

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 135 OF 2023

Tressan Ajay Coelho & Ors
Versus
Judelene D'Souza & Anr

...Applicants
...Respondents

Mr Samarth Moray, i/b Shivani Suryakant Shinde, for the Applicant.
Mr Viral Thakur, i/b LJ Law, for the Respondent No. 1.
Ms Sharmila Kaushik, APP, for the Respondent-State.

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 from the 12th Metropolitan Magistrate’s Court at Bandra to the Family Court at Bandra.
2. The marriage between the Applicant and the Respondent took place on 9th November 2019. There are no issues from the said wedlock. On account of marital discord, the Respondent wife filed a complaint before the Bandra Police Station on 3rd May 2021 and after that the Respondent wife filed an application under the Protection of Women from Domestic Violence Act, 2005 (“PWDV

Act”) on 9th August 2021, viz., DV case No. 143 of 2021 before the 12th Metropolitan Magistrate Court at Bandra. The Respondent No. 1 thereafter on 20th September 2021 filed a Petition for divorce, viz., Petition No. A-2743 of 2021 before the Family Court at Bandra.

3. It is submitted by the counsel for the Applicant that the trials in both cases, viz., before the Metropolitan Magistrate as well as before the Family Court at Bandra are yet to commence. He submits that it would be in the interest of both the concerned parties if the proceedings are clubbed and tried before a forum. It would not only obviate multiplicity of proceedings but also hardship and would save precious judicial time of the Courts. He relied on the judgment of *Roshan Shah vs Nishigandha Shah*¹ to submit that this is a fit case for clubbing and/or transfer of the matter from Magistrate’s Court to the Family Court and urged that transfer may be granted.

4. I have heard both advocates and having considered the facts and circumstances I am inclined to grant the transfer moreso in view of the judgement in the case of Rohan Shah (supra).

5. 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. 143/DV/21, filed by Respondent No. 1 before the

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

Ld. 12th Metropolitan Magistrate's Court at Bandra, to the Ld. Family Court, Bandra, Mumbai and further be pleased to direct that the same be heard and tried along with Petition A 2743 of 2021 pending before the Ld. Family Court, Bandra filed by the Respondent No. 1.”

(ii) At this stage, it is pointed out that the Interim Application for maintenance was closed for orders by the Metropolitan Magistrate's Court on 3rd March 2023. As on 8th August no orders were passed and then on account of the stay granted by this Court, no order was passed on that application.

(iii) In view of what is submitted and which is undisputed that the matter is closed for orders, the Magistrate may pass an order within four weeks from the date of this order, i.e., on or before 20th February 2024.

(iv) On expiry of four weeks the proceedings shall be transferred to the Family Court at Bandra.

(v) It is clarified that all other proceedings shall continue to be stayed pending the transfer.

(vi) Upon the transfer being effected, the Family Court to give notice to the parties concerned, preferably within three weeks, to proceed with the matters.

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

(viii) No orders as to costs.

(Kamal Khata, J)