



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.3076 OF 2023

Mr. Ashok Laxman Dhavade
Age : 35 years, Occu : Labour,
R/at : Balaji Nagar Power House
Telco Road, Near Mohan Super Market,
Bhosari, Pune, Maharashtra .. Applicant

Versus

Mrs. Surekha Ashok Dhavade
Age: 29 years, Occu : Labour,
R/o. Near Dhakal Gaon Water Tank,
Dhakal, Tal. Ambad, Dist. Jalna .. Respondent

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Mr. A. C. Sisodiya, Advocate for the Applicant
Mr. A. T. Jagtap, Advocate for the Respondent

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WITH

MISC. CIVIL APPLICATION NO.13 OF 2024

Surekha Ashok Dhavade
Age: 30 years, Occu : Household,
R/o. Near Dhakal Gaon Water Tank,
Dhakal, Tal. Ambad, Dist. Jalna .. Applicant

Versus

Ashok Laxman Dhavade
Age : 35 years, Occu : Service,
R/at : Balaji Nagar, Power House,
Telco Road, Near Mohan Super Market,
Bhosari, Pune .. Respondent

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Mr. A. T. Jagtap, Advocate for the Applicant
Mr. Vaibhav S. Bhagwat, Advocate for the Respondent

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : SEPTEMBER 5, 2024

PRONOUNCED ON : SEPTEMBER 6, 2024

FINAL ORDER (Per NEERAJ P. DHOTE, J.) :

. Criminal Application No.3076 of 2023 is filed by the Husband under Section 407 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for transfer of PWDVA No.03 of 2020 and Criminal M. A. No. 22 of 2020 pending before the Civil Judge (J.D.) and J.M.F.C. Ambad, District Jalna to the Court at Pune.

2. Misc. Civil Application No.13 of 2024 is filed by the Wife under Section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'C.P.C.') for transfer of Civil M. A. No.150 of 2021 and Marriage Petition A No.1784/2021 pending before the District Court, Pune to the Court at Ambad in Jalna District.

3. As the parties to the proceedings are common, the Applicant in one Application is the Respondent in another Application and *vice versa* and common submissions are made, both the proceedings are decided by this common order. Heard learned Advocates for the parties. Perused the papers on record.

4. The Applicant and the Respondent got married on 26.12.2013. They are having two children out of the wedlock. Since 25.12.2019, the Wife is residing with her parents at Ambad taluka, Dist. Jalna. The Husband is residing at Bhosari, Pune. Both the minor children are with the Husband. The Wife filed proceedings under the Protection of Women from Domestic Violence Act, 2005 bearing PWDVA No.03 of

2020 for various reliefs and Criminal M. A. No. 22 of 2020 for Maintenance before the Court at Ambad and Civil M. A. No. 150 of 2021 under Section 25 of the Guardians And Wards Act, 1890 for custody of children in the Court at Pune. The Husband filed Divorce Proceedings before the Court at Pune bearing Marriage Petition A No.1784/2021.

5. It is submitted by learned Advocate for the Husband that the children are residing with the Husband at Pune. The old parents of the Husband are also residing with him at Pune. He is working as labourer and he is required to keep his children with his old parents when he attends the Court at Ambad. He has to take leave for attending the Court at Ambad which is approximately 274 kms. away from Pune. Since the wife has filed the proceedings for custody at Pune, she attends the said matter at Pune. Only as a counterblast to the Application filed by the Husband for transfer, the Wife has filed the Civil Application for transfer of the custody matter to Ambad. The Husband is ready to bear the expenses which would be incurred by the Wife for travelling to attend the matters at Pune. One more Criminal Case was pending before the Sessions Court at Pune arising out of Report lodged by the Wife with the Bhosari MIDC Police Station on 22.05.2020 for the offence punishable under Sections 307, 323, 498-A, 504, 506 r/w. Section 34 of the Indian Penal Code and for the offence punishable under Sections 3 and 4 of the Dowry Prohibition Act. More inconvenience would cause to the Husband as compared to the Wife and therefore, the Application

under Section 407 of the Cr.P.C. be allowed and the Application filed by the Wife be rejected.

5.1. The learned Advocate for the Husband cited the orders passed by the Hon'ble Supreme Court of India in **Preeti Sharma vs. Manjit Sharma, 2005 (11) SCC 535** and **Jaishree Banerjee vs. Abhirup Banerjee, 1997 (11) SCC 107** in support of his submissions that merely because the Applicant is lady, does not mean that she cannot travel.

6. It is submitted by the learned Advocate for the Wife that she was not aware that the proceedings can be transferred from one Court to another and therefore, she filed the Application for transfer after the Husband filed the application for transfer of proceedings. He submitted that she being a lady it would not be proper and safe for her to travel to such a long distance at Pune. Once she was attacked by the Husband and his relatives. There is no one to travel with Wife as her parents are old. She would be filing appropriate proceedings for transferring of the Sessions Case from the Court at Pune to the Court at Ambad. He submitted that the Application be allowed and the Application filed by the Husband be rejected.

7. The papers show that in the proceedings filed by the Wife under the Domestic Violence Act at Ambad Court, there are in all seven (7) Respondents including the Husband and in-laws. The Wife has filed two (2) proceedings at Ambad and one (1) at Pune. The Husband filed

divorce proceedings at Pune. Criminal Case out of the Report lodged by the Wife is also at Pune where there are five (5) accused i.e. Husband and in-laws. In the proceedings filed by the Husband, the Wife is the sole Respondent. In all the proceedings filed by the Wife, the children are also impleaded as the Applicants through her. Admittedly, two (2) children are residing at Pune with the Husband. In the child custody matter, the children may be required to attend the Court for interaction, if the Court deems it proper before passing any order. Under such circumstances, in the event of transfer of the custody proceedings to Ambad, it would cause great inconvenience to the children. Attending the Court at Pune would be less inconvenient for them. In case the children are school going children, they would miss their studies for more days, if they are required to travel from Pune to Ambad. The Wife is not in the employment. The Husband is working. Further, the Husband would be required to take leave for more days to travel and attend the Court at Ambad. Considering the aspect of inconvenience, it would be more convenient for the Wife to travel to Pune as compared to travelling of Husband and other Respondents (in-laws) to Ambad. As such the Wife has filed the custody matter at Pune in 2021 and she must be attending the same from Ambad. The Husband is ready to bear the expenses for the Wife to attend the Courts at Pune. Therefore, taking into consideration all these aspects, the request for transfer of proceedings from the Court at Pune to the Court at Ambad in Jalna

District needs no favourable consideration and the grant of Application for transfer of proceedings from the Court at Ambad to the Court at Pune would be just and proper. Case is made out for exercise of the Powers under Section 407 of the Cr.P.C.

8. In view of above, I proceed to pass the following order.

ORDER

(i) Criminal Application No.3076 of 2023 is allowed in terms of prayer clause (a) which reads thus:

“(a) In view of the factual and applicable legal position as set out in this petition, this Hon’ble Court be pleased to order / direct withdrawal of the proceedings PWDVA – 03 of 2020 & Cri. M. A - 22 of 2020 presently pending before Hon’ble Civil Judge (J.D.) and J.M.F.C., Ambad and transfer the same to the file of the Court of Hon’ble Civil Judge (J.D.) and J.M.F.C., Pune having the coordinate / concurrent jurisdiction of the choice of this Hon’ble Court for being heard and disposed of according to law.”

(ii) The Husband shall pay the Wife and one companion towards travelling and stay expenses on every occasion, when the Wife is required to visit Pune for attending the Court proceedings.

(iii) The Court at Pune which would deal with the Proceedings after transfer from the Court at Ambad, shall ensure that such payment is made to the Wife on every occasion.

(iv) Misc. Civil Application No.13 of 2024 is dismissed.

(NEERAJ P. DHOTE, J.)

GGP