

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 164 OF 2018

Gulnaz Parvez Mulla

.. Applicant

Versus

The State of Maharashtra & Ors.

.. Respondents

.....

- Mr. S.P. Singh for Applicant
- Ms. Dhanalakshmi S. Krishnaiyer, APP fo Respondent No. 1 - State
- Mr. Dhananjayrao D. Rananaware for Respondent Nos. 2 to 8

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 15, 2024

P. C.:

1. Heard Mr. Singh, learned Advocate for Applicant; Mr. Rananaware, learned Advocate for Respondent Nos. 2 to 8 and Ms. Krishnaiyer, learned APP for State.

2. Applicant is wife of Respondent No. 2. She has filed present Application seeking transfer of Regular Court Case No. 300/2016 filed under Sections 498-A, 406, 323, 504 and 506 r/w 34 of IPC pending before the Chief Judicial Magistrate Satara to the 45th Court of Metropolitan Magistrate Court at Kurla, Mumbai or any other competent Metropolitan Magistrate Court situated at Mumbai.

3. It is averred in the Application that the Applicant has now shifted in Mumbai and is living in a rental house near her parents' accommodation in Deonar, Mumbai. She has also filed D.V. Act

proceedings before 45th Metropolitan Magistrate's Court, Kurla, Mumbai against Respondent No. 2. Applicant would submit that by virtue of order dated 22.07.2016, learned Metropolitan Magistrate Court has granted maintenance relief of Rs. 7,000/- per month out of which Rs. 5000/- is towards maintenance for wife and three children and Rs. 2000/- towards rent.

4. Mr. Rananaware would on instructions submit that Respondent No.2 has paid an amount in excess of Rs. 6 Lacs till date towards the maintenance granted to the Applicant and he is having bank statements to prove the same. He would fairly inform the Court that the said position has also been brought to the notice of the concerned Metropolitan Magistrate's Court, Kurla by Respondent No. 2 in the year 2023 since on suppression of facts and incorrect assumptions, Applicant has got a recovery certificate / warrant issued for non-payment of maintenance amount awarded by that Court. He would submit that since 2023, Applicant has also failed to appear before the concerned Court in order to rectify the said issue. He would however inform the Court that Respondent No. 2 is not in arrears and if at all there is any arrears, he would undertake to clear the same with immediate effect and ensure that all future payments as directed towards maintenance by the concerned Court shall be paid by him. His statement is taken as an undertaking given to this Court. Next he

would submit that before considering the present Application for transfer of proceedings, this Court should consider the fact that witnesses of Respondent No. 2 are from Satara and that apart family members of Respondent No. 2 are also implicated in the said case. He would in fact inform the Court that the proceedings are such that brother of Respondent No. 2 and his wife have also been implicated therein. Mr. Singh at this juncture interrupts and inform the Court that the brother of Respondent No. 2 and his wife are are residing in RCF Colony, Chembur, Mumbai. If that be the case, it is extremely difficult to fathom as to why they have been implicated in the proceedings filed in Satara. Be that as it may, it would be the prerogative of the concerned Court hearing the matter to determine the same in accordance with law.

5. Just as proximity of distance which would affect the issue of hardship of the Applicant is concerned, the proximity of distance would undoubtedly affect some of the Respondents before me. Respondent Nos. 3 and 4 are parents of Respondent No. 2 and Respondent No. 5 is the unmarried sister of Respondent No. 2. Parents of Respondent No. 2 are old and undoubtedly hardship would be caused to all of them if they are required to travel all the way from Satara to Mumbai. Hence in the interest of justice in so far as parents and the sister of Respondent No. 2 are concerned, who are implicated

in the RCC case, they are exempted from appearance in the said case before the Court in Mumbai. They are permitted to appear only through VC if necessary. Similarly, the brother and his wife who are parties and staying in Mumbai are also permitted to appear on VC. It is clarified that the Respondent No. 2 husband shall appear in person or through his Advocate before the concerned Court.

6. In view of the above, present Criminal Application is allowed in terms of prayer clause (a) which reads thus:-

"(a) Transfer the Regular Court Case No. 300/16 u/S. 498-A, 406, 323, 504, 506 r/w 34 IPC pending trial before the Ld. Chief Judicial Magistrate, Satara to the 45th Court of Metropolitan Magistrate Court at Kurla Mumbai or any other Competent Metropolitan Magistrate Court situated at Mumbai."

7. All the concerned Courts shall take cognizance of a server copy of this order and shall not insist on a certified copy of the order and act accordingly for transfer and re-registration of the proceedings as expeditiously as possible and in any events within two weeks from the date of presentation of a server copy of this order to the Courts by the Advocates for the parties.

8. Criminal Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.10.15
14:41:31
+0530