

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.92 OF 2022

1. Mrs.Rohini w/o Mangesh Rajak

2. Dhairya s/o Mangesh Rajak

Applicants

versus

1. Mangesh Kumar Rajak

2. The State of Maharashtra

Respondents

Mr.Pranil Sonawane with Varsha Gangawane and Nikhil Agrawal  
i/by KLS Legal, Advocate for applicants.

Mr.Ajinkya Udane, Advocate for respondent no.1.

Mr.A.D.Kamkhedkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29<sup>th</sup> June 2022

PC :

1. The applicants have preferred this application under Section 407 of Code of Criminal Procedure seeking transfer of divorce proceedings bearing P.A.No.1101/2019 pending before Family Court, at Pune to Family Court at Jalgaon. It is also prayed that Miscellaneous Application No.2996 of 2019 filed by the applicants under Protection of Women from Domestic Violence Act, 2005 ('D.V.Act') before the Court of learned Judicial Magistrate, First Class, Pune be transferred to the Court of JMFC, Jamner, District Jamner.

2. The proceedings under D.V.Act are initiated by applicant no.1 whereas the proceedings for divorce were initiated by respondent no.1.

MANISH  
SURESH  
THATTE

Digitally signed by  
MANISH SURESH  
THATTE  
Date: 2022.07.01  
15:00:56 +0530

3. Learned advocate for applicants has submitted that the applicants were illtreated by respondent no.1. Applicant no.1 along with applicant no.2 minor son is residing at Jalgaon along with her father. Her father is aged person. There is no one else to help applicant. The courts where the proceedings are presently pending are situated at a far distance of more than about 300 kms from Jalgaon. It would be difficult for the applicant to travel all the time to attend proceedings at Pune. In the interest of justice the aforesaid proceedings be transferred to the Courts as prayed by applicants. Learned counsel for applicant relied upon decision of Madras High Court in the case of N.Pakthavathsalam Vs. K.Pramila and others (TR.CMP. SR.NO.83046 OF 2016, decided on 7<sup>th</sup> February 2017). It is submitted that petition under Section 407 of Cr.PC is maintainable in law.

4. Learned counsel for respondent no.1 opposed the relief prayed in this application. No grounds are made out for transferring the proceedings. The proceedings under D.VAcr are initiated by applicant no.1 herself. The Trial Courts are seized of the matters. All the witnesses are from Pune. Respondent no.1 is willing to provide expenditure for travelling of the applicants to Court at Pune. The expenditure will be provided to applicants as well as one additional person. It is submitted that Family Court vide order dated 22<sup>nd</sup> July 2019 had directed respondent no.1 to pay costs/expenses of Rs.6,000/- considering the distance between two stations and probable fair and other miscellaneous expenses. That cost/expenses was provided for two visits which comes to Rs.3,000/- per visit. The respondent no.1 is willing to provide amount of Rs.5,000/- per day

to applicant no.1. It is also submitted that respondent no.1 is willing to accommodate the applicants by keeping both the cases on the same day at Pune with a view not to cause hardship to applicant no.1 to travel twice to attend both the cases. It is further submitted that applicants could have resorted to the proceedings u/s.24 of CPC and not u/s.407 of Cr.P.C.

5. The proceedings under D.V.Act were initiated by applicant no.1 on 20<sup>th</sup> July 2019 and the proceedings before Family Court were initiated by respondent no.1 on 25<sup>th</sup> July 2019. It is pertinent to note that both the Courts at Pune are seized of the matters since 2019. The applicants have expressed difficulty in travelling. It is also required to be noted that most of the witnesses are from Pune. The Family Court at Pune had directed the respondent no.1 to provide cost/expenses to applicants in the sum of Rs.6,000/- for two visits i.e. Rs.3,000/- per visit. There is no cogent reason to transfer the proceedings to Jalgaon. However, since respondent no.1 has agreed to provide the cost/expenses for attending the Court proceedings to applicant no.1, respondent no.1 can be directed to pay the cost. Considering the fact that applicants has prayed for transfer of proceedings under D.V.Act as well as proceedings before Family Court, this petition has been preferred u/s.407 of Cr.P.C.

### **ORDER**

- (i) Criminal Application is rejected and disposed of;
- (ii) The respondent no.1 shall pay cost of Rs.5,000/- per day/visit to the applicant no.1 whenever she attend the Court proceedings at Pune;
- (iii) The respondent no.1 shall accommodate the applicants for keeping both the matters on same day;

- (iv) The respective Trial Courts at Pune are requested to keep the matters on the same day;
- (v) The Trial Court may not insist presence of both the parties on every date of hearing and applicants can be directed to appear when their presence is required;
- (vi) Both the parties shall co-operate with both Courts for expeditious conclusion of the proceedings.

(PRAKASH D. NAIK, J.)

MST