these circumstances, it would be expedient in the interest of justice as well as both the parties that the proceeding under section 125 of the Code, being M.A. No. 65 of 2018, pending on the file of the learned Judicial Magistrate, First Class, Chikhali, District-Buldana are transferred to the Court of the Joint Judicial Magistrate, First Class, Cantonment Court, Pune.

10. Hence, the application stands allowed in terms of prayer clause (a), which reads as under :

(a) The Hon'ble Court may transfer Miscellaneous Criminal Application No.65 of 2018 filed in the Court of Judicial Magistrate, First Class, Chikhali, District Buldana to Joint Judicial Magistrate, First Class, Cantonment Court, Pune.

11. The transferor and transferee Courts be informed to take necessary action.
12. Application stands disposed.

(N. J. JAMADAR, J.)