

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

CRIMINAL APPLICATION (APPLN) NO. 105 OF 2021

Rosina w/o Shailesh Borale

..VS..

Shailesh Kishor Borale, and ors.

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

Court's or Judge's orders

Shri Gaurav S. Gour, Advocate h/f Shri D.V. Chauhan, Advocate
for the applicant.

Shri S.J. Parate, h/f Shri U.P. Dable, Advocate for the non-
applicant nos. 1 to 3.

Shri H.D. Dubey, A.P.P. for non-applicant no. 4.

CORAM : VINAY JOSHI, J.

DATED : 15/09/2022.

Heard.

2. This is an application of the informant-wife (applicant) of Criminal Case bearing No.PW/2500181/2019 filed by her for the offence punishable under Section 498-A of the Indian Penal Code. The applicant-wife seeks for transfer of said criminal case from the Court of Metropolitan Magistrate, Mumbai to the Competent Court at Nagpur. The transfer was mainly sought on the ground of inconvenience of the applicant-wife.

3. The non-applicants has strongly opposed the application by contending that this being a police case, the role of the applicant is restricted to giving her evidence once only. Moreover, it is strenuously argued that all non-applicants are resident of Mumbai and therefore, it is too inconvenient for them. Particularly,

it is submitted that non-applicant no. 1 (husband) is serving in Mumbai whilst non-applicant nos. 2 and 3 who are his mother and sister, are suffering from various ailment and taking treatment in Mumbai.

4. Learned Counsel appearing for the applicant has submitted that due to matrimonial harassment, the applicant-wife has filed a report with the Police of Sakardara Police Station, who registered the crime, however, it was transmitted to Police Station Byculla (Mumbai) on account of jurisdiction. It is submitted that, after matrimonial discord, the applicant-wife started to reside at Nagpur with her parents. It is submitted that she has no source of income and thus, it is very inconvenient for her to attend dates of the proceedings at Mumbai. In support of said contention, the applicant has placed reliance on the decision of this Court in ***Criminal Application No.57 of 2021 (Ruplakshmi w/o Tushar Bhagat vs. State of Maharashtra and ors.) dated 12.07.2022***, wherein this Court has acceded the request for transfer the similar case under Section 498-A of the Indian Penal Code on account of inconvenience of wife.

5. The non-applicants strenuously argued that the proceeding under Section 498-A of the Indian Penal Code, cannot be equated with matrimonial proceedings and thus, mere inconvenience of wife is not a ground. On the other hand, he has submitted that non-applicant no. 2 i.e. the mother-in-law of the

applicant, is taking cardiac treatment at Jagjivanram Hospital, Mumbai of which documents are produced. More particularly, it is submitted that non-applicant no. 3 sister-in-law of the applicant, who is widow is suffering from Cancer for which she is taking treatment at Tata Memorial Centre, Mumbai of which documents are produced. The learned Counsel for the non-applicants also relied on the decision of this Court in ***Criminal Application No. 75 of 2021 (Smt. Shital w/o Aditya Jibhkate vs. State of Maharashtra) dated 03.03.2022***, wherein this Court has declined to transfer the case similarly under Section 498-A of the Indian Penal Code.

6. Admittedly, after marriage, the applicant-wife was staying at Mumbai with her husband. After marital breakdown, she has shifted to Nagpur where her parents were residing. Undisputedly, she has filed the report at Sakkardara Police Station, Nagpur, however, on account of jurisdictional issue, the police report was sent to the concern Police Station at Mumbai, who carried investigation and filed final report in the Court of the Metropolitan Magistrate, Mumbai.

7. The only ground canvassed by the applicant is about her physical as well as financial constraints in attending the proceedings at Mumbai. No doubt, the wife has right to monitor the police case. However, all relevant circumstance have to be weighed.

8. It reveals that 4 to 5 witnesses are from

Nagpur whilst the equal number of witnesses are from Mumbai. The non-applicant no.2 (mother-in-law) is 62 years of age and as per the documents tendered on record, she is suffering from Coronary Artery Bypass Graft (CABG) and under treatment at Jagjivanram Hospital, Mumbai. The case papers support the said contention. Likewise, non-applicant no.3 (sister-in-law) is said to be a cancer patient. To support the said contention, registration details of Tata Memorial Centre at Mumbai have been produced to show that she requires long term follow-up treatment of the Radiation Oncologist. It is the non-applicants' case that due to severe disease, both non-applicant nos. 2 and 3 are residing in Mumbai with their son i.e. non-applicant no.1 and therefore, it is difficult for them to attend the dates of the proceedings at Nagpur. Undoubtedly, the non-applicants are accused in criminal case, their presence on all date is required unless exempted by the Court.

9. Though the rival parties have relied on the above referred decisions, basically each cases has to be decided on the basis of peculiar facts of case. Certainly, non-applicant nos. 2 and 3 would not fear of staying at Mumbai because, it would be at their detriment, if they are residing of their native place i.e. Buldhana. It reveals that both lady accused are under serious medical incaptivity. Having regard to said special feature as well as need of the applicant to attend the Court, it would be unjust to transfer the case from

Mumbai to Nagpur.

10. Considering the overall circumstances and consequences of transfer, I do not find that this is a fit case to exercise jurisdiction of transferring case. In that view of the matter, the application stands rejected.

(VINAY JOSHI, J.)

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