

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

CRIMINAL APPLICATION NO.3907 OF 2022

**HEMANT GULABRAO NIKAM
VERSUS
LINA HEMANT NIKAM AND ANOTHER**

Mr. S. T. Kazi, Advocate for the applicant
Mr. M. R. Wagh, Advocate for respondent Nos.1 and 2.

**CORAM : R. M. JOSHI, J.
DATE : 19th JUNE, 2023**

P.C. :-

1. This application seeks transfer of Criminal Misc. Application No. 284 of 2022 pending before JMFC, Ghodnadi, Tal. Shirur, Dist. Pune to be transferred to Family Court at Dhule.

2. There is no disputes about the fact that the applicant and respondent No.1 were married on 21st May, 2017 and out of the said wedlock they have one son. Thereafter matrimonial discord occurred between them and they started staying separately. It is a contention of the applicant that the respondent had filed complaint against applicant and his family members for the offence punishable under Section 498A of the Indian Penal Code at Dhule. So also a complaint was made to be the Woman Redressal Forum at Dhule. It is further pointed out that the proceeding for divorce filed by the applicant is also pending before the

Family Court, Dhule.

3. Learned counsel for the applicant states that the Family Court has directed the applicant to pay sum of Rs.3,000/- on each and every date when respondent wife remains present personally in the Court. She submitted that though all other proceedings are filed at Dhule, in order to cause harassment the proceeding under the Protection of Women from Domestic Violence Act is filed at Ghodnadi, Tal. Shirur, Dist. Pune. She placed reliance on the judgment of this Court in case of **Mr. Abhishek N. Billawa and Ors. V/s Mrs. Tejashree Abhishek Billawa** in **Mis. Civil Application No. 47/2020** and order of Hon'ble Apex Court in case of **Abhilasha Gupta versus Harimohan Gupta** in **Transfer Petition(s)(civil) No. 1027/2021** to support her contention.

4. Learned counsel for the respondent submitted that as relied upon the judgment of **Ammini K.A. Versus Ravi N.A. in Tr.P(C) No. 399/2021**, dated 8th September, 2021, Kerala High Court to canvass that the proceedings under the D.V. Act cannot be transferred to Family Court. He further argued that in view of Section 27 of D.V. Act the respondent wife has a right to file proceedings even at the place where she temporarily resides.

5. Section 27 of D.V. Act provides for jurisdiction of Court, which reads thus,

"27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,
shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India."

6. There is no dispute about the fact that respondent wife who is working in the bank is residing at Ghodnadi, Shirur, Dist. Pune. Thus, in view of aforesaid provision, JMFC at Ghodnadi has jurisdiction to entertain the application filed by the respondent under Section 12 of said Act. As far as the contention of the counsel for the applicant that the complaint under Section 498A of IPC has been lodged at Dhule is concerned, the said report could not have been lodged at any other place but the place where the offence in question has alleged offence has been committed.

7. With regard to direction of the Family Court to pay Rs.3,000/- to the respondent, it needs to be noted that the said direction

is issued as the respondent was required to attend the said proceeding at Dhule from Ghodnadi, Shirur, Pune. Thus, this cannot become a ground for transfer of proceeding under D.V. Act. It is informed to this Court that proceedings before Family Court are at the fag end.

8. This Court finds that the present application has not been filed with the contention that the proceedings before Family Court as well as JMFC entertaining application under Section 12 of the D.V. Act are similar in nature. Having regard to the allegations made therein and therefore, there is no question of determination of the common question involved in both proceedings as it appeared in the judgment of **Mr. Abhishek N. Billawa** (cited supra).

9. In view of the above discussion the applicant has failed to make out any case for transfer of proceeding under the D.V. Act from Ghodnadi, Shirur, Pune to Dhule.. Hence application stands dismissed.

(R. M. JOSHI, J.)

ssp