



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.111 OF 2023

Gayatri Sanjay Wable

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Harshvardhan B. Suryavanshi, Advocate for the Applicant.
Mr. Sameer M. Mangaonkar, APP for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 5th MARCH 2024

PC:-

1. Heard Mr. Suryavanshi, learned Counsel for the Applicant and Mr. Mangaonkar, learned APP for the Respondent No.1.
2. In this Criminal Application preferred under Section 407 of the *Code of Criminal Procedure, 1973* ("CrPC"), the Applicant is seeking the following reliefs:-

"a) That this Hon'ble Court be pleased to transfer the Criminal Proceedings arise out of FIR No.260/2022 filed by the Applicant against the Respondent under Section 377, 498-A A/W 34 with

Bhadrakali Police Station, Nashik be transfer back to Alankar Police Station, Pune.

b) That this Hon'ble Court be pleased to transfer the R.C.C. No.26 of 2023 filed at Nashik Sessions Court to Pune Sessions Court."

3. By Order dated 21st July 2023, a learned Single Judge has issued notice to the Respondents. However, the office note shows that service report of the contesting Respondents is awaited. By Order dated 13th February 2024, this Court had issued a fresh notice to the contesting Respondent Nos.3 to 5 and made the same returnable on 5th March 2024. In the said order, it is specifically mentioned that notice to indicate that subject to the convenience of the Court, the Criminal Application will be disposed of finally at the stage of admission and liberty is granted to the Applicant to serve the Respondent Nos.3 to 5 by way of private notice.

4. Mr. Suryavanshi, learned Counsel has tendered affidavit of service dated 5th March 2024. Mr. Suryavanshi, learned Counsel states that the contesting Respondent Nos.3 to 5 are served.

5. Mr. Suryavanshi, learned Counsel for the Applicant submitted that there is a Marriage Petition bearing No.A-835/2022 before the Family Court, Nashik filed by the Respondent No.3-Husband and the same has been transferred to the Family Court, Pune by Order dated 12th February 2024 passed by a learned Judge in Miscellaneous Civil Application No.207 of 2023. He submitted that already a domestic violence case bearing Criminal Miscellaneous Application No.5011 of 2022 filed by the Applicant against the Respondent Nos.3 to 5 is pending in the Family Court, Pune. He further submitted that Maintenance Application filed under Section 125 of the CrPC is filed by the present Applicant against the Respondent No.3 bearing case number Petition E/20/2023 is pending in the Family Court, Pune. He submitted that the income of the Applicant is not adequate for her to travel from Pune to Nashik for the aforesaid case. He submitted that the Respondent Nos.3 to 5 are attending these cases at Pune.

6. He submitted that F.I.R. No.105 of 2022 was lodged on 22nd August 2022 at the Alankar Police Station, Pune and the same has been transferred by the police authorities of Alankar Police Station, Pune to Bhadrakali Police Station, Nashik and has been registered

as F.I.R. No.260 of 2022 on 7th September 2022. He therefore, submitted that the R.C.C. No.26 of 2023 pending before the learned Sessions Court at Nashik be transferred to the learned Sessions Court at Pune.

7. Perusal of the record shows that a learned Single Judge (Coram:Shivkumar Dighe, J.) by Order dated 12th February 2024 passed in Miscellaneous Civil Application No.207 of 2023 has transferred the Marriage Petition No.A-835 of 2022 pending before the Family Court, Nashik to the Family Court, Pune. The reasons are given in paragraph no.4, which reads as under:-

“4. The Applicant stays at Pune with her old age parents. She is finding difficult to attend Court dates at Nashik. The distance between Pune to Nashik is more an 200 km. In the proceedings filed by the Applicant, the Respondent has appeared before the Court at Pune. It is settled principal of law at the time of the transfer of the Petition, the convenience of the wife has to be considered over the husband.”

The said reasons are also applicable to the present case.

8. It is significant to note that although the contesting Respondent Nos.3 to 5 have been served, none appears on their behalf and therefore, contentions raised by the Applicant in the Criminal Application have remained un-controverted. Apart from that, in the R.C.C. No.26 of 2023 pending before the learned Sessions Court, Nashik the Applicant has lodged F.I.R. No.105 of 2022 at Alankar Police Station, Pune and the same was transferred to Bhadrakali Police Station, Nashik. Thus, the case for transfer of R.C.C. No.26 of 2023 pending before the learned Sessions Court, Nashik under Section 407 of the CrPC is made out.

9. For the above reasons, the Criminal Application is allowed in terms of prayer clause (b) and is disposed of accordingly.

[MADHAV J. JAMDAR, J.]