

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 57/2021
(Ruplakshmi w/o Tushar Bhagat Vs. State of Maharashtra & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Ujwal Rajan Phasate, Advocate for applicant.
Mr. S. M. Ukey, APP for non-applicant No.1/State.
Mr. M. P. Kariya, Advocate for non-applicant Nos. 2 to 4.

CORAM : VINAY JOSHI, J.
DATED : 12 /07/2022.

Heard.

2. This application is of applicant (wife) seeking transfer of the Regular Criminal Case No. 267/2016 from the Court of Judicial Magistrate, Anjangaon Surji, District Amravati to the competent Court at Nagpur. The criminal case sought to be transferred was against the non-applicant Nos. 2 to 4 who are husband and two brothers of husband.

3. The marriage between the couple took place on 23.11.2013. During wedlock applicant (wife) was blessed with male child in the month of September 2014. The applicant's matrimonial house is at Tahsil Anjangaon Surji, District Amravati. The couple lived at Anjangaon Surji as well as at Vadodara in Gujarat State, which was the working place of non-applicant No. 2 (husband). Somewhere in the year 2015, due to matrimonial discord, the applicant (wife) started to

live with her parents at Nagpur. The applicant (wife) has filed proceeding under the Protection of Women from the Domestic Violence Act ('D.V. Act') at Nagpur, and it's appeal is pending at Nagpur Court. The applicant (wife) has also filed an application under Section 125 of the Code of Criminal Procedure at Nagpur. On the other hand, non-applicant No. 2 (husband) had filed a petition for divorce at Nagpur which is informed to be dismissed-in-default.

4. In aforesaid background, the applicant (wife) is seeking transfer of criminal case filed under Section 498-A of the Indian Penal Code from the Court of Anjangaon Surji, District Amravati to the Court at Nagpur. The applicant (wife) has canvassed that due to financial constraints, she is unable to travel from Nagpur to Anjangaon Surji to attend criminal case. It is submitted that most of the witnesses are from Nagpur and therefore, it is convenient for the applicant (wife) as well as witnesses to conduct trial at Nagpur. Moreover, it is submitted that the applicant (wife) has initially filed concerned Police Report at Sakardara Police Station, Nagpur, however on jurisdictional count, the Police registered crime vide '0' number and it was transferred to the Anjangaon Surji, Police Station, who in turn filed charge-sheet in the Court of Anjangaon Surji. It is applicant's case that due to financial constraints as well as geographical distance, she is not in a position to monitor the

criminal proceeding which resulted into delay therefore, she is seeking for transfer of the criminal case in the Court at Nagpur.

5. Learned counsel appearing for the non-applicants has opposed the prayer for transfer. It is contended that the alleged offence was committed at Anjangaon Surji, therefore the Police have rightly transferred the case to the jurisdictional Police Station. It is submitted that the said criminal case was filed with a view to harass the non-applicants. The urge for transfer is also an attempt of harassment since non-applicant Nos. 3 and 4 who are brothers of husband are staying at Chandurbazar, District Amravati i.e. in the jurisdiction of the Anjangaon Surji.

6. While opposing the prayer, the learned counsel for the non-applicants placed reliance on the decision of the Supreme Court in case of ***Rajkumar Sabu Vs. M/s. Sabu Trade Private Limited, AIR 2021 SC 2511***, wherein the prayer for transfer of case was rejected. The said case is clearly distinguishable on facts, since it was not a matrimonial dispute. It was a case of commercial nature sought to be transferred from the Salem Court to the Court at New Delhi which is far away in different State. The transfer was sought on the ground that the similar issue was pending in Delhi Court, there was language problem, and the distance is near about 2000 k.m. In such context, the

Supreme Court has declined to entertain the transfer of case on said reasons. The case in hand lies on quite different footing to which to which I am coming shortly.

7. To the next, learned counsel for the non-applicants has heavily relied on the decision of the Supreme Court in case of ***Jyoti Mishra Vs. Dhananjaya Mishra, (2010) 8 SCC 803***. In said case, similarly the wife has sought transfer of proceeding under Section 498-A of the Indian Penal Code, however it was rejected. In said case the wife has initially filed Police Case in the Court at Hyderabad where she was living with her husband. The wife left her husband's house of Hyderabad and went to reside at her maternal house at Indore and then sought transfer on the ground of inconvenience. The said petition was dismissed on the ground that the petitioner (wife) had not made all the accused as a party to the transfer petition. Secondly, the case was sought to be transferred to the another State solely on the ground of inconvenience and in such transfer, the right of accused of fair trial may hamper. The said decision was based on peculiar facts of that case. Then the non-applicant has relied on the decision of this Court in case of ***Smt. Shital w/o Aditya Jibhkate Vs. State of Maharashtra and others***, decided on 03.03.2022 (Criminal Application [APPLN] No. 75/2021), wherein the applicant's (wife's) urge for transfer was rejected

by the Single Judge of this Court. The said decision was also based on the factual aspect as 22 witnesses of said case were from Nagpur, but the case was sought to be transferred to Akola. Besides that, this Court took into account the inconvenience, which may cause to the accused by transfer. Lastly, reliance is placed on the decision of the *Punjab and Haryana High Court in case of Gurjeet Bajaj Vs. State of Haryana and others*, decided on 06.07.2012 (C.R.M. No. M-1774/2012 [O&MN]), wherein also the wife's urge for transfer was rejected. As against this, the learned counsel appearing for the wife by relying on the decision of the Supreme Court in case of *Ruhi Vs. Anees Ahmad and others, 2020 SCC Online SC 1308*, would submit that under similar circumstances, the Supreme Court has acceded the prayer for transfer of the case under Section 498-A of the Indian Penal Code to the place where the wife resides after matrimonial discord.

8. Basically, each case is to be decided on the basis of emerging facts. There can be no straight jacket formula that inconvenience of the party cannot be a reason for transfer as canvased by the non-applicants. Generally, in domestic dispute, the cases are ordinarily transferred to the place which is more convenient for the wife. True, the case sought to be transferred is under Indian Penal Code, however all relevant factors have to be considered. Pertinent to note that the applicant (wife) has filed two

proceedings at Nagpur as well as non-applicant No. 2 (husband) had also filed divorce proceeding at Nagpur. It speaks volumes that the husband had also chosen Nagpur for filing matrimonial proceeding. Moreover, the two proceedings filed by wife are presently pending at Nagpur i.e. one at appellate stage and another in the Trial Court. Though the criminal proceeding is a police case, however most of the witnesses are resident of Nagpur. The applicant (wife), her parents, brother and sister have been cited as witness, meaning thereby, all witnesses are from Nagpur.

9. On the other hand, the accused of criminal case are non-applicant No.2 (husband) and his two brothers. Admittedly, husband is staying at Vadodara in Gujarat State, therefore, Nagpur a mega-city is more convenient for him due to means of conveyance. The rest of the accused are two brothers of non-applicant (husband). It is informed that the distance between two places is near about 200 k.m. to 225 k.m. Notably, no female member of husband's family has been arrayed as an accused. Comparing the plight of applicant (wife), having a child vis-a-vis to two accused who are male members, the scale would certainly tilt in favour of the applicant (wife). Apart from that, it is noteworthy that the applicant (wife) has initially filed the Police Report for the offence punishable under Section 498-A of the Indian Penal

Code at Sakardara Police Station of Nagpur. However, the Police registered crime vide '0' number and transferred it to the Anjangaon Surji on jurisdictional ground. The said fact also indicates that applicant (wife) had initiated action at Nagpur, however the report was transferred to the Court of Anjangaon Surji. Certainly, it would be quite inconvenient for a applicant (wife) to attend the Court at Anjangaon Surji. I am not convinced with the non-applicants' submission that this being a State case, the role of applicant (wife) is to merely once give her evidence. In-fact, the applicant/lady being aggrieved, she has every right to attend and monitor the progress of her case. Besides that, all the witnesses are her family members who are staying at Nagpur.

10. For the forgoing reasons, the applicant (wife) has made out a case for transfer of criminal proceeding at Nagpur. In view of that, application is allowed. Regular Criminal Case No. 267/2016 pending on the file of Judicial Magistrate First Class, Anjangaon Surji is withdrawn and transferred to the competent Court at Nagpur. The learned Principal District Judge, Nagpur shall assign the case to any Court of competent jurisdiction for disposal according to law.

11. Application stands disposed of in above terms.

(VINAY JOSHI, J.)