



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1039 OF 2024

Vaishnavi w/o Mahesh Shewale

...Applicant

VERSUS

1. Alka Uttam Shewale
2. Mahesh Uttam Shewale

...Non-Applicants

Mr. K.N. Shermale, Advocate for applicant

Mr. N.S. Sunaniya, Advocate for non applicants

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 3rd MAY, 2024

PRONOUNCED ON: 11th JUNE, 2024

ORDER :

1. This application is filed under section 407 of Code of Criminal Procedure, 1973 seeking transfer of proceeding of Misc. Application/D.V. No. 52 of 2023 from learned Judicial Magistrate First Class, Rajgurunagar-Khed, Taluka- Khed, District- Pune to the Court of Judicial Magistrate First Class, Shrirampur, District- Ahmednagar.

2. Brief facts giving rise to the present application are as follows;

Marriage between applicant and 2nd respondent was solemnized on 28.11.2022 as per Hindu rites and customs. On 13.07.2023, applicant initiated proceeding i.e. Criminal Misc.

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Application/D.V. No. 365 of 2023 under sections 12, 18, 19, 22 and 23 of Protection of Women from Domestic Violence Act, in the Court of Judicial Magistrate First Class, Shrirampur. On 11.01.2024, applicant lodged FIR at C.R. No. 0023 of 2024 against non applicants for offences punishable under sections 498-A, 323, 504, 506 r/w 34 of IPC with Shrirampur City Police Station, Shrirampur, Dist. Ahmednagar.

Presently, applicant is residing at her parents house at Shrirampur and non applicants are resident of Taluka- Khed, District- Pune. Applicant has received notice of proceeding initiated by non applicant No. 1 in the Court of Judicial Magistrate First Class, Khed, Dist. Pune, under section 18 of Domestic Violence Act. Applicant therefore prays for transfer of said proceeding to Shrirampur as she is unable to attend the proceeding at Khed, which is more than 160 km away from Shrirampur.

3. Heard learned advocate for applicant and learned advocate for non applicants. Perused the documents placed on record and the reply affidavit filed by non applicants.

4. Learned advocate for applicant submits that applicant is destitute lady, who is staying at the mercy of her

parents, she has no source of income. Due to old age, her parents are unable to accompany her to Khed on each and every date. Non applicant No. 2 is earning handsome salary and according to applicant his salary is Rs. 1,30,000/- per month. Since already there are two proceedings going on at Shrirampur, present proceeding initiated by non applicants is required to be transferred to Shrirampur, considering the convenience of parties. In support of his case, he relied on ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha***, 2022 SCC OnLine SC 1199 and ***Rupali Devi vs. State of Uttar Pradesh and Others***, (2019) 5 SCC 384.

5. Learned advocate for non applicants vehemently opposed the application by relying on reply affidavit filed by non applicants. He submits that non applicant No. 1 is old and infirm lady, who is suffering from various ailments, so also her husband (father-in-law of applicant) is suffering from kidney problem, due to which they are not in a position to travel and attend the proceeding at Shrirampur. Applicant is young lady who can travel and attend proceeding at Khed and therefore proceedings are not liable to be transferred.

6. It appears that applicant has no source of income

and she is facing financial hardships and is at the mercy of her parents. Due to old age, her parents are unable to accompany her to attend the proceeding at Khed.

7. Domestic Violence Act proceeding filed by applicant is already pending at Shrirampur, so also, Misc. Application No. 373/2023. It is settled legal position that, "*Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.*" [**N.C.V. Aishwarya** (*supra*)].

Since these two proceedings are pending at Shrirampur, non applicants are required to attend these proceedings. Non applicant No. 1 claims to be an old and infirm lady, she may seek exemption from Shrirampur Court from attending trials and can attend proceedings only when her presence is absolutely necessary and directed by the Trial Court.

8. It is a matter of record that non applicant No. 2/husband has filed Marriage Petition No. 488/2023, under section 9 of Hindu Marriage Act at Khed. Applicant by filing Misc.

Civil Application No. 63/2024, under section 24 of CPC has sought transfer of said proceeding from Khed to Shrirampur. This Court by order dated 18th March, 2024 has stayed that proceeding.

9. Non applicant No. 1 had filed Cri. M.A. No. 420/2023 against applicant and her relatives for registration of FIR under section 420, 323, 511, 406, 378, 504, 506 r/w 34 of IPC on 13.10.2023. Learned Judicial Magistrate First Class, Khed rejected said application on 16.01.2024. Prima facie, it seems that non applicants are also filing various proceedings against applicant to harass her.

10. It is settled legal position that ordinarily convenience of the wife needs to be considered, while deciding application for transfer of proceeding. In ***N.C.V. Aishwarya*** (supra) Apex Court held;

"9. The cardinal principal 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 Court 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 sociology-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

11. In Rupali Devi (supra) it is held that, "*the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.*"

12. Considering the aforesated facts and ratio quoted *supra*, application deserves to be allowed and same is allowed in terms of prayer clause 'B'.

13. Proceedings of Misc. Application/D.V. No. 52 of 2023 pending before learned Judicial Magistrate First Class, Rajgurunagar-Khed, Taluka- Khed, District- Pune is hereby transferred to learned Judicial Magistrate First Class, Shrirampur, Taluka- Shrirampur, Dist. Ahmednagar.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde