

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPLN) NO.101 OF 2022

Kavita W/o. Digvijay Shelokar @ Kavita Pandurang Bhoyar .VS. State of
Maharashtra and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Vivek Awchat, Advocate for the Applicant
Mr N. M. Jibhakate, Advocate for respondent Nos. 3 to 6
Mr S. A. Ashirgade, APP for respondent Nos. 1 and 2

CORAM : G.A. SANAP, J.

DATE : DECEMBER 16, 2022.

Heard.

2. The applicant is the informant in Regular Criminal Case No. 2864 of 2020 pending on the file of the Chief Judicial Magistrate, Nagpur. In this application, prayer has been made for transfer of this criminal case from the file of the Chief Judicial Magistrate, Nagpur to the Court of Chief Judicial Magistrate at Yavatmal. It is stated that the applicant is residing at her parental house at Yavatmal. Her mother is the witness in the criminal case. She is suffering from cancer. As per the order of this Court, dated 06.12.2022, the divorce petition filed by the husband in the Family Court at Nagpur has been transferred to the Court at Yavatmal. Two more proceedings namely Domestic Violence Act proceeding (For Short 'D. V. Act proceeding') and proceeding for maintenance

under Section 125 of the Code of Criminal Procedure are filed by the applicant in the Court of Judicial Magistrate First Class at Yavatmal. It is stated that the accused are residents of Bhandara. They are attending the Court at Nagpur for this case. The matter is now posted for recording the evidence. The applicant and other witnesses from Yavatmal are finding it very inconvenient to attend the Court at Nagpur. It is further pointed out that initially the FIR bearing No. 0944 of 2019 was registered on the report of the applicant at Awdhutwadi police Station, Yavatmal. It is stated that on the basis of internal communication this FIR came to be transferred to Nagpur. This was not according to law. It is submitted that since three proceedings between the parties are pending in the Courts at Yavatmal, this proceeding may be transferred to the Court at Yavatmal. It is further submitted that on one or two occasions the evidence of the applicant was not recorded, though she was present in the Court.

3. The respondent Nos. 3 to 6 have opposed this application. It is contended that no case has been made out for transfer. The transfer of the case from the Court at Nagpur to the Court at Yavatmal would be inconvenient to them. They would be required to travel from Bhandara to Yavatmal. The majority of the witnesses named in the charge sheet are from Nagpur. According to them, no case has been made out for transfer.

4. I have heard the learned Advocates for the parties. Perused the record and proceedings.

5. It is undisputed that three proceedings between the parties are already pending in the Courts at Yavatmal. The divorce petition filed by the husband against this applicant in the Family Court at Nagpur came to be transferred as per the order of this Court to Yavatmal. The accused, in the criminal case, are party to the D.V. Act proceeding as non-applicants. The D. V. Act proceeding is pending in the Court at Yavatmal. The accused will be required to attend the D. V. Act proceedings till it is terminated. The husband is required to attend the divorce and maintenance proceedings. It is, therefore, apparent that the majority of the proceedings, except one, are pending in the Courts at Yavatmal.

6. It is to be noted that overall inconvenience of the parties is required to be borne in mind while deciding the transfer application. Except the criminal case, no other proceeding is pending at Nagpur, where the applicant would be required to come to Nagpur. It is further pertinent to note that since the criminal case has been initiated on the report of the applicant she can attend the same all throughout. Therefore, the contention that only once on the date of recording of her evidence she would be required to attend the Court cannot be justifiable. The accused are required to attend

the Court at Nagpur from Bhandara. The distance between Nagpur to Bhandara is about 70 KM. The distance between Bhandara to Yavatmal is near about 225 KM. The accused persons are attending the D. V. Act proceeding from Bhandara to Yavatmal. Therefore, in my view, the ground of traveling inconvenience is not available to them. In the event of grant of application made by the wife, necessary directions can be issued to keep all the matters on one and same date and depending upon the facts and circumstances consider their application for exemption from appearance. Such directions would serve the purpose in the event of grant of an application. The issue of identity of the accused would not be involved in a criminal case. Even on the date of recording of the evidence of the witnesses their personal appearance can be exempted on the basis of their application.

7. It is to be noted that initially FIR was registered at Awdhutwadi Police Station, Yavatmal. It was not registered as Zero FIR. Specific number, as mentioned above, was given to the said FIR. In view of the decision of the Hon'ble Apex Court in the case of *Rupali Devi .v/s. State of Uttea Pradesh & Ors*, reported in, *(2019) 5 SCC 384*, the said FIR could not have been transferred by the Awdhutwadi Police Station to the Nandanvan Police Station at Nagpur. The applicant has taken shelter at the house of her parents. She has lodged the report of cruelty and ill-treatment meted out to her by the

accused persons at Awdhutwadi Police Station, Yavatmal. In my view, this is one more ground in favour of the applicant. Learned Advocate for the accused relied upon the decision in the case of *Jyoti Mishra .v/s. Dhananjay Mishra*, reported in, **2010 (8) SCC 803** and submitted that the criminal case stands totally on a different footing and therefore, the convenience of all the parties must be weighed. Only the ground of inconvenience to the informant and witnesses cannot be taken into consideration. In my view, on the basis of the proposition in this case the submission advanced by the accused persons cannot be accepted. The facts of this case are totally different.

8. Three proceedings between the parties are pending in the Court at Yavatmal. In D. V. Act proceedings the accused persons would be required to attend the Court at Yavatmal. In view of the above, I am of the opinion that the inconvenience if weighed in the backdrop of the above stated facts would tilt the balance in favour of the applicant. The traveling inconvenience put forth by the accused can be taken care of by granting them liberty to apply for exemption. Similarly, the inconvenience can be addressed if the direction is issued to keep all the four proceedings on one and the same date. In the facts and circumstances, keeping in mind the inconvenience likely to be caused to the applicant and the witnesses, one of whom is a mother who is suffering from

cancer, the application needs to be allowed. Hence the following order.

ORDER

- i. The application is allowed.
- ii. Regular Criminal Case No. 2864 of 2020 pending on the file of the Chief Judicial Magistrate, Nagpur is withdrawn and transferred to the competent Court at Yavatmal.
- iii. The learned Principal District Judge, Yavatmal shall assign the case to any Court of a Competent Jurisdiction for disposal, according to law.
- iv. It is made clear that the endeavour must be made by the Courts at Yavatmal that all the four proceedings be kept on one and same date. If it is possible then the Domestic Violence Act proceeding and Criminal Proceeding be tagged together.
- v. It is further made clear that as and when an application for exemption is made the same shall be considered liberally because the identity of the accused persons is not in dispute.

The criminal application stands **disposed of**,
accordingly.

(G. A. SANAP, J.)

Namrata