

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.95 OF 2023**

J & Ors ...Applicants
Versus
P & Anr ...Respondents

Mr Samarth Moray, i/b Ms Shivani S Shinde, for the Applicant.
Mr Bimal Bhabhda, for Respondent No. 1.
Ms Shramila Kaushik, APP, for the State.
Applicant (husband) present in Court.
Respondent (wife) present in Court.

CORAM Kamal Khata, J.
DATED: 23rd January 2024

PC:-

1. This Application is under Section 407 of the Code of Criminal Procedure, 1973 (“CrPC”) for transfer of the proceedings filed before the 68th Metropolitan Magistrate’s Court at Borivali to the Family Court at Bandra.
2. The marriage between the Applicant and the Respondent took place on 19th April 2017. There are no issues from the said wedlock. On account of marital discord, the Respondent-wife filed FIR No. 7 of 2022 in the MHB Colony Police Station alleging

offences under Section 498A, 406 r/w 34 of the Indian Penal Code (“**IPC**”) against the Applicant and the family members.

3. The Applicants had approached the Sessions Court for anticipatory bail and were granted bail by order dated 19th March 2022. The Applicants then filed a Criminal Writ Petition No. 3475 of 2022 and 3462 of 2022 on 4th August 2022 for quashing the FIR No. 7 of 2022. The Respondent-wife then filed a DV proceedings before the 68th Metropolitan Magistrate Court at Borivali under the Protection of Women from Domestic Violence Act, 2005 (“**PWDV Act**”). The Applicants had to file a Criminal Writ Petition No. 406 of 2023 and Criminal Writ Petition No. 407 of 2023 and seek quashing of case No. 6800213/DV/22 which was filed by the Respondent-wife before the 68th Metropolitan Magistrate’s Court at Borivali. These Petitions are pending.

4. The parties were then sent before the Mediator by an order dated 24th January 2023. However, the mediation failed. On 18th May 2023 the Applicant-husband filed Petition No. A-3161 of 2023 for divorce.

5. The present Application seeks a transfer of the DV case before the Metropolitan Magistrate’s Court to the Family Court on the ground that common issues will arise for adjudication in both forums and both proceedings essentially are interconnected and further it would be in the interest of both the parties if the proceedings are clubbed and tried together before the Family Court. It would also obviate contradictory findings and conflicting orders

on the same set of facts. The learned counsel submitted that it would save judicial time, expense and hardships to parties.

6. The learned counsel for the applicant submitted that in view of the judgement of this Court in the case of *Rohan Shah vs Nishigandha Shah*¹ passed on 20th December 2023, this Court can transfer these matters to the Family Court.

7. The learned counsel for the Respondent-wife submitted that the maintenance application before the DV Court has been pending. The learned counsel further submitted that the Family Court may consider the maintenance application at an earlier date in the interest of the Respondent-wife who has long awaited the hearing of her application. The submission is accepted.

8. Having considered the judgement in the case of Rohan Shah (supra), I am inclined to transfer this case.

9. I accordingly pass the following order;

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

“(a) This Hon’ble Court be pleased to transfer Case No. 6800213/DV/22 filed by Respondent No.1 before the Ld. 68Th Metropolitan Magistrate’s Court at Borivali, to the Ld. Family Court, Bandra, Mumbai and

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

further be pleased to direct that the same be heard and tried along with Petition No. A-3161 of 2023 filed by the Applicant No. 1”

(ii) The transfer be effected within a period of four weeks and upon receipt of the papers and proceedings, the Family Court at Bandra to give notice to the parties concerned to proceed with the matter; and to consider the application for maintenance at the earliest convenience and preferably within six months from the date of the transfer.

(iii) Application stands disposed of in the above terms.

(iv) No orders as to costs.

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

(Kamal Khata, J)