

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3749 OF 2022

1. Sow. Surekha @ Samruddhi
w/o. Vilas Koli,
Age: 35 years, Occ: Household,
2. Atharva s/o Vilas Koli,
Age: 7 years, under the
guardianship of the mother
Sow. Surekha @ Samruddhi w/o.
Vilas Koli, ie Applicant No. 1
Both r/o Near Totla Hospital,
Vidya-Niketan Colony,
Akashwani, Aurangabad
At present R/o. Gandhi-Chowk,
Near Old Bus Stand, Biloli,
Ta. Biloli, Dist. Nanded

...Applicants

Versus

1. Vilas S/o. Kashinath Koli,
age: 38 years, Occ: Teacher,
2. Kashinath S/o. Devji Koli
age: 70 years, Occ: agri,
3. Tilottam w/o Kashinath Koli
age: 62 years, Occ: retired
teacher,
4. Nilesh @Sushil Kashinath Koli,
age: 36 years, Occ: Business,

All above r/o Near Totla
Hospital, Vidya-Niketan
Colony, Akashwani, Aurangabad

...Respondents

WITH
CRIMINAL APPLICATION NO. 4074 OF 2022
VILAS KASINATH KOLI
VERSUS
SUREKHA @ SAMRUDHI W/O. VILAS KOLI AND ANOTHER

Mr. S. A. Gaikwad, Advocate for the Applicant in APPLN/3749/2022 and for Respondents in APPLN/4074/2022.

Mr. A. B. Kharosekar, Advocate for Respondent in APPLN/3749/2022 and for Applicant in APPLN/4074/2022.

CORAM : R.M. JOSHI, J.

**RESERVED ON : OCTOBER 13, 2023
PRONOUNCED ON : OCTOBER 19, 2023**

ORDER

1. Criminal Application No. 3749 of 2022 is filed under Sections 407 and 482 of Code of Criminal Procedure (for short '**CrPC**') for seeking transfer of proceeding bearing Petition No. E-36/2021 filed under Section 125 of CrPC and Criminal M.A. No. 13/2022 filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (for short '**D.V. Act**') pending before Family Court, Aurangabad to JMFC, Biloli and Criminal Application No. 4074 of 2022 filed by husband for transfer of Charge-sheet No. 226/2019 in connection with FIR No. 180/2019 registered by Biloli Police Station, Dist Nanded from JMFC, Biloli to JMFC, Aurangabad.

2. The facts which led to the filing of Criminal Applications can be narrated in nutshell as under:

In accordance with averments in Criminal Application No. 3749/2022, Applicant No. 1 (wife) married to Respondent No. 1 (husband) on 30.11.2012 at Biloli and out of said wedlock a son i.e., Applicant No. 2 is begotten. Respondent Nos. 2 to 4 are in-laws of Applicant No. 1. There occurred disputes between the parties and Applicant and Respondents are staying separately. Applicants are residents of Biloli whereas Respondents are residing at Aurangabad. Applicants filed proceedings under Section 125 of CrPC and provisions of D.V. Act. Respondent No. 1, on the other hand, had filed Petition for divorce in Family Court, Aurangabad which came to be disposed of. He also filed an application under the provisions of Guardianship and Wards Act bearing no. D-24/2019 before Family Court, Aurangabad. Applicant No. 1 also had lodged report against Respondents for offence punishable under Section 498-A IPC and said proceeding is pending bearing R.C.C. No. 78/2019 before JMFC, Biloli.

3. Applicants filed Misc. C. A. bearing no. 214/2019 before this Court for transfer of proceedings. The said application came to be disposed of by order

dated 27.01.2020 granting liberty to the Applicants to file an application before Family Court. In application No. A-309/2019, Family Court passed order directing Respondent No. 1 to pay Rs. 1795/- on per date of hearing towards traveling expenses and a sum of Rs. 10,000/- was directed to be paid initially for legal expenses. It is the contention of Applicants that in the beginning the said amount was paid, however, for last 17 dates the order passed by the Family Court is not complied with. According to the Applicants, the same is causing prejudice and immense harassment to her and her minor son. Respondent No. 1 preferred an application before this Court being Criminal Application No. 2707/2021. In the said proceedings, Applicants herein did not appear and said application came to be allowed by order dated 10.03.2021. The D.V. proceedings were transferred from Court of JMFC, Biloli to Family Court, Aurangabad with further direction to tag the same together and try along with Petition No. A-309/2019, Petition No. D-24/2019, Petition No. E-36/2021 and Petition No. A-435/2021.

4. On the other hand, in Criminal Application No.

4074/2022, it is contention of husband that wife is in habit of making false allegations and pursuant to report lodged by her, charge-sheet came to be filed against him for offence punishable under Sections 498-A, 323, 504 and 506 of IPC, before JMFC, Biloli. It is his contention that number of proceedings are initiated by wife against him and these proceedings are pending the Court at Aurangabad. He also claims to be teacher working at Paithan, Aurangabad and finds it difficult to attend the Court at Biloli which is at distance of 300 to 350 kms from Aurangabad. On these averments, he seeks transfer of criminal proceedings.

5. Learned Counsel for the wife submits that on account of financial constraints she could not appear in the proceeding before this Court initiated by husband being application no. 2707/2021. It is further argued that this Court while passing order dated 10.03.2021 has essentially considered the fact that the Family Court has directed husband herein to pay Rs. 1795/- towards traveling expenses for attendance on each date and also Rs. 10,000/- towards initial legal expenses. It is submitted that order of this Court

directing Family Court to consider application for enhancement of the traveling expenses and further legal expenses indicates that only for the reason that there was such order of expenses, the D.V. proceedings was transferred from Biloli to Aurangabad. It is his submission that since last 17 dates of hearing though wife had appeared before the Family Court, husband has failed to pay amount of traveling expenses as directed by the Court. It is submitted that the distance between Biloli and Aurangabad is more than 300 kms and it is difficult for her to manage to come to Aurangabad when she is also required to take care of her minor son. It is submitted that the proceedings sought to be transferred are under the provisions of D.V. Act and under Section 125 of CrPC which permits the woman to file and prosecute the said proceedings at the place where she resides. As far as proceeding initiated for offences under IPC pending before JMFC, Biloli, it is contended that said proceedings cannot be transferred from the Court of proper jurisdiction.

6. Learned Counsel for the husband opposed the said contention and relied upon the affidavit-in-reply

filed by the husband. In the said reply he denied the allegations made by the wife. It is his contention that these complaints are lodged by wife and that the proceedings for the offence punishable under Section 498-A of IPC against in-laws except husband is already quashed by this Court. It is submitted that the maintenance proceeding is filed at Family Court, Aurangabad. It is his contention that as per order passed by this Court dated 10.03.2021 in Criminal Application No. 2707/2021, all the proceedings between the parties are required to be heard together by the Family Court. Learned Counsel for husband however did not dispute the fact that the traveling expenses are not paid by the Respondent No. 1 to the Applicants for number of dates. However, he has shown his willingness to pay the same now.

7. Wife is seeking transfer of Petition No. E-36/2021 filed under the provisions of Section 125 of CrPC and Criminal M.A. No. 13/2022 filed under Section 12 of D.V. Act. Section 126 of CrPC provides that the proceedings under Section 125 may be taken against any person, in any district where wife resides. Section 12

of D.V. Act makes similar provision whereby aggrieved women is permitted to file proceedings before Magistrate at the place where she has her place of residence. Both these provisions abundantly makes it clear that wife has right to file and prosecute these applications at Biloli as undisputedly she is resident of Biloli. Thus, there is no legal impediment in transferring applications at the said place.

8. The question arises as to whether in view of order passed by this Court dated 10.03.2021 in Criminal Application No. 2707/2021 any such order can be passed. Perusal of the said order indicates that Applicants herein did not appear before this Court in the said proceedings. It further reveals that the order passed by this Court after considering the fact that wife is directed to be paid by husband Rs.1795/- per date towards traveling expenses. Similarly, at that stage, Petition filed by the husband for divorce was pending. Now, there is substantial change in the circumstances such as Petition filed by the husband for divorce is disposed of by the Family Court. Apart from this, as directed by the Family Court and confirmed by this

Court, husband has failed to make payment of traveling expenses to wife for 17 dates of hearing. The fact of attendance of the Applicants before the Family Court on these dates is *prima facie* established by relying upon the Roznama of the said proceedings. Thus, there is non compliance of direction of this Court as well as Family Court by husband. It needs to be noted that husband cannot be allowed to cause harassment of wife by not complying with order of Court. The non compliance of order itself becomes sufficient ground to re-transfer the proceedings to JMFC, Biloli.

9. Pertinently present application is filed in November, 2022. Husband caused his appearance through Advocate on 08.12.2022. Since then in spite of lapse of 10 months, he has not even once offered payment of arrears of traveling expenses to the wife. It is only when the matter was reserved for order a submission is made by the Counsel for husband, this Court does not find the said offer to be *bona fide*.

10. While opposing application of wife it is contended by husband that he is employed as teacher and that the distance between Biloli and Aurangabad is

about 300-350 kms which could cause hardship and inconvenience to him. By applying same analogy, it must be held that inconvenience and hardship is caused to the wife and child, who is minor aged about 7 years. No evidence is required to be brought on record to hold that he must be a school going child and his activities are required to be managed by mother and she has to attend these proceedings at the distance of about 300 kms from her place of residence. Needless to say that more than 1 day's time is required for her in order to attend proceedings. Thus, certainly more hardship would cause to wife as compared to the husband. Even otherwise, failure on the part of the husband to make payment of traveling expenses to wife and child on 17 dates without showing any reason or justification disentitles him to make any grievance.

11. Considering the relevant provisions of CrPC and DV Act wife has right to prosecute proceedings bearing Petition No. E-36/2021 filed under Section 125 of CrPC and Criminal M.A. No. 13/2022 filed under D.V. Act before JMFC, Biloli. It would be open for the wife and child to recover unpaid traveling expenses from

Respondent No. 1 by adopting due process of law.

12. As regards proceeding arising out of the FIR lodged by wife for offences under 498-A, 323, 504 and 506 of IPC vide charge-sheet no. 226/2019, pending before JMFC, Biloli is concerned, husband has failed to make out any case for transfer of the said proceeding to Aurangabad. Even otherwise, after transfer of proceedings filed by wife to Biloli, there is no propriety in passing any order as sought by husband.

13. In view of above discussion, Criminal Application No. 3749 of 2022 stands allowed in terms of prayer clause 'B'. Proceedings bearing Petition No. E-36/2021 filed under Section 125 of CrPC and Criminal M.A. No. 13/2022 filed under D.V. Act pending before learned JMFC, Aurangabad are transferred to JMFC, Biloli.

14. Criminal Application No. 4074 of 2022 is rejected.

(R.M. JOSHI, J.)

Malani