

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.273 OF 2023

Raju Laxmanrao Patil ...Applicant

*Versus*

The State of Maharashtra & Anr. ...Respondents

WITH

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (ST) NO.9275 OF 2024

IN

MISCELLANEOUS CIVIL APPLICATION NO.382 OF 2023

Raju Laxmanrao Patil ...Applicant

*Versus*

Sonal Raju Patil ...Respondent

WITH

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.206 OF 2023

Raju Laxmanrao Patil ...Applicant

*Versus*

Sonal Raju Patil ...Respondent

WITH

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.382 OF 2023

Raju Laxmanrao Patil ...Applicant

*Versus*

Sonal Raju Patil ...Respondent

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Mr. Ajay Talreja, Advocate, for the Applicant.

Mr. Ashutosh Gavnekar i/b. Mr. Rohit Parab, Advocates, for the Respondent-Sonal Raju Patil.

Mr. P. P. Deokar, APP, for the Respondent-State.

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CORAM: MADHAV J. JAMDAR, J.  
DATED: 18<sup>th</sup> APRIL 2024

PC:-

1. Heard Mr. Talreja, learned Counsel for Applicant-husband, Mr. Gavnekar, learned Counsel for Respondent-wife and Mr. Deokar, learned APP for the Respondent-State.
2. By an Administrative Order dated 1<sup>st</sup> March 2024 of the Hon'ble the Chief Justice, the Criminal Application No.273 of 2023, Miscellaneous Civil Application No.206 of 2023 and the Miscellaneous Civil Application No.382 of 2023 have been assigned to this Court.
3. Miscellaneous Civil Application No.206 of 2023 is preferred under Section 24 of the *Code of Civil Procedure, 1908* ("CPC") on 23<sup>rd</sup> May 2023 seeking transfer of Marriage Petition A/747/2023 preferred by the wife in the Family Court at Nagpur to the Family Court at Bandra, Mumbai.
4. Miscellaneous Civil Application No.382 of 2023 is preferred under Section 24 of the CPC seeking transfer of Criminal

Miscellaneous Application No.3875 of 2023 pending in the Court of 15<sup>th</sup> Joint Civil Judge-Senior Division, Nagpur to the Family Court at Bandra, Mumbai.

5. Criminal Application No.273 of 2023 is preferred under Section 407 of the *Code of Criminal Procedure, 1973* (“CrPC”) as well as under Section 482 of the CrPC seeking transfer of proceedings bearing Petition E/448/2023 filed in the Family Court at Nagpur to the Family Court at Bandra, Mumbai.

6. Both, the Applicant/husband-Raju Laxmanrao Patil and Respondent/wife-Sonal Raju Patil are medical professionals. Their marriage was solemnized on 12<sup>th</sup> November 2021 at Nagpur. It is an admitted position that both families i.e. that of the Applicant-husband and of the Respondent-wife are from Nagpur.

7. It appears that within a short time, differences arose between both of them. The Respondent was working on a contractual basis with the Topiwala National Medical College and Bai Yamunabai Laxman Nair Charitable Hospital, Mumbai for one year and the said contract expired on 30<sup>th</sup> June 2023. It appears

that due to the differences between the Applicant and the Respondent, the Respondent was residing in the residential accommodation provided by the said college/hospital since 17<sup>th</sup> February 2023. Her contractual period was w.e.f. 7<sup>th</sup> July 2022 till 30<sup>th</sup> June 2023 and she was working as an Assistant Professor in the Department of E.N.T. on a temporary basis. Thereafter, for few days she was required to extend her services and she resigned from her post on 8<sup>th</sup> August 2023.

8. Respondent No.1 has filed an affidavit-in-reply stating that as the Applicant and her mother-in-law were harassing her and as they evicted her from her matrimonial house on 17<sup>th</sup> February 2023, she started residing separately. Mr. Talreja, learned Counsel for the Applicant denies the said contention raised in the affidavit-in-reply. However, he states that on 18<sup>th</sup> February 2023, the Respondent-wife had voluntarily left her matrimonial house. In any case, it is required to be noted that Respondent-wife is residing separately at least from 18<sup>th</sup> February 2023.

9. The Respondent-wife has filed an affidavit-in-reply dated 23<sup>rd</sup> March 2024 in Criminal Application No.273 of 2023 and has

stated in paragraph No.30 that after completing her contractual job with the said college/hospital at Mumbai, she moved to Nagpur i.e. her hometown and she has been residing at her parent's house since then. It is further stated that she has secured a Government job at the District Hospital, Bhandara, which is 60 k.m. from Nagpur and she is traveling daily from Nagpur to Bhandara.

**10.** The factual position on record shows that the Petition A/747/2023 seeking divorce has been filed at the Family Court, Nagpur on 23<sup>rd</sup> May 2023. Criminal Miscellaneous Application No.3875 of 2023 is filed under the provisions of the *Protection of Women from Domestic Violence Act, 2005* in the Court of learned 15<sup>th</sup> Joint Civil Judge-Senior Division, Nagpur on 19<sup>th</sup> August 2023. Petition E/448/2023 is also filed at Family Court, Nagpur on 19<sup>th</sup> August 2023 seeking maintenance under Section 125 of the CrPC.

**11.** It is the main contention of Mr. Talreja, learned Counsel for the Applicant that Section 19 of the *Hindu Marriage Act, 1955* specifies that the petition under the said Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the Respondent-wife is residing on the date of

presentation of petition and such Court has jurisdiction to entertain the petition. He submitted that on 23<sup>rd</sup> May 2023 when Petition A/747/2023 is filed seeking divorce in the Family Court, Nagpur the Respondent-wife is staying at Mumbai therefore, the said Petition should have been filed only in the Family Court at Bandra, Mumbai. He also submits that there is Criminal Case bearing 62/SW/2023 filed on 14<sup>th</sup> June 2023 under Sections 323, 379, 406, 420, 500, 504, and 506 read with 34 of the IPC in the Court of Metropolitan Magistrate, 9<sup>th</sup> Court, Bandra, Mumbai against the Respondent-wife, her parents and her brother. Therefore, it is the submission of Mr. Talreja, learned Counsel for the Applicant that all these proceedings which are filed in the Nagpur Court should be transferred to the Family Court at Bandra, Mumbai. He submitted that just to harass the Applicant who is a Doctor, these cases have been filed in Nagpur so that his professional life is affected as he is serving as a Doctor at D.Y. Patil Hospital, Nerul, Navi Mumbai.

**12.** On the other hand, Mr. Gavnekar, learned Counsel for the Respondent-wife submitted that she has permanently moved to Nagpur and that she has secured a permanent Government job at

District Hospital, Bhandara and therefore, the contention that these proceedings have been filed in Nagpur just to harass the Applicant, is not correct.

**13.** The factual position on record clearly shows that both the Applicant-husband and the Respondent-wife are Doctors. Their marriage was solemnized on 12<sup>th</sup> November 2021 at Nagpur. It is also an admitted position that both the families, i.e. that of the Applicant-husband and the Respondent-wife, are from Nagpur. It is also an admitted position that on 18<sup>th</sup> February 2023, the wife left the matrimonial house. She was working on a contractual basis as an Assistant Professor, Department of E.N.T. at Topiwala National Medical College and Bai Yamunabai Laxman Nair Charitable Hospital, Mumbai from 7<sup>th</sup> July 2022 and her contract period ended on 30<sup>th</sup> June 2023. Thereafter, she continued her services upto 8<sup>th</sup> August 2023 and resigned from her temporary job at Topiwala National Medical College and Bai Yamunabai Laxman Nair Charitable Hospital, Mumbai. It is also an admitted position that the Respondent-wife has secured a permanent Government job at District Hospital, Bhandara in March-2024.

14. Mr. Talreja, learned Counsel for the Applicant heavily relied on Section 19 of the *Hindu Marriage Act, 1955* which reads as under:

***“19. Court to which petition shall be presented.—***  
*Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—*  
*(i) the marriage was solemnized, or*  
*(ii) the respondent, at the time of the presentation of the petition, resides, or*  
*(iii) the parties to the marriage last resided together, or*  
*(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]*  
*(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.”*

15. Thus, there are various places where the petition under the *Hindu Marriage Act, 1955* (hereinafter referred to as “the said Act”) can be filed and all these respective District Courts have jurisdiction to try and entertain the said Marriage Petition. As per Section 19 of the said Act, the Petition under the said Act can be filed in the District Court within the local limits of whose ordinary

original civil jurisdiction either of the following circumstances *inter alia* have taken place or exist:

- i. The marriage was solemnized;
- ii. The Respondent at the time of the presentation of the petition, resides;
- iii. The parties to the marriage last resided together.

**16.** It is an admitted position that the marriage between the parties was solemnized at Nagpur. Therefore, the Petition A/747/2023 filed in the Family Court, Nagpur is perfectly within jurisdiction. There is no substance in the contention raised by the Petitioner that the Family Court, Nagpur has no jurisdiction.

**17.** It is a settled legal position that convenience of the Respondent-wife is one of the factor to be taken into consideration while considering the Transfer Application. It is to be noted that divorce petition bearing Petition A/747/2023 as well as Petition E/448/2023 filed under Section 125 of the CrPC are pending in the Family Court at Nagpur. However, Criminal Miscellaneous

Application No. 3875 of 2023 filed under the provisions of *Protection of Women From Domestic Violence Act, 2005* is pending before the learned 15<sup>th</sup> Joint Civil Judge-Senior Division, Nagpur. As the parties to these proceedings are the same and two petitions are pending before the Family Court, it is necessary to transfer said Criminal Miscellaneous Application No. 3875/2023 to the Family Court at Nagpur, in the interest of justice.

**18.** A learned Single Judge in *Rohan Shah v. Nishigandha Shah*<sup>1</sup> has held with respect to Sections 24 and 407 of the CrPC that a harmonious interpretation of both civil and criminal Courts favours holding that the source of the substantive power of Transfer in fact flows from Articles 227 and 235 of the Constitution of India, and not from the civil or criminal procedure codes themselves. Accordingly, there is no impediment in the transfer of the Criminal Miscellaneous Application No.3875 of 2023 to the Family Court at Nagpur.

**19.** Accordingly, in view of the facts and circumstances of this case, request of the Applicant to transfer proceedings which are

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**1** 2023 SCC OnLine Bom 2719

pending in the Family Court at Nagpur as well as before the learned 15<sup>th</sup> Joint Civil Judge-Senior Division-Nagpur to the Family Court at Bandra, Mumbai is required to be rejected.

**20.** However, in the facts and circumstances of this case, said Criminal Miscellaneous Application No.3875 of 2023 filed under the provisions of *Protection of Women From Domestic Violence Act, 2005* is required to be transferred to the Family Court at Nagpur as parties to the said litigation are same. The Principal Judge, Family Court at Nagpur is requested to assign Petition No.A/747/2023, Petition E/448/2023 and Criminal Miscellaneous Application No.3875/2023 to the same Family Court Judge so as to avoid conflicting decisions.

**21.** Accordingly, Miscellaneous Civil Application No.206 of 2023, Miscellaneous Civil Application No. 382 of 2023 and Criminal Application No.273 of 2023 are disposed of in above terms.

**22.** There is one Contempt Petition (ST) No.9275 of 2024 filed in Miscellaneous Civil Application No. 382 of 2023. A learned Single Judge [Shivkumar Dige, J.] by Order dated 20<sup>th</sup> February

2024 stayed the proceedings of Petition A/747/2023 and Criminal Miscellaneous Application No.3875 of 2023. However, inspite of stay order the Respondent has filed an affidavit of assets and liabilities and the learned Trial Court has passed an order directing that the Application be proceeded ex parte against the non-Applicant Nos.1 and 2, i.e. husband and the mother.

**23.** Mr. Gavnekar, learned Counsel for the Respondent-wife submitted that the proceedings were proceeded with in spite of a stay granted by this Court, due to some miscommunication. He submitted that when he came to know that in spite of the stay, the matter was proceeded with, he immediately instructed the Respondent-wife not to proceed with the matter. He tenders an unconditional apology on behalf of the Respondent and states that within a period of four weeks from today affidavit tendering an unconditional apology will be filed by the Respondent in this Court. He states that the Respondent will consent for setting aside the order directing that the Application be proceeded against the non-Applicant Nos.1 and 2 *ex parte*.

**24.** In view of the submissions made by Mr. Gavnekar, learned Counsel for the Respondent, no case is made out for taking further action. The Contempt Petition is accordingly disposed of.

**25.** At this stage, Mr. Talreja, learned Counsel for the Applicant submitted that even if the matters are retained at the Family Court, Nagpur, the Applicant be granted liberty to appear through Video Conference. He further submitted that as and when physical presence of the Applicant is required, the Applicant will attend those hearings. Accordingly, if the Applicant-Raju Laxman Patil prefers Application seeking permission to appear through Video Conference, the same be considered sympathetically by the concerned learned Judge, Family Court, Nagpur.

**26.** In view of above discussion, all these proceedings are disposed of by passing following operative order:

**ORDER**

- (a) Criminal Application No.273 of 2023,  
Miscellaneous Civil Application No.206 of

2023 and Miscellaneous Civil Application No.382 of 2023 are dismissed.

- (b) Criminal Miscellaneous Application No.3875 of 2023 filed under the provisions of *Protection of Women From Domestic Violence Act, 2005* in the Court of 15<sup>th</sup> Joint Civil Judge, Senior Division, Nagpur stands transferred to the Family Court at Nagpur.
- (c) The Principal Judge, Family Court at Nagpur is requested to assign Petition No.A/747/2023, Petition E/448/2023 and Criminal Miscellaneous Application No.3875/2023 to the same Family Court Judge.
- (d) If the Applicant-Raju Laxman Patil prefers Application seeking permission to appear through Video Conference, the same be considered sympathetically by the concerned learned Judge, Family Court, Nagpur.

(e) Contempt Petition (ST) No.9275 of 2024 is  
disposed of.

27. The Applications are disposed of accordingly.

[MADHAV J. JAMDAR, J.]

SONALI  
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PATIL

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