

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.310 OF 2022**

|                                 |                |
|---------------------------------|----------------|
| Mrs. Ronak Bhavesh Kansara      | ...Applicant   |
| <i>Versus</i>                   |                |
| The State of Maharashtra & Ors. | ...Respondents |

---

Mr. Gautam Kanchanpurkar, for the Applicant.

Ms. Supriya Kak, APP, for the Respondent-State.

Ms. Kalpana R. Trivedi, for Respondent Nos.2 to 7

---

**CORAM : MADHAV J. JAMDAR, J.**

**DATED : FEBRUARY 14, 2024**

**P.C.:**

**1.** Heard Mr. Kanchanpurkar, learned Counsel appearing for the Applicant, Ms. Kak, learned APP appearing for the Respondent-State and Ms. Trivedi, learned Counsel appearing for Respondent Nos.2 to 7.

**2.** This is a Criminal Application preferred under Section 407 of the *Code of Criminal Procedure, 1973* seeking transfer of C.C. No.3238/PW/2016 pending in the Court of Metropolitan Magistrate, Railway Mobile Court - Andheri, Mumbai to the Court of Judicial Magistrate First Class, Palghar.

**3.** Learned Counsel appearing for the Applicant submitted that initially the F.I.R. was lodged at Palghar Police Station. However, thereafter the same was transferred to the Oshiwara Police

Station and therefore the F.I.R. was renumbered as F.I.R. No.24 of 2016 dated 12th January 2016 registered with Oshiwara Police Station for the offences punishable under Sections 498-A, 406, 354-A(1), and 506 r/w 34 of the *Indian Penal Code, 1860* and the investigation was conducted by the Oshiwara Police Station.

**4.** He submitted that in fact the Respondent No.2-husband of the Applicant has filed Marriage Petition No.A-742 of 2017 in the Family Court, Bandra, Mumbai seeking divorce. He submitted that the Applicant filed Miscellaneous Civil Application No.255 of 2017 seeking transfer of the said Petition from the Family Court, Bandra, Mumbai to the Court of Civil Judge Senior Division, Palghar on the ground that the Applicant resides at Palghar and that travelling to Bandra for attending the Family Court proceedings will be difficult for her. A learned Single Judge by Order dated 29th September 2017 passed in Miscellaneous Civil Application No.255 of 2017 has transferred the said proceedings from Family Court, Bandra to the Court of Civil Judge Senior Division, Palghar.

**5.** Learned Counsel appearing for the Applicant further submitted that another Criminal Complaint bearing No.12 of 2016 under the *Protection of Women from Domestic Violence Act, 2005* was filed in the Court of learned J.M.F.C. at Palghar. Learned Counsel appearing for Respondent Nos.2 to 7 submitted that an

Order has been passed in the said D. V. proceedings and the same has been challenged before the Sessions Court at Palghar and now before this Court.

**6.** Learned Counsel for the Applicant also pointed out the statement made by learned Counsel appearing for Respondent Nos.2 to 7 before this Court disputing that the wife is residing at Palghar and therefore time was sought to file affidavit-in-reply. The said statement is recorded by a learned Single Judge by the Order dated 19th December 2022. He submitted that pursuant to the said Order, the affidavit is filed on 4th February 2023, but in the said affidavit it is not stated that the Applicant is not residing at Palghar. He submitted that therefore the Respondents were granted further opportunity to file additional affidavit. However, in spite of direction to file additional affidavit, no such additional affidavit is filed. He therefore submitted that statement made to the Court that Applicant is not residing at Palghar is totally incorrect statement. He submitted that the case be transferred at Palghar.

**7.** On the other hand, learned Counsel appearing for Respondent Nos.2 to 7 submitted that the Applicant has resided at Andheri, Mumbai with the Respondents for fifteen years and therefore further action if any is only can be taken in the Court at Andheri, Mumbai. She submitted that Respondent No.2 passed

away in the year 2022. She submitted that other Respondents are suffering from various ailments and therefore it will not be possible for travelling to Palghar.

**8.** A perusal of the record shows that not only this F.I.R. was lodged at Palghar but even the D. V. proceedings have also been filed at Palghar. In fact, in the said D. V. case, learned J.M.F.C. at Palghar has passed certain orders and the same were challenged before the learned Sessions Court at Palghar and thereafter upto this Court.

**9.** It is further significant to note that the Respondent No.2, husband of the Applicant, who passed away during the pendency of the Application, has filed Divorce proceedings bearing Petition No.A-742 of 2017 in the Family Court at Bandra, Mumbai and the said Divorce proceedings were transferred by a learned Single Judge by the Order dated 29th September 2017 passed in Miscellaneous Civil Application No.255 of 2017 to the Court of Civil Judge Senior Division, Palghar.

**10.** Learned Counsel appearing for the Applicant has pointed out that the relatives of the Respondents are threatening and, therefore, N.C. dated 25th March 2016 and N.C. dated 13th January 2020 have been lodged. He submitted that in the said criminal case, the Respondent Nos.2 to 7 are not co-operating and therefore warrants against the Respondent Nos.2 to 7 are

required to be issued again and again. Even certain allegations are made against the officers of the Oshiwara Police Station.

**11.** In any case, the factual position on record clearly shows that the Applicant is residing at Palghar. Although the statement was made before a learned Single Judge on 19th December 2022 disputing that the wife is residing at Palghar and therefore time was sought to file a reply, however, in the reply dated 4th February 2023, it is even not denied that the Applicant is residing at Palghar. It is further significant to note that on 2nd May 2023, a learned Single Judge granted time to file additional affidavit. However, the said additional affidavit is not filed. Therefore, it is clear that the Applicant is residing at Palghar and just to delay the hearing of this Criminal Application, the stand is taken that the Applicant is not residing at Palghar.

**12.** It is further significant to note that the said D. V. proceedings are filed at Palghar and the orders passed in the same are challenged before the Sessions Court and thereafter challenged upto the High Court and the said challenge is pending.

**13.** Apart from that even the Divorce proceedings filed by the Respondent No.2 in the Family Court at Bandra, Mumbai was also transferred to the Court of learned Civil Judge Senior Division, Palghar.

**14.** It is also significant to note that there are a total of 19

witnesses proposed to be examined as per the Charge-sheet. Except the Panch witnesses and the Investigating Officer from Oshiwara Police Station, all other witnesses are from Palghar. Section 407 of the *Code of Criminal Procedure, 1973* contemplates transfer of case for ensuring general convenience of the parties or witnesses.

**15.** Although it is the contention of learned Counsel appearing for the Respondents that they are suffering from various ailments, nothing is mentioned in affidavit-in-reply.

**16.** Accordingly, in view of the facts and circumstances of this case, the same is a fit case to exercise jurisdiction under Section 407 of the Cr.P.C. and pass the Order of transfer.

**17.** Accordingly, C.C. No.3238/PW/2016 pending in the Court of learned Metropolitan Magistrate, Railway Mobile Court Andheri, Mumbai is transferred to the Court of learned Judicial Magistrate First Class, Palghar.

**18.** The Criminal Application is disposed of in the above terms.

**19.** As the case is of the year 2016, concerned learned Judicial Magistrate First Class, Palghar is requested to dispose of the case expeditiously.

[MADHAV J. JAMDAR, J.]