

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

MISC. CIVIL APPLICATION NO.646 OF 2022

(Smt. Mamta alias Anushka w/o Mangesh Pise Vs. Shri Mangesh s/o Tejram Pise)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mrs. K.R. Dhole, Advocate for the applicant.
Shri D.R. Bhoyar, Advocate for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 24, 2023.
PRONOUNCED ON : APRIL 21, 2023.

Heard.

2. Present application is filed for seeking transfer of matrimonial proceeding bearing Misc. Cri. Case No.91/2014 filed under Section 12 of the Domestic Violence Act, 2005 and H.M.P No.214/2014 pending in the Court of 2nd Joint Civil Judge, Senior Division, Wardha to the Court of Judicial Magistrate First Class and Civil Judge, Senior Division, Yavatmal, respectively.

3. As per the contention of the applicant, her marriage with the non-applicant was solemnized on 20/05/2013 at Sahakar Sanskruti Bhawan, Wadgaon, Yavatmal. After marriage she resumed cohabitation at the house of the non-applicant. She had one male child namely Shivansh who is 8 years old and studying in IIIrd standard at Yavatmal.

4. As per her contention, after marriage she was not treated well by the non-applicant, and therefore, she

constrained to leave matrimonial house and now staying at the mercy of her parents. The distance between Wardha to Yavatmal is more than 200 kilometers. It is difficult for her to attend the proceedings at Wardha. Initially, the non-applicant has also filed H.M.P No.214/2014 which is already disposed of and now only the proceeding of the applicant is pending in the Court of Judicial Magistrate First Class, Wardha.

5. It is inconvenient for her to attend the proceeding at Wardha as she has no source of income, therefore, she is unable to incur the expenses of the litigation.

6. For all above the ground, she claimed the transfer of the proceeding bearing No.91/2014 from 2nd J.M.F.C., Wardha to the court of J.M.F.C., Yavatmal.

7. Said application is strongly opposed by the non-applicant on the ground that the application is not maintainable under Section 24 of the Code of Civil Procedure as by this application, the applicant is seeking transfer of the criminal proceeding.

8. Section 24 of Code of Civil Procedure is applicable only to the civil proceedings, and therefore, the application itself is not maintainable. He further submitted that the application is groundless and deserves to be rejected.

9. He also filed a counter affidavit stating that the Hindu Marriage Petition filed by him is already disposed of on 04/01/2023, therefore, this Court cannot entertain the present application. He further submitted that the present non-applicant was under impression that the applicant will withdraw the present application but on 06/01/2023 Shri Shinde, learned Counsel appeared on his behalf and erroneously made a wrong statement that the applicant has no objection for transfer of Misc. Cri. Case No.91/2014. He had already filed his reply and submitted that the instant application is filed by concealing the stages of the proceedings and deserves to be rejected. It is further contended by the non-applicant that the relief claimed under the Domestic Violence Act are of monetary reliefs. For transfer of the criminal proceedings separate provision is made under Section 408 of the Code of Criminal Procedure, therefore, this application is not at all maintainable and deserves to be rejected.

10. Heard Mrs. Dhole, learned Counsel for the applicant. She reiterated the contentions and submitted that as the applicant is residing at Yavatmal at the mercy of her parents, she has no source of income to attend the proceeding at Wardha and she has to look after her son who is eight years old. If she has to attend the proceeding at Wardha, she has to spend entire day in attending the proceeding. In her absence there would be nobody to look after her son, therefore, taking into consideration her convenience, the matrimonial proceeding bearing Misc.

Cri. Case No.91/2014 be transferred to the court of J.M.F.C., Yavatmal.

11. In support of her contention she placed reliance on the judgment of this Court in ***Misc. Civil Application (St.) No.5825 of 2020*** (Mr. Sanket Sanjeev Khanolkar Vs. Mrs. Surabhi Sanket Khanolkar) ***decided on 15/02/2021*** and the judgment of the Madras High Court in ***P. Ganesan Vs. M. Revathy Prema Rubarani C.R.PPD(MD) No.909/2021, 896/2021 and 915/2021.***

12. Per contra, Shri Bhoyar, learned Counsel for the non-applicant submitted that the application filed by the applicant is groundless. In fact, the application itself is not maintainable as for the proceeding in the provisions of Domestic Violence, the Code of Criminal Procedure is applied, therefore, the application under Section 24 of the Code of Civil Procedure is not maintainable.

13. Heard both the sides and perused the application.

14. There is no dispute that by this application, the applicant is seeking transfer of H.M.P No.214/2014 pending in the court of 2nd Joint Civil Judge, Senior Division, Wardha and Misc. Cri. Case No.91/2014 pending in the court of 2nd J.M.F.C., Wardha. Admittedly, the matrimonial proceeding i.e. H.M.P No.214/2014 is disposed of by the judgment on 04/01/2023, therefore, only question arises whether the proceeding under Section

12 of the Domestic Violence Act can be transferred to the court of J.M.F.C., Yavatmal under Section 24 of the Code of Civil Procedure. The first and foremost question is whether the proceeding under the Domestic Violence Act is of criminal nature. In the case of ***Kunapareddy Vs. Kunapareddy Swarna Kumari (2016) 11 SCC 774***, the Hon'ble Apex Court has laid down clearly that the proceedings under Chapter IV of the Domestic Violence Act are civil in nature. The object and the statement of the said Act states that the Procedure for obtaining order of reliefs is stipulated in Chapter IV of the Domestic Violence Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the Domestic Violence Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the Domestic Violence Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction,

damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the Domestic Violence Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.

15. Thus, the Statement & Objects of the Domestic Violence Act spells out that the Act has been enacted mainly to address the absence of civil law remedies to the victims of an offence under Section 498-A IPC and also to provide remedy under civil law to protect the women from being victim of Domestic Violence and to prevent the occurrence of Domestic Violence in the society. Thus, the nature of reliefs that can be granted under Chapter IV of the Domestic Violence Act, one can easily come to the conclusion that the proceedings under Chapter IV of Domestic Violence Act are civil in nature. The nature of relief provided under the Domestic Violence

Act are prohibitory orders, right to get compensation, right to monetary reliefs, right of residence such as right from being dispossessed from shared household etc. The determination of rights under Chapter IV of the Domestic Violence Act does not result in penal consequences so as to term it as criminal proceedings. This Court also in ***Nandkishor Pralhad Vyawahare v. Mangala* 2018 SCC online Bom 923** held that the applicability of provisions of the Criminal Procedure Code and providing of criminal consequences for breaches are only indicative of the intention of the Parliament to make various civil remedies available under the D.V. Act more effective and meaningful. Parliament thought in its wisdom that mere giving of remedies of civil nature or an order of injunction or prohibition for that matter, may not be sufficient to enable the aggrieved person realise the benefits of civil remedies. It were the speed and fear of the criminal procedure generally and the penal consequences visiting the respondent for some of his indiscretions would what really make a disobedient respondent behave. So, as an effective tool in the hands of the Court and the aggrieved person, the procedure to be followed generally is criminal and breach of protection order and directions issued in such order constitute two separate and distinct offences. Obviously, they have no bearing upon and do not determine the basic character of the proceeding initiated under Section 12(1) of the Act which is by and large of the civil nature. Making of breach of the protection order

or failure to perform by the protection officer duty in terms of the direction given by the Magistrate in the protection order are only instances of efficacy and inherent punch of the remedy provided under section 18 of the Act which is at its core civil in nature. These provisions at best, are the effective instruments by which to make available speedily the remedies under the Act to the aggrieved person and enable her to enjoy the fruits of the remedies.

16. The Hon'ble Apex Court in ***Satish Chander Ahuja v. Sneha Ahuja (2021) 1 SCC 414*** while deciding the question with regard to the effect of the order passed in the proceedings under Section 19 of the Domestic Violence Act, whether it is interim or final on the proceedings in a Civil Court, observed as follows:

“We proceed to examine the effect of orders passed under criminal proceedings i.e. the 2005 Act on the civil proceedings and consequence of any conflict in proceedings under the DV Act as well as civil proceedings.”

The Hon'ble Apex Court while making those observations did not decide the question as to what is the nature of the proceedings under the Domestic Violence Act. It is trite that a case is an authority for what it decides and it cannot be quoted for a proposition that may seem to logically flow from it. However, the statement and objects of the Domestic Violence Act makes it very clear

that the proceedings are civil in nature. The legislature has said that the Act was to only provide for civil law remedies to victims of offences or civil wrongs or both committed by an adult male. Thus, there is no dispute that the various remedies which can be claimed under the provisions are of civil nature.

17. Being the remedies under the provisions of Domestic Violence Act are of civil nature, therefore, under Section 24 of the Code of Civil Procedure can be invoked to transfer the proceeding which is filed under the Domestic Violence Act to the Family Court or the Civil Court. This Court also in M.C.A. No.5825/2020 held that the principle issue is whether the Family Court can entertain the application, as framed and filed by the respondent, before the learned Magistrate. Referred the judgment of this Court in *(i) Minoti Subhash Anand V/s. Subhash Manoharlal Anand*, *(ii) Sandip Mrinmoy Chakraborty V/s. Reshita Sandip Chakrabaty and (iii) Mr.Santosh Machindra Mulik V/s.Mrs.Mohini Mithu Choudhari*, wherein it has been consistently held by this Court, in view of Section 7(2)(b) of the Family Courts Act, read with Section 26 of the D.V. Act, that the Family Court would get jurisdiction to entertain application for reliefs under section 18 to 22 of the D.V. Act and also adverted to the issue whether the Family Court would be competent to grant interim relief and has held in the affirmative. This Court further held that the proceeding initiated by the applicant in which powers can be exercised by this Court

under Section 24 of the Code of Civil Procedure to transfer the application.

18. In the wake of above, in my opinion, case for grant of transfer is made out taking into consideration the convenience of the wife-applicant. The Hon'ble Apex Court recently in the case of ***N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha*** (Civil Appeal No.4894/2022) by order dated 18/07/2022 wherein the Hon'ble Apex Court dealt with this issue and held in paragraph No.9 as follows:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio- economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

19. Said application was filed by the applicant as Wardha was the place where she lastly resided with the non-applicant. Now she is residing at the mercy of her parents at Yavatmal. The distance between two cities are more than 200 kilometers. The applicant has to look after her son aged about eight years. She has to spend entire day to attend the proceedings at Wardha. In the light of the above discussion it will be convenient and will be just and proper to transfer the Domestic Violence Proceeding bearing No.91/2014 to the court of Yavatmal. In the result, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) Misc. Cri. Case No.91/2014 pending in the Court of 2nd Judicial Magistrate First Class, Wardha be transferred to the Court of Judicial Magistrate First Class, Yavatmal.
- (iii) The 2nd Judicial Magistrate First Class, Wardha shall send the record and proceedings to the Judicial Magistrate First Class, Yavatmal.
- (iv) The parties to appear before the Judicial Magistrate First Class, Yavatmal on 05/06/2023.

20. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)