

CRIMINAL APPLICATION NO.3568 OF 2022

Versus

Mr. Mukul S. Kulkarni, Advocate for the applicants.
Mr. D.G. Nagode, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JANUARY, 2023

ORDER :

1. Applicant-husband and his relatives have moved the present application under section 407 of Code of Criminal Procedure, 1973, seeking transfer of Criminal Miscellaneous Application No. 1008/2016 from the Court of Judicial Magistrate First Class, Ahmednagar to Family Court at Ahmednagar.
2. Heard the learned advocate for the applicants and learned advocate for respondent No. 1.
3. Following proceedings i.e. (i) Hindu Marriage Petition No. E-2-2018, (ii) Petition No. E-92-2018 filed by wife under

section 125 of Code of Criminal Procedure, 1973, (iii) Special Civil Suit No. 33/2018 filed by wife under section 18 of Hindu Adoption and Maintenance Act, 1956, for permanent alimony, which is transferred to the Family Court by order dated 06.10.2021, passed by Joint Civil Judge, Senior Division, Ahmednagar and (iv) Hindu Marriage Petition No. 85/2017 filed under section 9 of Hindu Marriage Act, by wife is also transferred to Family Court by order dated 07.04.2018, passed by Civil Judge, Senior Division, Ahmednagar, between applicant No. 1- husband and the respondent are pending before Family Court, Ahmednagar. Therefore, transfer of Criminal Miscellaneous Application No. 1008/2016, pending in the Court of learned Judicial Magistrate First Class, Ahmednagar to Family Court, Ahmednagar is sought.

4. Learned advocate for the respondent submits that the proceeding sought to be transferred by the applicants is at the stage of recording of evidence, and therefore, it may not be transferred to the Family Court. He further submits that there may be issue of jurisdiction of the Family Court to entertain the said proceeding which is filed under section 12 of the Domestic Violence Act, 2005.

5. In reply to said submission, learned advocate for the applicants relied on Anirudh Ajaykumar Garg Vs. The State of Maharashtra, MANU/MH/4253/2021.

6. In the aforesaid citation, learned Single Judge of this Court by relying on Apex Court decision in Kunapareddy v. Kunapareddy Swarna Kumar (2016) 11 SCC 774, held that, proceedings under Domestic Violence Act, are predominantly of civil nature and transferred the proceeding under Domestic Violence Act to the Family Court.

7. Considering above ratio and the facts of the present case and as four matrimonial proceedings between the parties are pending before the Family Court, it would be desirable and in the interest of justice to transfer Criminal Miscellaneous Application No. 1008/2016 to Family Court, Ahmednagar, considering convenience of parties and as the Family Court is already seized of four matrimonial proceedings pending between the parties. Let the Family Court, Ahmednagar consider all the proceedings on merit and decide the same in accordance with law.

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

[NITIN B. SURYAWANSHI, J.]