

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 146 OF 2021

Suyash Ashokkumar Singhania ...Applicant

Versus

1. Varsha Suyash Singhania

2. The State of Maharashtra ...Respondents

....

Mr. Hrishikesh Chavan i/by Ms. Sangeeta Salvi, Advocate for the Applicant.

Ms. Rajlaxmi Punjabi, Advocate for Respondent No.1.

Mr. A.R.Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 8th JULY, 2022.

PER COURT:

1. This application is preferred under Section 407 of Cr.P.C. seeking transfer of proceedings in C.C. No.167/DV/2018 from the Court of learned Metropolitan Magistrate, 49th Court, at Vikroli, Mumbai to the Family Court, Bandra, Mumbai and hearing the said proceedings with Petition PA No.2407 of 2017.

2. The proceedings under the Protection of Women from Domestic Violence Act (for Short “PWDV Act”) were initiated by Respondent No.1 under Section 12 of the said Act. Whereas applicant has filed the petition under the Hindu Marriage Act

before the Family Court. The marriage between applicant and respondent No.1 was performed on 06.05.2013. Out of wedlock son was born on 7th October, 2016.

3. The proceedings under PWDV Act were filed on 3rd September 2018. The respondent has prayed for relief under Section 22, 23(1)(2), 17, 19(d)(e)(f), 18(d) of PWDV Act. Petition No. A 2407/2017 was preferred by applicant for decree of dissolution of Marriage. The respondent No.1 filed written statement cum counterclaim on 6th May 2019. In the counterclaim the respondent No.1 had prayed for conjugal rights under the provisions of section 9 of Hindu Marriage Act, directing the petitioner to resume cohabitation with respondent therein (applicant) and stay with respondent No.1 along with their son. She had also prayed for contingency expenses, return of streedhan, injunction from selling, transferring, alienating right, title interest in any property.

4. Learned Advocate for the applicant submitted that the proceedings pending before the Court of learned Magistrate and the family Court are between the same parties. The proceedings are arising out of matrimonial dispute. The applicant is residing at Mumbai. The respondent No.1 has shifted to Thane after filing the

proceedings under the PWDV Act. She is attending the proceedings in the family Court at Bandra in the Court of learned Magistrate at Vikroli. The witnesses and the evidence in both the proceedings are same. In view of contradictory relief claimed by the parties and to avoid conflicting judgments it would be appropriate to club both the matters together. The respondent No.1 has filed the domestic violence proceedings as counterblast on receipt of summons in Petition No.2407 of 2017. The witnesses in both proceedings would be same. To avoid contradictory orders, it would be appropriate to club the matters. The family Court can try and entertain domestic violence proceedings under Section 26 of PWDV Act Hence, proceedings under PWDV Act can be transferred to family Court.

5. Learned Advocate for the applicant has relied upon the decision in the case of **Sandip Mrinmoy Chakraborty V/s. Reshita Sandip Chakraborty & Anr.** 2018 SCC OnLine Bom 2709 decided by this Court and another decision of this Court in the case of **Dr. Sandeep Shekar Shetty V/s. Dr. Sarika Sandeep Shetty** dated 8th October, 2021 passed in Misc. Civil Application No.125 of 2020.

6. The respondent No.1 has filed affidavit-in-reply. Learned Advocate for respondent No.1 submitted that the respondent No.1/

wife was harassed by the applicant. She has no support of parents. She is taking care of child. Proceedings before the learned Magistrate are proceeding expeditiously. Merely on the ground that the parties are common the proceedings may not be transferred to the family Court. The applicant herein has been filing frivolous litigation before various Courts to harass respondent No.1. In November-2007 he filed the divorce petition before the family Court at Bandra. He deliberately terminated the rent agreement in respect to premises occupied by respondent No.1. On account of termination of the agreement, the respondent No.1 was forced to shift along with minor child at Ghatkopar, Mumbai. Distress warrant was issued against the applicant for recovery of amount. The arrears of maintenance is Rs. 8,40,000/- till December – 2019. Part maintenance was received but still there is outstanding of Rs.4,37,413/-. The learned Magistrate by order dated 10th January, 2020 directed the applicant to clear the outstanding amount. The said order was challenged in the Sessions Court. The transfer is sought by the applicant to delay the proceedings. The proceedings under the PWDV Act has to be tried before Magistrate and not before Family Court. Learned Advocate for respondent No.1 has relied upon the decision of Delhi High Court in the case of **Sandeep Aggarwal V/s. Viniti Aggarwal 2021 SCC OnLine Del 1524**.

7. The applicant has filed rejoinder and stated that when the matter came up for hearing, the respondent No.1 made grievance that there are arrears of maintenance in the sum of Rs. 4,50,800/-. The Court directed respondent No.1 to file affidavit in support of her claim. The applicant was residing with respondent No.1 at Ghatkopar until January 2018. Due to conduct of respondent No.1 he had to leave the flat. Respondent No.1 continued to stay in the flat. The applicant was paying rent to landlord. The landlord informed him that flat is under lock for five months. The respondent No.1 had moved out. The respondent No.1 moved application for distress warrant. The Court issued distress warrant. The applicant approached Session Court. Distress warrant was stayed. The applicant volunteered to deposit Rs. 85,000/-. Pursuant to order dated 26th April 2022 the respondent No.1 filed additional affidavit dated 24th June 2022. In the said affidavit it is stated that Rs. 3,65,821/- are arrears outstanding from applicant towards maintenance.

8. Apparently there is progress in proceedings under the PWDV Act. Vide order dated 15th January 2019 the learned magistrate passed order, partly allowing the application for interim maintenance. The applicant herein was directed to pay interim

maintenance i.e. Rs. 20,000/- per month to respondent No.1 and Rs. 10,000/- to son. The petitioner was directed to pay rent of Rs. 30,000/- per month. The applicant preferred appeal before Sessions Court. By order dated 12th April 2019, the appeal was partly allowed. The order was modified by directing applicant to pay rent of Rs. 30,000/- per month from January 2019.

9. In the case of *Sandip Mrinmoy Chakraborty* (supra) the husband preferred criminal writ petition before this Court. Wife had instituted petition before family Court seeking dissolution of Marriage and other reliefs including maintenance and custody of child. The husband filed counter claim in the petition preferred by wife and sought dissolution of marriage and custody of child. Wife had also initiated proceedings under the PWDV Act. The petitioners (husband) grievance before this Court was that the reliefs sought in two different proceedings is substantially the same. Therefore he preferred petition invoking Section 24 of the Code of Civil Procedure to transfer the proceedings under the PWDV Act to family Court. This Court had held that in order to avoid the multiplicity of litigation and in the interest of the parties, it would be appropriate that the power under Section 24 can be exercised and proceedings can be clubbed together. In the case of

Sandeep Shekar Shetty (supra) civil application was preferred by husband seeking transfer of a case under the PWDV Act filed by wife in the Court of Metropolitan Magistrate, to the Family Court, where the husband filed petition for divorce. The relief was sought under Section 24 of CPC r/w Rule 6 of Chapter I of Bombay High Court Appellate Side Rules 1960 and Article 227 of the Constitution of India. It was urged by applicant that, both the proceedings be clubbed together. This Court relied upon decision in the case of *Sandip Mrinmoy Chakraborty V/s. Reshita Sandip Chakrabarty & Anr.* (supra) and decision of this Court in the case of *Minoti Subhash Anand V/s. Subhash Manoharlal Anand in Misc. Civil Application No.255 of 2015* and order dated 15th November, 2019 in Misc. Civil Application No.64 of 2019 (*Santosh Machindra Mulik V/s. Mohini Mithu Choudhari*). The proceedings under the PWDV Act, were transferred to family Court.

10. In the case of *Sandeep Aggarwal* (supra) passed by the Delhi High Court, the petitioner (husband) sought transfer of complaint filed by wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 to Family Court on the ground that, both the petitions arise out of matrimonial dispute between the parties wherein both parties have levelled allegations and counter

allegations and entire evidence of the parties in same. The proceedings be clubbed together and decided by one court to maintain judicial propriety and to avoid conflicting decisions. Reliance was placed on Section 26 of PWDV Act which empowers the Family Court to decide the complaint under said Act. The respondent (wife) urged that, the Court of Magistrate alone has the jurisdiction to adjudicate an application under Section 12 of the PWDV Act. The Family Court is not empowered to entertain an independent application filed under Section 12 of the said Act. Scope of Section 26 of the PWDV Act does not derive an inference that a pending application filed under Section 12 of the Act before Magistrate must be transferrred to Family Court. It is held that, Section 26 of the PWDV Act permits availing the reliefs provided under Section 18, 19, 20, 21 & 22 of PWDV Act in any other legal proceedings before the civil or criminal Court and in case such a relief is granted then an information to this extent is required to be given to the Magistrate dealing with the application under the PWDV Act. However, Section 26 does not contemplate ouster of jurisdiction of the Magistrate even in a case some relief as contemplated under Sections 18 to 22 of the PWDV Act is granted by the civil or criminal Court in some other legal proceedings. The Magistrate will be still empowered to consider and grant the

remaining reliefs sought. Even if proceedings are pending before the family Court, the same will not warrant the application under Section 12 of the PWDV Act to be transferred to the family Court. The PWDV Act provides for a complete mechanism for enforcement of the rights claimed under Section 12 of the PWDV Act and merely because the rights as provided under Section 18 to 22 of PWDV Act can be claimed in other legal proceedings also does not imply ouster of jurisdiction of the Magistrate to try the matter once divorce proceedings have been filed.

11. In aforesaid decision, the learned Single Judge has made reference to decision of Division Bench of Chattisgarh High Court in the case of Smt. Neetu Singh Vs. Sunil Singh 2007 SCC OnLine Chh 19. The factual aspect of the said decision indicate that the appellant therein had questioned legality and correctness of order passed by family Court on an application filed by appellant under Section 12 of the PWDV Act, whereby family Court held that since application has been filed under Section 12 of the said Act, it ought to have been filed before Court of Magistrate. It was argued before the High Court that in view of Section 26 of the PWDV Act, the family Court is competent to entertain the said application. The Court referred to scope of sections 12, 18, 19, 20, 21, 22 and 26 of

the said Act. In paragraphs 9 and 10 it was observed as follows:-

"9. Section 26 of the Act has been inserted with an objective that in addition to the provisions of Section 12 the aggrieved person is entitled to any relief available under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act. Sub-section (2) of Section 26 further envisages that any relief referred to in Sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court. Sub-section (3) cast duty on the aggrieved person that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under Section 12 of this Act, she shall be bound to inform the Magistrate of the grant of such relief. Therefore, as per Section 26 of the Act, the aggrieved person is also entitled to seek relief as provided under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court, or a criminal Court in which the aggrieved person and respondent are party & that relief is in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding. Therefore, an option has been given to the aggrieved person to avail reliefs available to her under Sections 18, 19, 20, 21 and 22 in a legal proceeding pending in a civil Court, criminal Court or family Court in addition to filing of the application under Section 12.

10. In view of the above scheme of the Act, specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to seek relief available to her under Sections 18, 19, 20, 21 and 22 of the Act, 2005 in the maintenance proceeding pending in the Family Court, Bilaspur. But the appellant is required to move an application under Section 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant moved an independent fresh application under Section 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before Family Court because proceeding under Section 12 of the Act, 2005, as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application."

12. Section 26 of the Protection of Women from Domestic Violence Act reads as follows:-

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

13. The Act has been enacted to provide for a remedy to protect women from being victims of domestic violence and prevent occurrence of domestic violence. The Act aims at providing speedy remedy to victims of domestic violence. Special procedure has been provided under the Act.

14. In the present case, application for interim maintenance has been decided. The respondent has opposed transfer of proceedings. It is not mandatory that the proceedings under the PWDV Act must be transferred to the family Court, where the proceedings initiated by petitioner are pending. Section 26 of the PWDV Act provides that any relief available under Section 18, 19, 20 & 21 may also be sought in any legal proceedings before Civil

Court, family Court of criminal Court affecting aggrieved person and respondent. Section 26 of the the PWDV Act, would indicate that, it permits availing reliefs enumerated therein in any other legal proceedings before Courts referred in the said provision. Section 26 of PWDV Act does not ouster jurisdiction of Magistrate even if some relief under Sections 18 to 22 of PWDV Act is granted by Court in other legal proceedings. The Magistrate will be empowered to consider and grant other reliefs sought. Even if proceeding is pending before family Court, it is not necessary that application under Section 12 of PWDV Act to be transferred to Family Court/Civil Court. The PWDV Act provides mechanism for enforcement of rights claimed under Section 12 of the Act. There is debate amongst parties about clearance of arrears. Here the transfer is sought from Court of Magistrate to the Court of family Court. The PWDV Act does not contain any provisions clothing jurisdiction on the Family Court to entertain an application filed under Section 12 of the said Act. The option is given to aggrieved person to claim the reliefs available under Sections 18 to 22 of the PWDV Act in pending proceedings before Family Court. Considering the scope of the Protection of Women from Domestic Violence Act, interpretation of section 26, I do not find any reason to grant relief prayed in this application.

ORDER

Criminal Application No.146 of 2021 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)