

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 176 OF 2024

Suresh Kesharao Kottewar and Anr.

.. Applicants

Versus

Punam Parish Kottewar and Anr.

.. Respondents

.....

- Ms. Mrunmayi Khambete, Advocate for Applicant.
- Ms. Manisha R. Tidke, APP for Respondent-State.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2024

P.C.:

1. Heard Ms. Khambete, learned Advocate for Applicant and Ms. Tidke, learned APP for the Respondent-State.

2. At the outset, learned Advocate appearing for the Applicant submits that considering complaint filed by Respondent No.1 under the DV Act, 2005 against Applicant No.1 and 2 and also against Mr. Vaibhav Suresh Kottewar and Mrs. Rekha Vaibhav Kottewar, she would submit that inadvertently these two Applicants were not impleaded as parties in the present Application. Learned Advocate appearing for the Applicant seeks leave to amend the Application. She tenders draft of amendment across the bar which is taken on record and marked "X" for identification. Leave to amend is allowed by the Court. Re-verification stands dispensed with. Learned Advocate is permitted to carry out the amendment of impleadment of the

remaining two parties in the presence of the Court.

3. After the amendment is carried out, Application is taken up for hearing. Ms. Khambete, learned Advocate for the Applicants submits that Respondent No.1 has filed Domestic Violence case bearing No. No. PWDVA No.106 of 2022 before the JMFC at Chandrapur against the Applicants. Respondent No.2 is a minor child of the Respondent No.1. She would submit that the grounds for seeking transfer of said domestic violence case from Chandrapur to Parnel are enumerated in paragraph Nos. 10 and 11 of the Application. She would submit that in view of the advanced age of the Applicant Nos. 1 and 2 and the vocation of Applicant No.3 and 4, it would be difficult for them to travel all the way from Parnel to Chandrapur to attend the domestic violence case and hence the transfer of the case is sought.

4. Learned Advocate may be right in her contention to the extent of the difficulty for Applicant No.1 and 2 to travel, but in the facts of the present case convenience of the parties will have to be seen by this Court since the Application is made under Section 407 of the Cr.PC. Here is the case where Respondent No.1 (wife) is the the principal Applicant who has filed Domestic Violence case. She along with Respondent No.2 her minor girl child of 4 years age is residing in Chandrapur with her parents. If the Application of the Applicants is countenanced then it would entail a much greater degree of difficulty

to Respondent No.1 and also indirectly to Respondent No.2 to also travel all the way from Chandrapur to Panvel. Needless to state that both of them will have to travel together or if not make arrangements to take care of her 4 years old girl-child and also face financial constraints and require accompaniment of an elder / parent for the visit to Panvel. In such a case where the degree of difficulty exists on both the sides, the Court will have to play a balancing role. In that view of the matter while considering the request and submissions made by the learned Advocate for Applicants, I am of the view that the present Application cannot be allowed as it would cause a greater difficulty to the Respondent No.1 and 2 to travel all the way from Chandrapur to Panvel. The proximity of distance between the two destinations as also the financial constraints are the real factors which weigh in favour of the Respondent Nos.1 and 2 as can be seen from the facts of the case. However, in view of the advanced age of the Applicant No. 1 and 2, even they will have some difficulty to travel to Chandrapur and attend the proceeding there. Therefore the Application stands dismissed, however with the caveat that the concerned designated Court hearing the Domestic Violence case in Chandrapur shall permit the Applicant Nos. 1 to 4 to attend the proceedings through VC. However, this does not mean that this Court has given an imprimatur to all 4 Applicants to attend the proceedings only on VC. If the personal presence of Applicants is required by the

concerned designated Court, Applicants shall abide by the same and not cite this order. The Court shall take cognizance of this direction. However, the concerned designated Court is directed to look at the convenience of the Applicant Nos.1 and 2 considering their old age and if they are required to appear physically, appropriate order be passed in accordance with law. If Applicant Nos.3 and 4, who are young are required to appear in person in the proceedings at Chandrapur, and if the Court requires their presence, they shall have to appear physically. Applicants are directed to appoint an Advocate immediately to represent them at Chandrapur in the D.V. case. The said Advocate shall have to appear on all dates with instructions from Applicants. If there is any delay or dereliction due to the above ground / issue, the order from persona exemption given hereinabove shall forthwith stand cancelled and revoked without recourse to this Court.

5. With the above directions, Application stands dismissed.

[MILIND N. JADHAV, J.]