

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.2203 OF 2022**

**ANAND SHESHERAO DHANLE AND OTHERS  
VERSUS  
SOW. KOMAL W/O ANAND DHANLE @ KOMAL D/O KISHOR KADAM  
AND ANOTHER**

...

**Mr. Sudarshan J. Salunke, Advocate for Applicants  
Mr. S. S. Jangada, Advocate for Respondents**

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 15<sup>th</sup> FEBRUARY, 2023**

**PER COURT :**

1. By this application filed under section 407 of Cr.P.C., applicants (original non-applicants) seek transfer of Criminal M.A. No.9/2022, filed by respondent (original applicant) pending on the file of learned Judicial Magistrate First Class, Rajgurunagar, Taluka Khed, District Pune, to the Court of learned Judicial Magistrate First Class, Pathri, District Parbhani.

2. Respondent wife filed said proceeding at Rajgurunagar, Taluka Khed, alleging that her marriage with applicant No.1 was solemnized on 07/11/2017 at Borgavhan, Taluka Pathri, District Parbhani. Son Advik is born out of the said wedlock. After marriage wife started residing with the applicants at Khedula, Taluka Pathri, Parbhani. She was treated well for initial two months and thereafter ill-treatment was given to her on the ground that marriage was not

performed properly and no proper presents were given. Her father had left them and therefore, her mother looked after her and her two brothers. Son Advik was born on 01/09/2019 at the maternal house. However, for four months nobody came to see him. After four months she was taken to the matrimonial home. Again ill-treatment started. Thereafter, applicant No.1 husband and respondent wife started residing at Aurangabad. There also applicant No.1 continued to ill-treat her. During lock-down applicant No.1 called her maternal cousin Atishkumar to take her. She went to her maternal home with him. Applicant No.1 gave her abuses asking her as to why she went away with her maternal cousin. Wife, therefore, came to Chandoli, Rajgurunagar, Taluka Khed, Pune, with her maternal cousin and started residing there. Applicant No.1 continued to call her on cell phone and giving her threats. He is not giving any maintenance amount. She further claims that the domestic violence on the part of applicant Nos. 1 to 3 be prohibited and she and her son be given maintenance at the rate of Rs.20,000/- per month. Compensation of Rs.50,000/- and expenses of litigation of Rs.10,000/- are also sought.

3. Heard learned advocate for applicants and learned advocate for respondents. Perused the application, grounds raised therein and documents placed along with the application as well as

affidavit-in-reply filed by the respondents.

4. It is a matter of record that maternal home of respondent wife is at village Borgavhan, Taluka Pathri, District Parbhani. Applicants have placed on record copy of electoral roll of village Borgavhan. Both the real brothers of respondent wife and her mother are staying at village Borgavhan. It is not in dispute that all the applicants are residents of village Khedula, Taluka Pathri, District Parbhani.

5. On 24/09/2020 wife had filed complaint to the Women's Grievance Redressal Cell against applicants and others, wherein she had shown her residence at Hattalwadi, Taluka Manvat, District Parbhani. In these circumstances, it is clear that the wife has no occasion and/or reason to go and reside with her maternal cousin at Rajgurunagar, Taluka Khed, District Pune. There appears substance in the contention of applicants that only with a view to harass applicants, wife has filed proceedings at Rajgurunagar, which is at a distance of more than 370 Km from the residence of applicants.

6. Learned advocate for applicants is justified in placing reliance on ***Mrs. Afia Rasheed Khan Vs. Mr. Dr. Mazharuddin Ali Khan & Another, 2022 All MR(Cri) 3125***, wherein it is held thus:-

"14. Thus, averments in application suggest, that Applicant is well educated person; she is financially sound; her parents are in business. In consideration of her

background it is difficult to accept her contention or that she could not seek protection order at Hyderabad. In other words, application in no way suggest or implies that she was forced to leave the Hyderabad and or she was intending to reside in Mumbai. On the contrary the chronology of the events do suggest, that the Applicant engineered the cause of action with an intention to file case and confer jurisdiction upon the Magistrate. In the case of, Advocate Ramesh Mohanlal Bhutada Vs. State of Maharashtra & Ors., 2011 CRI. L.J. 4074: [2011 ALL MR(Cri) 2631], the learned Judge of this Court has made distinction between temporary residence and casual visit. In Paragraph No.5 it was held that;

"5. In support of the petition, it is submitted on behalf of the petitioners that there is distinction between temporary residence and casual visit. The expression "reside" implied something more than "stay" and implied some intention to remain at a place and not merely to pay it a casual visit. The question of residence is required to be decided as to whether the party claiming residence, permanent or temporary, has an intention to stay at a particular place then alone it could be said that the party is residing at that particular place, either permanently or even temporarily. The question as to whether aggrieved person has made a particular place an abode, permanent or temporary, is a question to be decided with reference to facts of each case. It is apprehended that if liberal construction is placed upon the provisions made under Section 27 of the Act to allow even casual visit of the place to claim that the place is his or her temporary residence within the meaning of Section 27 of the Act 2005, then it may lead to abuse of the legal process as the aggrieved person may choose to harass the other party by choosing any place where he or she may be a casual visitor. Reference is made to the ruling in Mst. Jagirkaur and another V. Jaswant Singh : AIR 1963 SC 1541. The Apex Court was dealing with the question relating to the term "resides" in respect of petition by a wife against her husband for maintenance. Considering the dictionary meaning of the word "resident" the Apex Court has observed that the word means both a permanent dwelling as well as temporary living in a place. It is capable of different meanings including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it one thing is obvious that it does not include casual stay or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. The expression "reside" implies something more than a casual stay and implies some concrete intention to remain at a particular place but not

merely to pay a 1 casual or flying visit. In other words, it is always something more than a casual visit or casual stay at a particular place to assign status to the person as "temporary resident" of a particular place is contemplated under the law."

Yet in the case of Prashant s/o Manmohanjhi Laddha Vs. Sau Madhuri w/o Prashant Laddha; 2018 ALL MR (Cri) 2971. It was held that;

"Temporary residence requires residence at a place on continuing basis in pursuit of some activity or want or need which may be economic, educational, financial, cultural, social and the like which comes to an end when the goal or purpose is achieved. The period of such residence would vary depending upon the purpose for which it is taken. But, such residence cannot be a residence created just to confer territorial jurisdiction upon a Magistrate of a place or otherwise, it would be easy for a woman well equipped with resources to go to a far away place, set up a temporary residence there just to file a case and file a case to get the pleasure of seeing husband or person in domestic relationship being put to travails of long travels and high expenses. So, to my mind, in the context of Section 27 of the D.V. Act, temporary residence means a residence set up or acquired in the ordinary course of human affairs and is not a residence set up with an intention to file a case and confer jurisdiction upon the magistrate. This is the meaning, plainly and naturally, conveyed by combined reading of key words used in Section 27 of the D.V. Act, which are "resides or carries on business or is employed."

15. Thus, in consideration of the facts of the case, I hold that the Applicant was not "temporarily" residing within the jurisdiction of the Court of learned Magistrate and no cause of action arose in Mumbai. The facts pleaded in the application and the documents produced in support of her case only belief, leads to indicate that Applicants' visit to Mumbai was 'casual visit' and does not imply definite intention to stay at a particular place. Therefore, order passed by the Magistrate cannot be faulted with, either for wrong or non-exercise of jurisdiction. In fact if liberal construction is placed upon the provision, made under Section 27 of the Act, as sought by the Applicants, it may lead to abuse of legal process of law, as aggrieved person may choose, any place, where she may be a casual visitor. "

7. Above narrated observations are squarely applicable to the facts of the present case. Nothing is placed on record by the

wife stating that she is residing at Rajgurunagar in pursuit of some activity or want or need which may be economic, educational, financial, cultural, social, etc. It appears from the facts of the present case that residence of wife at Rajgurunagar is created just to confer territorial jurisdiction upon Magistrate at Rajgurunagar. The said residence cannot be termed as temporary residence within the meaning of Section 27 of the Protection of Women from Domestic Violence Act, 2005.

8. In the result, application is allowed in terms of prayer clause 'B'.

**(NITIN B. SURYAWANSHI, J.)**