

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

CRIMINAL APPLICATION NO. 173 OF 2024

Ashwin Babubhai Prajapati

.Applicant

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. Vivek Joshi, Advocate, for the Applicant

Ms. Sangeeta Phad, APP, for Respondent No. 1 – State

Mr. Atmaram Patade a/w. Mr. Suhas S. Deokar i/b. Mr. Atmaram Patade, Advocates, for Respondent No. 2

CORAM : MILIND N. JADHAV, J.

DATE : 18.12.2024

P. C.

1. Heard Mr. Joshi, learned Advocate for the Applicant, Ms. Phad, learned APP for Respondent No. 1 – State and Mr. Patade, learned Advocate for Respondent No. 2.

2. The present Applicant seeks transfer of D. V. proceeding, being DV/233/2022 filed by Respondent No. 2 – wife pending before the 67th Metropolitan Magistrate's Court, Borivali to the Family Court No. 7, Bandra. The Application is filed by the husband on the ground that the issues that would form part of the decision in the trial of the D. V. proceeding will be overlapping with the issues which are the subject matters of the Marriage Petition filed by Respondent No. 2 in the

Family Court at Bandra. The Hindu Marriage Petition filed by the husband against the wife is pending in the Family Court admittedly.

3. Mr. Patade, learned Advocate for Respondent No. 2 – husband would argue that in the D. V. proceedings before the Borivali Court, Interim Application below Exh. 5 has already been argued by the parties and closed for Orders since August, 2024. He would submit that if the present Application is allowed before the final Order is delivered, it would be to the detriment of both the parties because in that case, the said Application will then have to be re-heard by the Family Court. He would submit that, in such a case, it would put unnecessary strain on the parties.

4. Mr. Joshi, learned Advocate joins Mr. Patade, learned Advocate in fairly admitting that the Interim Application below Exh. 5 has already been argued and it has now been fixed for passing orders on 20.12.2024. There cannot be any impediment in allowing the present Application and passing appropriate directions. However, in view of the submissions made by Mr. Patade, it is specifically directed that the learned 67th Metropolitan Magistrate's Court, Borivali seized of hearing the Exh. 5 Application i. e. Interim Application in DV/233/2022 shall pass appropriate speaking/reasoned Order in the said Application on 20.12.2024 or any date thereafter but in any event within a period of

four weeks thereafter without fail. Once the Interim Application below Exh. 5 is decided by the learned 67th Metropolitan Magistrate's Court, Borivali, the main D. V. proceeding shall stand transferred to the Family Court, Bandra. Mr. Joshi, learned Advocate for the Applicant would inform the Court that the next date of hearing before the Family Court at Bandra is 21.02.2025. He would submit that since the learned 67th Metropolitan Magistrate's Court at Borivali is burdened with a lot of work, this Court may be pleased to give some more time to that Court to pass the Order in the pending Exh. 5 Application. Suggestion made by Mr. Joshi, learned Advocate for the Applicant is accepted by this Court. In that view of the matter, it is directed that the learned 67th Metropolitan Magistrate's Court at Borivali shall pass the Order, if it is not passed on 20.12.2024 in any event within a period of four weeks from today.

5. In view of the above observations, findings and directions, the Application stands allowed in terms of prayer clause (a) which reads thus :-

“(a) That this hon'ble Court, looking at the circumstances, this hon'ble court be pleased to transfer the DV DV/233/2022, Pending before the Hon'ble 67th MM Court at Borivali to Hon'ble Family Court No 7 at Bandra.”

6. It is clarified that the Marriage Petition and the transferred

D. V. proceedings shall both be clubbed together and heard by the Family Court together thereafter. The Family Court shall not be influenced by the observations made in this Order and determine the proceedings strictly in accordance with law.

7. With the above directions, Application stands allowed and disposed of.

(MILIND N. JADHAV, J.)