

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 257 OF 2021
WITH
INTERIM APPLICATION NO. 611 OF 2022

Akshay Ramakant Khane & Ors ...Applicants
Versus
Prachi Akshay Khane alias Prachi Sambhaji Jagtap
& Anr ...Respondents

Mr Vaibhav P Patankar, *i/b Patankar & Associates, for the Applicants.*
Ms SS Kaushik, APP, *for the Respondent-State.*

CORAM Kamal Khata, J.
DATED: 15th January 2024

PC:-

1. This matter was one amongst those matters which involved a common question as to whether the Family Court was competent to conduct the proceedings and give relief under the Protection of Women From Domestic Violence Act, 2005 (“**PWDV Act**”) and whether the proceedings under the PWDV Act can be transferred to the Family Court. I have in my judgment dated 20th December 2023 in the case of *Rohan Shah vs Nishigandha Shah*¹ decided the issue. Consequently, this matter is now heard on merits.

1 2023:BHC-AS:38681; 2023 SCC OnLine Bom 2719.

2. The Applicant-husband seeks transfer of the proceeding under section 407 of the Code of Criminal Procedure, 1973 pending before the 2nd Joint Judicial Magistrate First Class (“**JMFC**”), Alibaug filed by the Respondent-wife to the Family Court Alibaug, Dist Raigad.

3. The Applicant-husband and the Respondent-wife’s marriage was solemnized on 17th May 2019. A son is born out of the wedlock on 1st April 2020. The Respondent-wife, on account of matrimonial disputes, started residing separately.

4. Then, on 5th October 2020 the Respondent-wife filed a Criminal Miscellaneous Application No. 171 of 2020 under the provisions of section 12, 17 to 20 and 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (“**PWDV Act**”) against the Petitioner in the Court of 2nd JMFC Alibaug. In addition to this Application, the Respondent also made an Application under Section 125 of the Code of Criminal Procedure, 1973 (“**CrPC**”) before the 2nd JMFC Alibaug. This Application under section 125 CrPC was transferred to the Family Court at Alibaug.

5. Advocate for the Applicant submits that the reliefs sought in both the applications are identical. The papers relied upon, the evidence to be led and the issues would be common and consequently, it would be in the interest of parties that instead of conducting two separate proceedings before two separate courts, which would also entail expense of time, effort and money of both parties, the Application before the 2nd Joint JMFC be transferred to

the Family Court. He submitted that it would obviate separate findings from two separate Courts.

6. The Applicant's Advocate submitted that none appears for the Respondent since March 2023. There would be no prejudice caused to the Respondent-wife if the proceedings are to be transferred. In fact, it would be convenient to all concerned if the matter was transferred.

7. Advocate for the Applicant submits that both the proceedings have been stayed and the proceedings should continue on transfer of proceedings to the Family Court at Alibaug.

8. The Applicant's Advocate relies on the judgment in the case of *Rohan Shah v Nishigandha Shah* (supra) in support of his submission and request to transfer.

9. In view of the aforesaid submissions, I am inclined to pass the following order:

(a) Application is allowed in terms of prayer clause (a) which reads thus:

“a.) Criminal Misc. Application No. 171 of 2020 filed by Respondent Nos. 1 & 2 (original applicant Nos. 1 & 2) & pending the file of 2nd Joint J.M.F.C., Alibaug be transferred to the Ld. Family Court, Alibaug, Dist. Raigad to try, entertain & dispose of along with Petition 'E' No. 13 of 2021 pending in the Ld. Family Court, Alibaug, Dist. Raigad on its own merits & in accordance with law;”

(b) The transfer be effected within a period of four weeks and upon receipt of the papers and proceedings, the Family Court, Alibaug shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(c) All concerned to act on the authenticated copy of this order.

10. Criminal Application is disposed of in the above terms.

11. In view of the disposal of the Criminal Application, Interim Application does not survive and the same is also disposed of.

(Kamal Khata, J)