

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

Criminal Application (APPLN) No. 84 of 2021

Smt. Pooja Rajat Mishra

Versus

Shri Rajat Mahesh Mishra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Bhagyashree Kakde, Advocate and Ms. Suruhi Pande, Advocate for the applicant.

CORAM : ANIL S. KILOR, J.

DATED : 18th APRIL, 2022.

This is an application filed under Section 407 of the Code of Criminal Procedure for transfer of Regular Criminal Case No. 134 of 2020 from the Court of Chief Judicial Magistrate, Gondia to Judicial Magistrate First Class at Yavatmal, on the ground that the applicant is not medically fit to travel to Gondia and to attend the said proceeding. The other ground is that the domestic violence case is pending at Yavatmal Court against the respondent and, therefore, it would be convenient for the respondent to attend both the matters at Yavatmal.

2. Learned counsel for the applicant has pointed out the medical reports of the applicant and

submits that she is not in a position to travel from Yavatmal to Gondia which is 300 kilometers away and therefore, she is seeking transfer of Regular Criminal Case No. 134 of 2020 from the Court of Chief Judicial Magistrate, Gondia to the Court of Judicial Magistrate First Class at Yavatmal.

3. Though the respondent is served, nobody is appearing on behalf of the respondent.

4. To consider the contentions raised by the learned counsel for the applicant, I have perused the record.

5. There is no dispute that Regular Criminal Case No. 134 of 2020 was initiated on a complaint lodged by the applicant against the non-applicant for the offences punishable under Sections, 498-A, 504 and 506 of the Indian Penal Code.

6. The Hon'ble Supreme Court of India in the case of *Jyoti Mishra Vs. Dhananjay Mishra*¹ has observed that the consequence of not attending the criminal matter being a drastic consequence of issuance of bailable warrant or non-bailable warrant and therefore, the Hon'ble Supreme Court of India has held

1 2010(8) SCC 893

that civil matter and criminal matters cannot be equated.

7. In the present matter, the learned counsel for the applicant is not disputing the fact that Regular Criminal Case No. 134 of 2020 is being a criminal matter the respondent needs to attend the said proceeding on each and every date, whereas it is not necessary for the applicant to attend the said proceeding.

8. In the circumstances, looking to the fact that the distance between the Gondia and Yavatmal which is 300 kilometer and for any reason, if the respondent fails to attend the said proceeding after transfer of criminal proceeding from Gondia to Yavatmal, the consequence would be drastic, whereas the appearance of the applicant would be required only at the time of recording of evidence in the above referred matter. In the circumstances, I do not find any merit in the present application. Accordingly, I pass the following order.

ORDER

- i. Application is rejected.

[ANIL S. KILOR, J.]