

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

CRIMINAL APPLICATION (APPLN) NO.104 OF 2021

Rita Kamlesh Usre

Versus

State of Maharashtra, through P.S.O., P.S. Frezerpura, Amravati and others

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

Court's or Judge's Order

Shri Shahrukh Shah, Advocate for the applicant.

Shri V.A. Thakare, A.P.P. for the non-applicant No.1/State.

Shri Swapnil S. Shingane, Advocate for the non-applicant Nos.2 to 6.

CORAM : ANIL S. KILOR, J.

DATED : 06/04/2022

1. This is an application filed under Section 407 of the Code of Criminal Procedure for transfer of RCC No.888 of 2017 (State Vs. Kamlesh) pending in the Court of 11th Joint Civil Judge (Junior Division) and Judicial Magistrate First Class, Amravati to the Judicial Magistrate First Class, Chandrapur, on the ground that there is reasonable appreciation in the mind of the applicant that there is threat to her life if the proceedings are continued at Amravati.

2. There is no other ground raised in the application for transfer of the proceedings from Amravati to Chandrapur. For this purpose, the learned counsel for the applicant has drawn attention of this Court to the N.C. Report lodged by the applicant on 25.11.2020.

3. On the other hand, Shri Shingane, learned counsel for the non-applicant Nos.2 to 6 submits that the non-applicant No.2, who is the husband of the applicant, is suffering from 40% visual impairment and the non-applicant No.3 requires regular Dialysis. He further submits that the proceedings pending at Amravati is a criminal proceedings and the consequences of non-attendance by the accused/non-applicant Nos.2 to 6 are drastic in nature.

4. To consider the rival contentions of the parties, I have perused the record.

5. The Hon'ble Supreme Court of India in the case of *Jyoti Mishra Vs. Dhananjaya Mishra*¹, has observed thus:

"5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.

6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot

¹ (2010) 8 SCC 803

be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

6. Thus, in view of the above referred well-settled principles of law, in this case, looking to the nature of the proceedings in which the applicant is seeking transfer from Amravati to Chandrapur cannot be considered for the reason that the presence of the applicant in the said proceedings is not necessary on every date, but only on the date of recording of her evidence. Whereas, the presence of accused persons are necessary on every date in the said proceedings and repercussion of failure to attend would be drastic like issuance of bailable or non-bailable warrant.

7. In that view of the matter, I do not find any merit in the present application. Accordingly, the criminal application is **rejected**.

[ANIL S. KILOR, J.]