

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 147 OF 2021

Prakash Bhatia ...Applicant
Versus
State of Maharashtra & Ors ...Respondents

Ms Swapna Pramod Kode, for the Applicant.
Smt SS Kaushik, APP, for the Respondent-State.
Ms Urmila Bhatia, Respondent-in person-present.

CORAM Kamal Khata, J.
DATED: 22nd December 2023

PC:-

1. This Criminal Application is filed by the Applicant husband under Section 407 of Code of Criminal Procedure (“Cr.P.C.”). This Criminal Application seeks a transfer of proceeding from 17th Metropolitan Magistrate Court at Borivali to the Family Court at Bandra.
2. The marriage was solemnised on 28th November 2014. It was a second marriage for both parties. There are no issues from the wedlock. But each of them have issues from their earlier marriage.

3. The husband filed for dissolution of marriage before the Family Court at Bandra on 10th August 2020. The Respondent on the other hand filed the FIR before the Samta Nagar Police Station on 5th September 2020. Thereafter an application under the DV Act was filed on 16th December 2020.

4. The learned counsel for the Applicant submits that the prayers that are sought before the Magistrate's Court for maintenance are also sought before the Family Court. Both husband and wife residing at Kandivali.

5. The Respondent appears as a party in person. She submits that inspite of orders of the Magistrate's Court granting maintenance of Rs. 1 lakh per month to her, the Applicant has failed to make any payment so far and he is in arrears of around Rs. 25 lakhs. She submits that the Borivali Court is in close proximity from her residence at Kandivali (West). Besides that she submits there are multiple litigations that are pending in various Courts amongst the parties. Further she had made several attempts to settle the matter that have failed. The proceeding before the Magistrate's Court is at an advanced stage and the Family Court was vacant. Therefore enormous prejudice would be caused if the matter was transferred.

6. In rejoinder the Advocate for the Applicant submits that she is willing to offer Rs. 25,000/- p.m. to the Respondent before 5th of every month. Secondly, she is also willing to pay a sum of Rs.

1000/- as travel expenses to the Respondent for each date of hearing before the Family Court.

7. She submits that now the Family Court is not vacant and the matter will proceed before the Family Court. She submits that in view of the judgement passed by this Court on 20th December 2023 in the case of Rohan Shah vs Nishigandha Shah, the transfer from Magistrate Court to Family Court Bandra be granted. The Respondent may receive the payments without prejudice to her rights and contentions.

8. The learned counsel for the Applicant submits that the first cheque of Rs. 25,000/- for this month shall be paid by the end the day tomorrow i.e. 23rd December 2023. It would be an online transfer for which the Respondent shall give her bank details by the end of the day today.

9. The amount that is paid by the Applicant is accepted by the Respondent without prejudice to her rights and contentions. The Respondent accepts that the amount paid may be adjusted towards the final order of the maintenance.

10. In view of my order passed in Misc. Civil Application No. 477 of 2022 dated 20th December 2022, I am inclined to allow this application and pass the following order;

(i) Application is allowed in terms of prayer clause (a).

(ii) The proceedings and application made in CC No. 259/DV/2020 pending before the 17th Metropolitan Magistrate Court, Borivali, Mumbai to Family Court, Bandra be stayed pending transfer; and be transferred to Family Court Bandra.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Family Court Bandra, shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) All concerned to act on the authenticated copy of this order.

(Kamal Khata, J)