



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APPLN) NO. 22 OF 2024

SNEHA W/o MILIND KALE

VERSUS

MILIND S/o SHRIKRUSHNA KALE AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P. A. Abhyankar, Advocate for the applicant.
Mr. S. A. Mohta, Advocate for the non-applicant nos.1 to 3.

CORAM : G. A. SANAP, J.
DATE : JULY 23, 2024.

1. This is an application filed by the applicant/wife for transfer of Criminal Case No. 316/2021 pending on the file of learned 15th Joint Civil Judge, Senior Division, Nagpur to Family Court No.1, Nagpur.

2. It is the case of the applicant/wife that the husband/ non-applicant no.1 has filed a petition bearing No. A-1237/2021 before Family Court No.1, Nagpur, for dissolution of marriage on the ground of cruelty. The proceedings filed by the applicant under Section 12 of the Protection of Women from Domestic Violence, Act, 2005 ("the D.V. Act" for short) before the Jt.CJSD, Nagpur, is for custody of the minor girl child, grant of maintenance and for her accommodation. It is stated that the foundation of both the cases is on same set of facts. It is the case of the applicant that for proper adjudication of the dispute

between the parties and to avoid multiplicity of the proceedings and contradictory findings on the same issue, the proceedings filed under the D.V. Act pending on the file of learned Jt.CJSD is required to be transferred to the Family Court, Nagpur.

3. Though the non-applicants are duly served and represented by Advocate, they have not filed any reply and opposed the application.

4. I have heard the learned advocates for the parties. Perused the record and proceedings.

5. As far as the issue of jurisdiction of the Family Court to try the D.V. Act proceedings is concerned, it has been settled. In this context, a useful reference can be made to the decision of the coordinate bench of this Court in ***Rohan Shah .v. Nishigandha Shah***, reported at ***2023 SCC Online Bom 2719***. The Coordinate Bench, while allowing the transfer of D.V. Act proceeding pending on the file of the Metropolitan Magistrate, Bhoiwada, Mumbai to the Family Court, Bandra, Mumbai, where the Hindu Marriage Petition filed by one of the parties was pending, has held that the D.V. Act proceeding filed under Sec. 12 of the PWDV Act, can be transferred to the Family Court inasmuch as the Family Court has jurisdiction to entertain and try such proceeding. The Coordinate Bench has

considered the provisions of the D.V. Act to arrive at this conclusion. It is thus seen that the issue of jurisdiction of the Family Court is no more *res-integra*.

6. The question is whether the facts stated in the application are sufficient to make out a ground for transfer. The husband has filed the divorce proceedings on the ground of cruelty. The wife has filed the proceedings under the D.V. Act alleging that she was subjected to domestic violence at the hands of the non-applicants. It is, therefore, apparent that the foundation of both the proceedings is on the same set of facts. In the facts and circumstances, the parties would be required to adduce evidence to substantiate their respective contentions before the Court of Jt.CJSD as well as before the Family Court. In my view, in the interest of both the parties and to avoid conflicting decisions on the same set of facts, it is advisable to have adjudication of said proceedings by one Court.

7. The non-applicants have chosen not to file any reply. The averments made in the application by the applicant/ wife have gone unchallenged and uncontroverted. Besides, the facts stated in the application are sufficient to grant the prayer.

8. Accordingly, the criminal application is allowed.

i) The proceedings of Criminal Case No. 316/2021

pending on the file of learned 15th Joint Civil Judge, Senior Division, Nagpur may be transferred to Family Court No.1, Nagpur.

(ii) The Principal District and Sessions Judge, Nagpur shall withdraw the said proceedings from the file of learned 15th Joint Civil Judge, Senior Division, Nagpur and transfer it to the file of Principal Judge, Family Court, Nagpur.

(iii) The Principal Judge, Family Court, Nagpur, shall, in turn, assign the said proceedings to the Judge, Family Court No.1, Nagpur, for its disposal in accordance with law.

9. The criminal application stands disposed in the aforesaid terms.

(G. A. SANAP, J.)

Diwale