

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.280 OF 2022

Hitesh Ramesh Prajapati & Ors. ...Applicants
V/s.
Bhavinee Hitesh Prajapati & Anr. ...Respondents

Mr. Kuber Wagle for Applicants.
Mr. G. T. Kanchanpurkar for Respondent No.1.
Mr. A. R. Patil, APP for Respondent No.2.

CORAM : AMIT BORKAR, J.
DATE : NOVEMBER 21, 2022

PC.:

1. This is an Application filed by the husband to transfer Case No.11/DV/2022 pending before the learned Judicial Magistrate, First Class at Dahanu to the Family Court at Bandra, Mumbai.

- (i). The transfer is sought on the ground that the learned Magistrate is unnecessarily refusing adjournment to the petitioner and is not granting sufficient time to the petitioner to conduct the proceedings.
- (ii). Considering the conduct of the wife, Petition needs to be transferred.

(iii). It is settled law that the Family Court has power to decide proceedings under the Protection of Women from Domestic Violence Act, 2005.

(iv). That the petitioner on earlier occasion was kidnapped by the family members of the wife and, therefore, there is risk of life, if the petitioner appears before learned Judicial Magistrate, First Class, Dahanu as the family of the wife is influential.

2. Having considered the grounds raised by the petitioner, in my opinion, refusing sufficient time to file reply cannot be a ground to transfer proceedings filed by the wife to a place where proceeding is filed by the husband. The conduct of the wife is relevant while adjudicating rights of the parties under the provisions of Protection of Women from Domestic Violence Act, 2005 or under the provisions of Hindu Marriage Act, 1955 for other reliefs, but is not relevant for exercising power under Section 407 of Code of Criminal Procedure, 1973.

3. Merely because the Family Court has power to adjudicate proceedings under the Domestic Violence Act, same by itself is not a ground to transfer proceedings filed by the wife to a place where proceedings are filed by the husband. The last ground raised that on earlier occasion, the petitioner was kidnapped by the family members of the wife by itself is not sufficient to transfer the proceedings to place where the husband's proceedings are pending unless there is eminent risk to the life which has been demonstrated by the series of incidents or by bringing on record gravity of earlier incident which unquestionably raises

apprehension of risk of life of the petitioner.

4. It is disputed by the wife that she is residing in Dahanu. Therefore, in my opinion, the proceedings at the behest of the husband cannot be transferred to a place where the proceedings are filed by him. There is no merit in the Petition.

5. Criminal Application is therefore disposed of.

(AMIT BORKAR, J.)