

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.119 OF 2023

Sandra Martin Philip

APPLICANT

VERSUS

Martin Dominic Philip

RESPONDENT

.....

Mr. N. C. Garud h/f Mr. S. N. Gaikwad, Advocate for applicant
Miss. Madhu More h/f Mr. H. F. Pawar, Advocate for respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st AUGUST, 2023

ORDER :

1. This application is filed by the applicant/wife seeking transfer of proceeding i.e. HMP No. A-115 of 2023 filed by respondent/husband for divorce in the Family Court at Nagpur to Family Court at Ahmednagar.
2. Heard the learned advocate for the applicant and learned advocate for the respondent. Perused the memo of application, annexures thereto and the reply filed by respondent.
3. It is the contention of the wife that she has filed proceedings No. PE-129 of 2022 in the Family Court at Ahmednagar, seeking maintenance under section 125 of the Criminal Procedure Code. She has also filed Application No. 32 of

2023 before Bharosa Cell at Ahmednagar, on the basis of which Crime No. 187 of 2023 is registered with Camp Police Station, Ahmednagar for offence punishable under section 498A, 323, 504, 506 read with 34 of the Indian Penal Code. and therefore, the proceedings filed by the respondent - husband in Family Court at Nagpur, be transferred at Family Court at Ahmednagar.

4. Learned advocate for the applicant - wife submits that, considering the distance between Ahmednagar and Nagpur which is 611 k.m., it would be very difficult for her to travel such a long distance along with her 7 years old child, to attend the Court proceedings at Nagpur.

5. Learned advocate for the respondent - husband vehemently opposed the prayer contending that the divorce proceeding is filed at Nagpur Court as the parties last resided together at Nagpur and therefore this proceeding is not liable to be transferred. Further submission is that no inconvenience is likely to be caused to the applicant - wife if the proceeding is retained at Nagpur.

6. It is well settled principal of law that ordinarily convenience of the wife needs to be considered while deciding application for transfer of proceeding. In ***N.C.V. Aishwarya Vs. A.S. Saravana***

Karthik Sha, 2022 SCC OnLine SC 1199, it is held;

“9. The cardinal principal for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Court are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing sociology-economic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.”

7. In the facts of the present case, since proceedings of PE No. 129 of 2022, filed by the applicant wife seeking maintenance under section 125 of the Criminal Court is already pending before the Court at Ahmednagar, it is desirable to transfer proceeding of HMP No. A-115 of 2023 pending in the Family Court, Nagpur to Family Court at Ahmednagar. In the result, following order:

ORDER

- A. Civil Miscellaneous Application is allowed.
- B. HMP No. A-115 of 2023 filed by respondent/husband in Family Court at Nagpur is hereby transferred to Family Court Ahmednagar.

[NITIN B. SURYAWANSHI]
JUDGE