

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.100 OF 2024

Dilip Pandita and Ors.

.. Applicants

Versus

Sakshi Dilip Pandita alias

Sakshi Kaul and Anr.

.. Respondents

-
- Ms. Sangeeta Salvi, Advocate i/by Ms. Shweta Alawate for Applicants.
 - Mr. Abhishek Patil a/w. Mr. Sahil Wagh, Advocate for Respondent No.1.
 - Ms. Dhanalakshmi Krishnaiyer, APP for Respondent No.2 – State of Maharashtra.
-

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 27, 2024

P.C.:

1. Heard Ms. Salvi, learned Advocate for Applicants; Mr. Patil, learned Advocate for Respondent No.1 and Ms. Krishnaiyer, learned APP for APP for Respondent No.2 – State of Maharashtra.

2. On 09.10.2024, after hearing the learned Advocate for Applicant and the learned APP, the following order was passed:-

“1. Heard Ms. Salvi, learned Advocate for Applicants and Ms. Krishnaiyer, learned APP for Respondent No. 2 – State.

2. Present Application seeks transfer of D.V. Act proceedings pending before JMFC, Pune to Family Court at Pune where the Marriage Petition filed by Respondent - wife is pending. Applicant also seeks transfer and clubbing of both the proceedings so that they can be heard and determined together.

3. I have perused the Application and the grounds stated

therein. In the interest of justice and in order to avoid multiplicity of trials, present Application deserves to be allowed and granted. However since the present Application is listed for the first time before this Court today, issue notice to Respondents returnable on 23.10.2024. Humdast permitted. In addition thereto, Applicant is directed to serve the Respondents by any permissible mode of service and file appropriate affidavit of service to that effect on or before the next date. After due service, Respondents are directed to remain present before this Court on the next adjourned date failing which this Court shall determine the present Application in accordance with law.

4. In the meanwhile, there shall be ad-interim relief in terms of prayer clause (c).

5. Stand over to 23rd October, 2024”

3. At the outset, Ms. Salvi informs that despite the aforesaid order and stay to the proceedings in terms of prayer clause (c) of the Application, the said JMFC Court has proceeded further thereafter in passing the order in the pending proceedings and have *prima facie* breached the aforesaid order.

4. Though the learned Advocate is not in a position to show the order which has been passed by the JMFC Court which according to her is dated 25.10.2024, Mr. Patil does not deny the same. He would submit that since the proceedings before the JMFC Court was already heard and matter was posted for orders, the said order dated 25.10.2024 was passed. However, he also has no answer when a question is put to him with respect to breach of the ad-interim order granted by this Court in terms of prayer clause (c) and transgression of the order by the JMFC Court.

5. In so far as the present Application is concerned, it seeks transfer of proceedings filed by Respondent No.1 (wife) before the JMFC Court, Pune to the Family Court, Pune where proceedings for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) are pending. Application is supported by grounds stated in paragraph Nos.6 to 8 of the Application. I have perused the same. There can be no impediment in allowing such a transfer in view of the imprimatur of the Supreme Court in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*¹. It is evidently clear that the issues that would be deliberated, decided and adjudicated in both proceedings are between the same parties and in respect of the same cause of action / facts.

6. In that view of the matter, to avoid multiplicity of trial on the same issues and to avoid conflict of decisions by two different Courts in respect of the same issues, present Application deserves to be allowed.

7. Though an objection is raised by Mr. Patil, that the JMFC Court Pune will also have the power to hear and decide the Application filed by Respondent No.1 under Section 125 of Cr.P.C. and therefore the said Application should be transferred from the Family Court to the JMFC Court. If that is the submission of Respondents, then it was open to them to file an appropriate Application for seeking such a transfer, which has not been done. Hence, submission made by Mr. Patil stands

¹ AIR 2022 SC 4318

rejected.

8. I see no impediment in allowing the present Application in view of the ethos of the provisions of Section 407 of Cr.P.C. which state that the power of the High Court to transfer cases and appeals as enumerated in Chapter XXXI of the Cr.P.C. will have to consider the convenience of the parties and the Applicant has made out a case before the Court. For reference Section 407 of Cr.P.C. is reproduced hereunder:-

“407. Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the

lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under Sub-Section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under Sub-Section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose;

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under Sub-Section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under Sub-Section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

8.1. The above provision refers to “convenience of the parties”. Especially in the present case, where the transfer of proceedings is sought from one Court to another Court in the same jurisdiction at Pune. Hence, Application stands allowed in terms of prayer clause (b) which reads thus:-

“b) The Hon’ble Court may transfer Cri.M.A. 356/2021 pending before Learned JMFC Court, Pune under section 12, 17, 18, 19, 29, 21, 22, 23 to the Learned Family Court at Pune in petition No. E/44/2023.”

9. However, I direct that the JMFC Court, Pune shall ensure that the proceeding is transferred expeditiously by hand or through a Court messenger within a period of one week from the date of tabling a server copy of this order before the said Court by the parties and the concerned Registrar / In-charge / Officer of JMFC Court, Pune shall transfer the papers and proceedings to the Family Court at Pune immediately.

10. Both the concerned Courts shall act on a server copy of this order and shall not insist on production of a certified copy of this order and ensure that transfer of proceedings and re-registration of the proceedings by the Family court is done within a week of receiving the transferred proceeding from the JMFC Court. No delay shall be caused by both the Courts below.

11. All contentions of both the parties are expressly kept open before the Family Court at Pune.

12. Criminal Application is disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.11.28
16:57:04 +0530