



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPLICATION NO. 2258 OF 2024

ANAND KESHAVRAO PHATAK AND OTHERS

VERSUS

VARSHA ANAND PHATAK @ VARSHA SUDHIR HASGUDE

...

Advocate for Applicants : Ms. Ashvini R. Mate

Advocate for Non-Applicant : Ms. Rashi Navtakke h/f.

Mr. Prashant B Jadhav

...

CORAM : Y. G. KHOBRAGADE, J.

DATE : 22.10.2024

PER COURT :

1. Rule. Rule made Returnable forthwith. Heard at length the learned counsel appearing for the Applicants and the learned counsel appearing for the Non-Applicant.

2. Having regard to the rival submissions canvassed on behalf of both the sides, I have gone through the record.

3. By the present application under Section 407 of Criminal Procedure Code, 1973, the applicants have prayed for transfer of proceedings bearing Cri. M. A. No. 648/2020 and PWDVA No. 306/2022 to the file of learned Judicial Magistrate First Class, Kallam, District Osmanabad (Dharashiv) from the file of learned Judicial Magistrate First Class, Barshi, District Solapur and further prayed for

transfer of Criminal Revision Application No. 35/2022 to the file of learned Sessions Judge, Kallam District Osmanabad (Dharashiv) from the file of learned Sessions Judge, Barshi, District Solapur.

4. According to the applicants the relationship of husband and wife does not exist between the Applicant No.1 and Non-Applicant and marriage between them never took place. However, the Non-Applicant claimed that, she is legally wedded wife of the Applicant No.1, who is legal practitioner by profession.

5. After going through the application it appears that, the Non-applicant was married with Mr. Sudhir Hajgude, however, her husband died in vehicular accident. Therefore, she had instituted a proceeding bearing M.A.C.P No. 211/2010 for compensation through the present Applicant No.1, who is a practicing Lawyer. On 09.03.2012, the Member, MACT passed judgment & award and granted the compensation to the tune of Rs. 20,72,000/- in favour of Non-Applicant and her children. Being aggrieved by the said Judgment & Award, the Insurance Company preferred an appeal before this Court and pursuant to the order passed by this Court, the Insurance Company deposited amount of Award, which was withdrawn by the Non-Applicant.

6. The Applicants alleged that, due to some misunderstanding, the Non-Applicant lodged an F.I.R., on the basis of which Crime No. 0166/2018 came to be registered against the Applicant No. 1 with Police Station Kallam on 08.08.2018 for the offences punishable under Sections 324, 323, 504 and 506 r/w with Section 34 of the Indian Penal Code. After due investigation, charge-sheet came to be filed and it is registered as RCC No. 126/2018.

7. It also appears that, prior to registration of above mentioned crime, another Crime bearing No. 162/2018 was registered against the Applicants and the Non-Applicant for committing an offence of affray u/s 159 punishable under Section 160 of the Indian Penal Code. After investigation, the charge-sheet came to be filed which is registered as SCC No. 758 of 2018 and trial of both the matters are pending before the competent Court at Kallam.

8. It further appears that, on 01.02.2020, the Non-Applicant lodged a report against the Applicants Nos. 1 and 2 with Anandnagar Police Station, Osmanabad, on the basis of which Crime No. 26/2020 was registered for the offences punishable under Sections 307, 376, 420 read with Section 34 of the Indian Penal Code. After due investigation,

the Investigating Officer submitted B-Summary. However, the learned Magistrate did not agree with the B-Summary and directed re-investigation according to law and referred the matter to the concerned police station on 08.10.2020.

9. Being aggrieved by the said order, the present Applicants Nos.1 and 2 filed Criminal Revision No. 23/2020 before the learned Additional Sessions Judge, Osmanabad. On 09.10.2020 the learned Additional Sessions Judge, Osmanabad passed an order in Criminal Revision Application No. 23/2020 and remanded back the matter for fresh hearing.

10. Subsequently, the learned Judicial Magistrate First Class, Osmanabad accepted the 'B' summary report in Crime No.26/2020 and rejected the protest petition filed by the Non-Applicant on 22.06.2021. Being aggrieved by the said order, the present Non-Applicant filed Criminal Revision No.19/2021 before the learned Additional Sessions Judge, Osmanabad.

11. Needless to say that, the Non-Applicant filed criminal proceeding bearing Cri. M.A. No.648 of 2020 u/s 125 of the Code of Criminal Procedure against the present Applicant No.1 before the learned

Judicial Magistrate First Class, Barshi claiming that on 09-01-2015, her marriage was solemnized with Applicant No.1 as per Hindu Customs and Rites in Swami Samarth Mandir, Latur. After marriage, for first four months, she cohabited with the Applicant No.1 at Latur. The Applicant No.1 is practicing at Kallam and Osmanabad. However, subsequently due to family dispute, the Non-Applicant filed Criminal M. A. No. 648 of 2020 for maintenance and said Petition is pending on the file of learned Judicial Magistrate First Class, Barshi, District Solapur. So also, Criminal Revision Application No.35/2022 is pending before the learned Sessions Judge, Barshi. The proceeding bearing PWDVA No. 306/2022 is also pending on the file of learned Judicial Magistrate, F. C., Barshi, District Solapur, whereas other proceeding bearing R.C.S. No. 620 of 2021 for perpetual injunction is pending on the file of learned Civil Judge, J.D., Kallam, District Osmanabad (Dharashiv).

12. The record further shows that R.C.S. No. 698 of 2021 is pending on the file of learned Civil Judge Junior Division, Kallam, District Osmanabad (Dharashiv) and M.C.A. No. 51 of 2023 and M.C.A. No.2 of 2024 were pending before the file of learned District Judge, Kallam, District Osmanabad between the Applicants and Non-Applicant. Therefore, for convenience of the parties to attend those proceedings,

the Applicants prayed for transfer of proceedings at the competent Court at Kallam, District Osmanabad (Dharashiv).

13. Per contra, the learned counsel appearing for the Non-Applicant strongly resisted the application on the ground that all above proceedings between the Applicants and the Non-Applicant are pending before the competent Courts on the basis of cause of action arose for the disputes, even for lodging the Reports/F.I.R. against each other. The Applicant No. 1 is the legal practitioner and is regularly appearing in the Courts situated at Kallam, District Osmanabad as well as before the Court at Barshi, District Solapur. Therefore, the Applicants can easily attend both the proceedings before two different Courts. The distance between Kallam and Barshi is approximately 40 kms. The Non-Applicant is residing at Barshi. Therefore, if these proceedings are transferred from the file of learned Sessions Court and the Judicial Magistrate First Class, Barshi, in that event, the Non-Applicant will required to travel from Barshi and Kallam which is not convenient for the Non-Applicant, hence prayed for dismissal of the application.

14. Needless to say that Section 407 of Cr.P.C. provides for transferring a case from one criminal Court to another criminal Court from one division to another for fair and impartial inquiry or trial.

15. In the case of ***Baljit Singh-Vs- J & K, AIR 1982 SC 1558***, the Hon'ble Supreme Court has held that, principle of territorial jurisdiction must prevail and a place where a large number of witnesses were to be examined could not be a ground for transfer.

16. In the case of ***Sonabai Digambar Jagtap- Vs- State of Maharashtra, (2001) (2) Bom. L.R. 427***, this Court has held that, it is of fundamental importance that justice should manifestly and undoubtedly be seen to be done. The test is not whether bias has actually crept into the consideration of the Judge; the test is whether a litigant could reasonably apprehend that a bias attributable to the tribunal might have operated against him.

17. In the case of ***Abdul Nazar Madani-V- State of Tamil Nadu, AIR 2000 SC 2293***, the Hon'ble Supreme Court has held that, convenience of both parties and not of the petitioner alone is to be seen.

18. In the case in hand, the Applicant Nos. 1 and 2 prayed for transfer of criminal proceedings which were lodged by the Non-Applicant. The Non-applicant made averment that, after demise of her husband she married with Applicant No.1 as per Hindu Customs and rites. After marriage, she cohabited with the Applicant No.1 and

residing at Barshi. She instituted legal proceedings before the competent Court at Barshi. The distance between Barshi and Kallam is approximately 40 kms. The applicant No. 1 is a practising Advocate and he regularly attends the Court at Barshi as well as at Kallam, where he is residing.

19. It is trite settled principle of law that the convenience of the women is required to be taken in to consideration while transfer of matrimonial proceedings from one Court to another but the convenience/suitability of the male alone cannot be taken into consideration. However, in the case in hand, the Applicants, who are residing at Kallam prayed for transfer of above proceedings to Courts at Kallam from the file of Courts at Barshi Dist. Solapur, which does not appear to be a substantial and bona fide ground to transfer. Therefore, I am not inclined to grant the present application.

20. In view of the above, Rule discharged.

(Y. G. KHOBRAGADE, J.)

shp