



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 107 OF 2024

Aparna Jignesh Dangarwala

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Ms. Swapana P. Kode	Advocate for the Applicant
Adv. Abhijeet Kulkarni a/w Adv. Pundalik Bhalbar	Advocate for the Respondent No. 2
Ms. S. E. Phad	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 08th AUGUST 2024

P. C. :-

1. Heard learned Advocate Ms. Kode for the Applicant-wife and learned Advocate Shri Kulkarni for the Respondent No. 2-husband.

2. There are two proceedings which are relevant for deciding this transfer application. They are as follows :-

(i) Domestic Violence Application No. PWDVA/111 of 2019

pending before the Court of the Metropolitan Magistrate, Mulund in which the Applicant-wife has completed evidence and her

witness-mother intends to give evidence. The case is fixed today.

(ii) Marriage Petition No. A-619 of 2020 for divorce filed by the wife against the husband.

It is pending before the Family Court, Bandra.

The pleadings are over and yet the Applicant-wife has to file an affidavit.

3. The Applicant-wife wants transfer of the Domestic Violence case to the Family Court. **The reasons quoted are as follows: -**

(a) If the prayer is accepted then Applicant-wife is not required to give evidence in Marriage Petition and in fact the evidence of witnesses recorded in Domestic Violence case can also be adapted there.

(b) The Applicant is slow learner, so that it is difficult for her to again give evidence before the family Court.

4. There are certain allegations made against the present Presiding officer. It is in respect of comments about happening of events before him. They are pleaded in para nos. 14 to 17. **Those events are as follows:**

(i) There was distress warrant issued against Respondent No.

2-husband on 19/01/2024, and he took the case on board on 22/01/2024. Accidentally, the Applicant and her mother have gone to the Court for collecting the warrant and at that time, the Presiding officer asked the Applicant-wife to settle the matter.

- (ii) On 17/02/2024, the Presiding officer made a comment over the attitude of the Applicant-wife in extracting the money from the husband.
- (iii) On 07/03/2024, the case was fixed for cross-examination but Presiding officer was on leave (this can not be considered as an allegation against the Presiding officer)
- (iv) On 11/03/2024, the cross-examination of the Applicant-wife commenced, and she was ridiculed continuously for being a slow learner.
- (v) On 27/03/2024, the Applicant's mother was required to wait till 3.30 p.m. to 04.00 p.m. and then the date was given.

5. During arguments learned Advocate Ms. Kode also referred about certain comments made by the Presiding officer about the

behaviour of lady advocate, who is representing the Applicant-wife before him. This event took place after this transfer application is filed, and she is ready to submit an affidavit. Even she prayed for calling entire record of the Domestic Violence case.

6. Learned Advocate Mr. Kulkarni opposed the prayer on following grounds:-

- (i) The Applicant-wife ought to have filed this transfer application earlier for the reasons quoted about the difficulty of the Applicant-wife being slow learner.
- (ii) The allegations made against the Presiding officer are stoutly denied. According to him, if the Applicant-wife will file an application containing the incomplete reliefs, Presiding officer is bound to tell her not to file such applications.

7. My attention is invited to an order passed by the learned Single Judge on 13/01/2023 passed in Criminal Writ Petition No. 65 of 2023. The hearing of the Domestic Violence case was expedited, and it was to be disposed of within 10 months. The period is extended for period of one year as per subsequent Order dated 26/03/2024, when the learned Presiding officer sought for extension.

8. Learned Advocate Mr. Kulkarni also brought to my notice certain roznamas dated 11/07/2024, 20/07/2024, 03/08/2024, 08/08/2024.

9. After hearing both of them, I am not inclined to transfer the Domestic Violence proceedings. The reason is the Domestic Violence case is **at the stage of the culmination**. The husband has already given a pursis of the closing evidence. He does not want to lead evidence. **The Applicant has filed this application belatedly.**

10. So far as allegations against the Presiding officer are concerned, I **do not think they are of such a kind which deals with the impartiality and integrity of the Judge**. If the judge will suggest settling the matter, I do not think, he has committed any wrong. Ultimately, such suggestions are given for betterment of the Parties.

11. I have not called the record because it will result into stalling the progress of the court which is expedited by this court. I do not think it necessary to call the remarks of the learned presiding officer on the above allegations. I can only say that learned Presiding Officer should restrain himself from making any comments about the behaviour of a particular Advocate. He must understand the situation prevailing in

Bombay. It is much different from situation prevailing outside the Bombay. We cannot compare the situation prevailing outside Bombay with that of such situation prevailing in Mumbai. The situation is different practices and customs are different. If Judge is recently posted in that Court, he must adapt the practice and customs followed in Bombay.

12. With these observations, I do not think prayer can be accepted. It is rejected. Accordingly, criminal application is rejected.

13. At this stage, learned Advocate Ms. Kode requested to stay the trial of the Domestic Violence proceedings, for the reason that her client is going to file SLP before the Hon'ble Supreme Court for various reliefs, and now she will amend that proceeding, and she will also challenge an order passed today. It is opposed on behalf of learned Advocate Mr. Kulkarni.

14. I think the Applicant-wife is at liberty to seek extension from the trial Court and trial Court to consider it positively only for reasonable period.

[S. M. MODAK, J.]