



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1458 OF 2024

1. Sagar s/o Madhukar Aute
Age: 32 years, Occu: Service
2. Saroj s/o Madhukar Aute
Age: 59 years, Occu: Pensioner
3. Amit s/o Madhukar Aute
Age: 38 years, Occu: Business
4. Rahul s/o Madhukar Aute
Age: 37 years, Occu: Business
5. Renuka @ Smita w/o Rahul Aute
Age: 32 years, Occu: H.H.
6. Snehal w/o Amit Aute
Age: 34 years, Occu: H.H.

All R/o Plot No.33, Nutan Yashwant Housing Society,
N-8, Maulana Azad Chowk, Cidco, Ch. Sambhajanagar,
Tq. & Dist. Ch. Sambhajanagar.

... PETITIONERS

V/s.

Priti w/o Sagar Aute,
Age: 26 years, Occu: Business,
R/o "Matruchaya" Behind Maroti Temple,
Prakash Nagar, Barshi Road, Latur,
Tq. & Dist. Latur .

... RESPONDENT

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Mr. Gundre Surav V, Advocate for the Petitioners
Mr. Avinash M. Reddy, Advocate for the Respondent

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CORAM : Y.G. KHOBRAGADE, J.
DATE : 19.12.2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides at the stage of admission.
2. By the present petition, the Petitioners who is the Husband and his relatives are party for transfer of proceeding PWDVA No.8/2023 from the file of the learned JMFC, Chakur to the file of learned JMFC, Latur.
3. The learned counsel appearing for the Petitioners canvassed in vehemence that the Petitioner No.1-Husband initiated a proceeding bearing No.A/90 of 2023 under Section 9 of the Hindu Marriage Act, for restitution of conjugal of rights before the Family Court, Aurangabad, however, subsequently vide order dated 31.08.2023 passed by this Court in Misc. C.A. No.169/2023, said proceeding has been transferred to the Family Court, Latur. Subsequently, the Respondent/wife lodged a FIR bearing Crime No.0169/2023 with MIDC, Police Station, Dist. Latur, against the present Petitioners for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the I.P.C. on account of raising cruelty against her for non-fulfillment of illegal demand of dowry. After investigation, a charge-sheet came to be filed by the Investigating Officer and trial is pending on the file of the learned JMFC, Latur. Thereafter, the Respondent/aggrieved person instituted a proceeding under the

provisions of Prevention of Women from Domestic Voilence Act (in short the DV Act), bearing PWDVA No.8/2023 before the JMFC, Chakur, Dist. Latur.

4. The Petitioners have filed Cri.M.A. No.23/2024 before the learned Sessions Court, Latur and prayed for transfer of proceeding wherein PWDVA No.8/23 (*Priti Sagar Aute V/s. Sagar Madhukar Aute*) from the file of learned JMFC, Chakur to the file of JMFC, Latur. On 15.06.2024, the learned Sessions Judge passed the impugned order and declined to grant prayer of the Petitioners as law laid down in case of ***Rajani Kishor Pardeshi V/s. Kishor Babulal Pardeshi; 2005 (12) SCC 137***, wherein it has been held that, while deciding the transfer petition convenience of wife is to be preferred over the convenience of the husband.

5. In the case in hand, the Respondent/Wife is residing at her parental house at village Mhalangi, Tq. Chakur, Dist. Latur. During course of argument, the learned counsel for the PetitionerS fairly disclosed that distance between Latur and Chakur is 40 kms. Needless to say that the proceeding under Section 9 of the Hindu Marriage Act seeking decree of restitution of conjugal right is pending before the learned Family Court, Latur. The trial for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the I.P.C. is pending on the file of JMFC, Latur.

6. Section 27 of the DV Act provides jurisdiction for institution of the complaints under the DV Act before the Judicial Magistrate in whose jurisdiction the aggrieved person reside permanently or temporarily. The learned counsel appearing for the PetitionerS canvassed that the Respondent is residing at the given address in Latur and notice of this Court was duly served upon the Respondent on the same address. To testify this submission, this Court called the service report. On perusal of service report dated 16.09.2024 submitted by the Police Constable attached with MIDC Police Station, Latur, it appears that the Respondent is not residing at Latur but the notice has been served upon the Respondent through WhatsApp.

7. Nonetheless, the present Petitioners are residing at Ch. Sambhajinagar (Aurangabad) and they are attending two proceedings i.e. trial for the offences punishable under Section 498-A and proceeding for restitution of conjugal right at Latur by traveling from Sambhajinagar (Aurangabad). It would be worthwhile to mention here that the proceeding under the DV Act is not the criminal prosecution for any offences, however, the Respondents therein i.e. the present Petitioners are not required to attend the said proceeding by keeping themselves personally present on each and every date. But said proceeding can be defended through their counsel. Therefore, to my mind, no inconvenience is likely to be caused to the Petitioners. As per the law laid down in the case of *Rajani Kishor Pardeshi* cited (supra), convenience of

the wife is required to be considered for transfer of proceeding from one Court to another, from one criminal division to another criminal division.

8. In the case in hand, the Petitioners who are the relatives of the Respondent-Wife/ aggrieved person within the meaning of Section 2 (a) of the DV Act as of right cannot seek transfer of DV proceeding pending on the file of learned JMFC Chakur to the file of JMFC Latur. Therefore, present petition deserves to be dismissed. Accordingly, it is dismissed. Rule is discharged.

[Y.G. KHOBRADE, J.]