

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

MISC. CIVIL APPLICATION NO. : 279 OF 2021

Sheetal Dilip Pandhare

Age : 39 years, Occu. Nil,
Residing at : 501/2, Pandhre Niwas,
Mohan Bagh, Delhi Gate, Ahmednagar,
Tal. and Dist. Ahmednagar.

... PETITIONER
(Orig.Defendant)

VERSUS

Pawan Sahebrao Patil

Age : 51 years, Occu.Service,
R/o : Sneh Nagar, Near NIT Garden,
Wardha Road Nagpur,
Tal.and Dist. Nagpur.

... RESPONDENT
(Orig.Plaintiff)

...

Advocate for the Petitioner :- Ms. S.C.Thombre
Advocate for Respondent : Mr. Ramrao G. Nirmal h/f.
Mr. S. S. Gangakhedkar

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 06.01.2023

PRONOUNCED ON : 10.01.2023

ORDER :

Heard rival submissions. Also perused the documents on record along with the written notes of argument filed by the petitioner.

2. The petitioner is seeking transfer of RCS No.670/2017 filed by respondent-husband for declaration and injunction, from the Court of learned Civil Judge (Junior Division), Nagpur to the Court of the learned Civil Judge (Junior Division), Ahmednagar.

3. On perusal of the entire material on record, it appears the marriage between petitioner and respondent took place on 23.02.2004 at Ahmednagar. However the respondent - husband then filed petition for divorce under Section 13 of the Hindu Marriage Act in Family Court, Nagpur vide Petition No.A-119/2005. The learned Family Court, Nagpur on 24.02.2009 passed the decree of divorce on merit in the said petition. The present petitioner had challenged the said decree by filing Appeal No.122/2011 before this Court, but the said appeal was dismissed for want of prosecution on 11.07.2014. Then the petitioner had also filed various litigations against the respondent namely RTC No.446/2011, STC No.1355/2012 and STC No.745/2014 in the concerned Courts at Ahmednagar. However, ultimately the petitioner and respondent settled their disputes on 30.10.2014 by withdrawing all the pending cases against each other.

However, thereafter one threatening letter received at the place of petitioner's father and therefore, the petitioner was constrained to lodge an First Information Report against the respondent with Tofkhana Police Station, Ahmednagar under Sections 504, 506 of the Indian Penal Code and it was registered as STC No.187/2015 and at present it is pending in the Court of Judicial Magistrate, First Class, Ahmednagar. The respondent had challenged the order of learned Judicial Magistrate, First Class of directing the petitioner to furnish additional evidence, under Criminal Revision No.197/2015 in the Court of Additional Sessions Judge, Ahmednagar, but it was dismissed on 11.04.2016.

4. Thereafter, the petitioner has filed the aforesaid Civil Suit bearing Regular Civil Suit No.670/2017 which is the subject matter of the present application. However, the learned Civil Judge, Junior Division, Nagpur has rejected the application (Exhibit 5) of temporary injunction filed by the respondent -husband for restraining the petitioner from instituting or prosecuting him in any Court.

5. The learned counsel for the petitioner submits that there are number of judgments passed by the Honourable

Apex Court whereby it has been reiterated time and again, that in the transfer application, the convenience of the wife is to be considered than the convenience of the husband. She also relied on following such judgments :

(i) N.C.V. Aishwarya vs. A.S.Saravana Karthik Sha, reported in 2022 SCC OnLine SC 1199,

(ii) Sumita Singh v. Kumar Sanjay & another reported in (200) 10 SCC 41.

(iii) Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi reported in (2005) 12 SCC 237:

6. Admittedly, such position is settled by the Honourable Apex Court. However, it is extremely important to note that the present petitioner had also filed same application of transfer for the same purpose as claimed in the instant application. The record shows that the petitioner had filed MCA No.177/2017 in this Court for the transfer of the same suit i.e. RCS No.670/2017 from Nagpur to Ahmednagar, but this Court vide order dtd. 10.04.2019 has rejected the said application. Even the Special Leave to Appeal No.30427/2019 preferred by the petitioner to Honourable Supreme Court against the aforesaid order in MCA No.177/2017 has also been dismissed by the Honourable Supreme Court on

17.01.2020. As such, it appears that rejection of the application for transfer of the aforesaid suit under the order dtd.10.04.2019 of this Court has been confirmed upto Honourable Apex Court.

7. Now, the petitioner has again claimed same relief by making averments that she was threatened by the respondent when she went to attend the date of said Civil Suit at Nagpur which resulted into lodging N.C.R. No.420/2021 in Sadar Police Station, Nagpur on 02.07.2021 at her hands. However, though it is claimed by the petitioner that she being a lady, it would be highly difficult for her to attend the dates of the Civil Suit at Nagpur which is 490 kms. away from her native place, Ahemednagar, but considering the earlier observation of this Court while rejecting her similar application for transfer of the said suit, it reveals that the petitioner is having habit of lodging complaints on flimsy grounds against respondent, even after the respondent had complied with the condition of settlement by paying huge amount of Rs. 17,50,000/- to her through a demand draft. The petitioner has also admitted about the receipt of such payment. This Court, in the earlier order dtd. 10.04.2019 in similar application, has observed as follows :

“6. The applicant claims that she received a letter on 4.12.2014 and hence she filed another complaint before the Tofkhana Police Station, Ahmednagar on 8.12.2014 under Section 504 and 506 of the IPC. The respondent, his sister and sisterinlaw approached this Court in Criminal Writ Petition No. 586 of 2016 and by an interim order, this Court has stayed the proceedings.

7. The respondent submits that he eventually got fed up with the series of complaints being filed by the applicant on false pretexts and instituted RCS No. 670 of 2017 against the applicant seeking permanent injunction against the applicant and her relatives from filing cases against the respondent and his relatives.

8. The record reveals that both the parties have agreed to keep away from each other and the respondent had complied with the condition of payment of Rs.17,50,000/ through a Demand Draft. The applicant admits that she has received the said money. The record further reveals that the applicant is lodging complaints on frivolous grounds, for example, that she alleged that one Satish Vitthalrao Durgude, who is the husband of the respondent's sister, uttered the words, "Hi Sexy". Further complaints have been filed on the ground that the applicant received some chits or notes or letters threatening her.

9. *After this matter was heard on 27.3.2019, I had kept the option of referring the parties to a Mediator, so as to have a complete end to such bickerings. The applicant subsequently declined to have the matter referred to a Mediator. Thereafter, when the matter was heard on 9.4.2019, I had orally suggested to the parties that they would have peace by withdrawing all cases and would keep no contact with each other. Today, learned Advocate for the applicant submits, on instructions, that the applicant does not desire to withdraw the complaints filed by her before the Police Station.*

10. *This apparently indicates that the applicant, on the one hand, has accepted Rs.17,50,000/ as the full and final separation amount and on the other hand, has proceeded against the former husband and his relatives by filing various complaints in the Police Station.*

11. *This is a peculiar case, wherein the applicant, former wife, has proceeded against the former husband and his relatives by lodging police complaints in defiance of the terms of the settlement and after having accepted the amount of Rs.17,50,000/.*

12. *Considering the above, I am of the prima facie view that the applicant, former wife, appears to be*

misusing and abusing the process of law. Such a litigant cannot be granted any relief. As such, the respondent, former husband, is at liberty to seek injunctory orders from the trial Court in RCS No.670 of 2017, by praying for a direction that the applicant, former wife, should deposit the entire amount received by her from the husband, as a condition for considering her grievance.”

8. Thus, it appears that the present petitioner is filing this application for the same purpose for which her earlier application has been rejected by this Court. In fact, the order of this Court of rejecting her earlier application has been confirmed upto Honourable Apex Court. Therefore, the applicant cannot be given liberty to file successive application for the relief which is already denied. In view of the same, the present application stands rejected.

**(SANDIPKUMAR C. MORE)
JUDGE**

shp/-