

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1116 OF 2022
WITH APPLN/4376/2022 IN WP/863/2021

SACHIN PRABHAKAR UGALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Dhakane Rajendra Babaji
APP for Respondent No.1/State : Smt. D.S. Jape
Advocate for Respondent No.2 : Mr. Jaybhay Bibhishan R.

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CORAM : KISHORE C. SANT, J.
DATE : 8th MARCH 2023.

Per Court :

Heard the parties.

1. This petition is challenging an order passed by the learned Sessions Judge, Aurangabad dated 08.05.2022, whereby an application preferred by the petitioner/husband for transfer of either of the proceedings before the Court, where another proceeding is pending. The application is rejected with costs of Rs.10,000/-.

2. Criminal Application No.4376/2022 is filed for recalling of the order dated 08.12.2022 passed by this Court in Writ Petition No.863/2021 on the ground that it was passed in absence of present

petitioner. However, the learned Advocate in view of subsequent event informs that he does not want to press this application.

3. The respondent/wife filed proceeding under the provisions of Domestic Violence Act bearing PWDV Application No.374/2019, which is pending in the Court of learned 15th Judicial Magistrate First Class, Aurangabad. The wife thereafter also filed proceeding bearing Criminal Miscellaneous Application No.573/2022 under Section 125 of the Code of Criminal Procedure (Cr.P.C. for short) for maintenance, which is presently pending before the Court of learned 17th JMFC, Aurangabad.

4. In view of the same, the husband had filed an application for transfer of proceeding in the Sessions Court. The said application was objected by the respondent/wife. The learned Sessions Judge observed that both the proceedings stand independently under different statutes and are different in nature. It is held that therefore it is not necessary to transfer the proceeding to another Court. While imposing a cost of Rs.10,000/-, the Court has observed that the husband has unnecessarily dragged wife to the Court by filing application under Section 408 of the Cr.P.C.

5. The learned Advocate for the petitioners submits that in fact it is for the convenience of both the parties that the proceedings be taken up before any one Court. If the proceedings are transferred to one Court, a common date can be given in both the proceedings and thereby parties need not attend two different Courts for different matters. He submits that though the proceedings are under different statutes but parties are the same and both the Courts have jurisdiction to try both the proceedings. It was in fact in the interest of wife also if the proceedings are transferred to one Court. He further submits that filing application for transfer, can in no way be said to be harassment of the wife.

6. The learned Advocate for the respondent no.2 fairly concedes that in fact it is even for the convenience of the wife that both the proceedings are taken before one Court. He submits that though it was opposed in the Sessions Court, but on giving a second thought, even the wife thought it would be convenient even to her. He further submits that the husband is not paying interim maintenance in spite of order passed by the trial Court, which was challenged by the husband in an

appeal. Though the Appellate Court quashed the order of interim maintenance, however this Court in Criminal Writ Petition No.863/2021 had set aside the order passed by the learned Sessions Judge and thus the order passed by the trial Court is confirmed.

. He further submits that still the petitioner/husband is not regularly paying the amount of maintenance. He therefore submits that before granting any relief to the petitioner, he has to show his bonafide by depositing some amount towards maintenance.

7. Considering the above submissions, this Court finds that the proceedings needs to be transferred. It is informed that PWDV Darkhast No. 202/2022 is also filed, which is presently pending before 17th Court, JMFC for execution of the interim maintenance. This Court finds that since two proceedings are now pending before the 17th Court, JMFC and only one proceeding is pending before the 15th Court, JMFC, it would be in the interest of justice to transfer the proceeding of PWDVA No.374/2019 to the Court of learned 17th JMFC, Aurangabad. It would also be just to direct the husband to pay some amount towards interim maintenance. Hence, the following order.

ORDER

- (i) The proceeding of PWDV Application No. 374/2019 that is presently pending in the Court of learned 15th JMFC, Aurangabad shall be transferred to the Court of learned 17th JMFC, Aurangabad. All three proceedings i.e. PWDVA No.374/2019, Criminal Miscellaneous Application No.573/2022 and PWDV Darkhast No.202/2022 be placed together before the learned 17th JMFC, Aurangabad.
- (ii) The learned Magistrate shall give same date in all the matters to avoid the inconvenience to the parties and shall try to dispose off all the proceedings as early as possible and preferably within six months from today.
- (iii) This order is subject to condition of depositing Rs.75000/- in Darkhast No.202/2022 within a period of two weeks from today.
- (iv) With this, the Criminal Writ Petition stands disposed off.
8. In view of the disposal of the Writ Petition No.1116/2022, nothing survives in the Criminal Application No.4376/2022. The same stands disposed off.

[KISHORE C. SANT, J.]

Najeeb.