

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.362 OF 2023

Suvidha d/o. Subhash Kawale @ Suvidha w/o.
Abhishek Lohot ...Applicant
Versus
Abhishek s/o. Nanabhau Lohot ...Respondent

CRIMINAL APPELLATE JURISDICTION

WITH

CRIMINAL APPLICATION NO.485 OF 2022

Abhishek Nanabhau Lohot ...Applicant
Versus
Suvidha Subhash Kawale & Anr. ...Respondents

WITH

CRIMINAL APPLICATION NO.348 OF 2024

Abhishek Nanabhau Lohot ...Applicant
Versus
Suvidha Subhash Kawale & Anr. ...Respondents

Mr. Deepak C. Natu a/w. Ms. Gayatri K. Soni i/b. M/s. N. Deepak and Co. Advocates, for the Applicant in MCA No.362 of 2023 and for the Respondent No.1 in Criminal Application No.485 of 2022 and Criminal Application No.348 of 2024.

Mr. Amol B. Jagtap a/w. Ms. Deepika S. Tendulkar, for the Applicant in Criminal Application No.485 of 2022 and Criminal Application No.348 of 2024 and for the Respondent in MCA No.362 of 2023.

Mr. R. S. Tendulkar, APP, for the Respondent No.2-State in Criminal

Application No.485 of 2022 and Criminal Application No.348 of 2024.

CORAM: MADHAV J. JAMDAR, J.
DATED : 27th MARCH 2025

PC:-

1. At the outset, it is required to be noted that all the matters are clubbed together and placed before this Court by the administrative order.

MISCELLANEOUS CIVIL APPLICATION NO.362 OF 2023:

2. Heard Mr. Natu, learned Counsel appearing for the Applicant and Mr. Jagtap, learned Counsel appearing for the Respondent.

3. This Miscellaneous Civil Application No.362 of 2023 is filed under Section 24 and 151 of the Code of Civil Procedure, 1908 seeking transfer of P.A. No.990 of 2020 from the Court of Family Court at Pune to the Court of learned Civil Judge, Senior Division, Khed, Tal. Rajgurunagar, Dist. Pune.

4. Mr. Natu, learned Counsel appearing for the Applicant states that the Applicant is residing at Junnar, Pune and now at Junnar,

Pune the Court is established and therefore, although the prayer is to transfer the said proceedings to the learned Civil Judge, Senior Division, Khed, the Applicant is seeking transfer of said P.A. No.990 of 2020 from the Court of Family Court at Pune to the Court of learned Civil Judge, Senior Division, Junnar, Dist. Pune. He submits that the Applicant is at Junnar and although she is employed in a company at Mumbai she has been allowed to work from home and therefore, she is working from Junnar.

5. On the other hand, Mr. Jagtap, learned Counsel appearing for the Respondent submitted that the said P.A. No.990 of 2020 has been filed by the Respondent-Husband seeking divorce on the ground of cruelty under the provisions of the Hindu Marriage Act, 1955. The said Petition is at the stage of evidence. He submitted that in fact the Applicant has filed application before the learned Family Court, Pune stating that as she is working at Mumbai she cannot attend the Court at Pune.

6. Mr. Natu, learned Counsel appearing for the Applicant tenders Certificate dated 28th March 2023 issued by the employer

of the Applicant mentioning that currently the Applicant is allowed to work from home.

7. Mr. Jagtap, learned Counsel points out application dated 13th October 2024 filed by the Applicant in said Petition No.990 of 2020, wherein the Applicant has stated that earlier she was working with said “Manek Consulting” at Thane and as she has been promoted, she is working from the office of the company i.e. at Vile Parle, Mumbai. Thus, it is clear that the Petitioner is working at Mumbai.

8. In any case, even the said Certificate also states that currently she has been allowed to work from home thus, the said Certificate also cannot be relied on for holding that the Petitioner is permanently allowed to work from home i.e. at her residence at Junnar, Pune.

9. Apart from that, it is required to be noted that the said Miscellaneous Civil Application No.362 of 2023 has been filed on 25th September 2023. Till date neither any ad-interim order nor

any order transferring the said proceedings is passed. The said proceedings have now come to the stage of recording evidence.

10. It is also required to be taken into consideration that the Family Court is Special Forum established under the Family Courts Act, 1984 to deal with matrimonial cases. As far as the Family Court is concerned, the decree passed by the Family Court can be challenged in Appeal before the High Court. If the said proceedings are transferred to the Court of learned Civil Judge, Senior Division, Junnar, then there is First Appeal to be filed before the District Court and the Second Appeal to be filed in the High Court. As far as the matrimonial proceedings are concerned, the same are required to be disposed of expeditiously.

11. Thus, by taking overall view of the matter and in the facts and circumstances of this case, no case is made out for transfer of the said Petition A No.990 of 2020 from the Court of learned Judge, Family Court at Pune to the learned Civil Judge Senior Division, Khed, Tal. Rajgurunagar, Dist. Pune or learned Civil Judge, Senior Division, Junnar, Dist. Pune.

12. Accordingly, Miscellaneous Civil Application No. 362 of 2023 is dismissed, however, with no order as to costs.

CRIMINAL APPLICATION NO.485 OF 2022:

13. Heard Mr. Jagtap, learned Counsel appearing for the Applicant and Mr. Natu, learned Counsel appearing for the Respondent.

14. The prayer in this Criminal Application filed under Section 407 of the Code of Criminal Procedure, 1973 (“**CrPC**”) is to transfer the DV proceedings filed by the Respondent No.1-Wife from the Court of learned JMFC, Junnar to the Court of learned JMFC, Pune.

15. It is the submission of Mr. Jagtap, learned Counsel appearing for the Applicant that all incidences which the Respondent No.1 has narrated in the application filed under the provisions of Sections 12, 18, 19, 20, 22, 23 of the Protection of Women from Domestic Violence Act, 2005 (“**DV Act**”) have taken place either at Pune or Mumbai. Therefore, the said case which is pending in the

Court of learned JMFC, Junnar be transferred to the Court of learned JMFC, Pune.

16. On the other hand, Mr. Natu, learned Counsel appearing for the Respondent No.1-Wife submits that the Respondent No.1-Wife is permanent resident of Junnar. She has shifted to Mumbai for the purpose of her employment. He submits that as per Section 27 of the DV Act, the competent Court *inter alia* is the Court of Judicial Magistrate of First Class, within the local limits of which a person aggrieved permanently or temporarily resides or carries on business or is employed. He submits that the Respondent No.1 is staying along with her parents at Junnar and she has support of her parents.

17. Mr. Jagtap, learned Counsel appearing for the Applicant relied on the decision of this Court in the case of ***Shekhar Shivdas Mahire & Ors. vs. Sou. Sarikabai Shekhar Mahire & Anr.***¹. As already noted above, in the order passed in Miscellaneous Civil Application No.362 of 2023, the Respondent-

1 2010 SCC OnLine Bom 578

Wife was working at Thane and thereafter at Mumbai. She has also been allowed to work currently from home, which is at Junnar.

18. Although the said Miscellaneous Civil Application No.362 of 2023 has been dismissed, by recording various reasons, the factual position on record clearly shows that the Respondent-Wife, who is the aggrieved person as contemplated under the provisions of the DV Act is not a permanent resident of Pune or Mumbai. It can be said that she is in fact, permanent resident of Junnar and she has either shifted to Thane or Mumbai temporarily for her service purpose.

19. The jurisdiction of the Court under the DV Act is as per Section 27, which reads as under:

“27. Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which— (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.”

20. Thus, what is contemplated is that the competent Court to grant protection order and other orders under the DV Act and to try offences under the DV Act is *inter alia* the Court of Judicial Magistrate First Class within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed.

21. It is an admitted position that the Respondent is permanently resides at Junnar and in any case, she is at the most temporarily residing at Junnar.

22. It is not even the case of the Respondent that now she is staying at Pune as noted in the order passed in Miscellaneous Civil Application No.362 of 2023. It is the contention of present Applicant that the Respondent-Wife is staying at Mumbai for the purpose of employment. Thus, there is no substance in the

contention of learned Counsel appearing for the Applicant that the said DV proceedings be transferred from the Court of learned JMFC, Junnar to the Court of learned JMFC, Pune.

23. The decision of the learned Single Judge in the case of *Shekhar Shivdas Mahire & Ors.* is arising out of Petition for quashing and in the said Petition, instead of quashing the said complaint, the learned Single Judge has transferred the proceedings from the Court of learned JMFC, Sahada to the Court of learned Chief Judicial Magistrate, Nashik. Mr. Jagtap, learned Counsel appearing for the Applicant relied on the paragraph 7 of the said decision. However, in the said paragraph 7, the learned Single Judge has noted the submissions of Amicus Curiae. The decision of the learned Single Judge on which the Applicant is relying is concerning FIR lodged under Section 498A of the Indian Penal Code, 1860 (“**IPC**”), therefore, the said decision has no application to the present case.

24. Mr. Natu, learned Counsel appearing for the Respondent No.1-Wife has relied on the decision of the Supreme Court in the

case of *Rupali Devi vs. State of Uttar Pradesh & Ors.*². In the said case after quoting Section 27 of the DV Act it is observed by the Supreme Court that plain reading of Section 27 makes it clear that Petition under the DV Act can be filed in Court where the person aggrieved permanently or temporarily resides or carried on business or is employed. As noted herein above, in fact the Petitioner is permanent resident of Junnar and in any case, temporarily resides at Junnar.

25. It is not even the contention of the Applicant that the Respondent-Wife is residing at Pune. Thus, no case is made out for transfer of said DV Proceedings from the Court of learned JMFC, Junnar to the Court of learned JMFC, Pune.

26. Accordingly, the Criminal Application is dismissed, however, with no order as to costs.

CRIMINAL APPLICATION (ST) NO.6639 OF 2024:

2 (2019) 5 SCC 384

27. Heard Mr. Jagtap, learned Counsel appearing for the Applicant and Mr. Natu, learned Counsel appearing for the Respondent.

28. By the present Criminal Application filed under Section 407 of the Code of Criminal Procedure, 1973 (“CrPC”), the Applicant is seeking transfer of R.C.C. No.361 of 2023 pending before the learned Joint Civil Judge, Junior Division and JMFC Court, Junnar to the Court of learned JMFC, Pune.

29. It is the submission of Mr. Jagtap, learned Counsel appearing for the Applicant that perusal of the FIR shows that either the incidents have taken place at Pune or at Mumbai and no offence has taken place at Junnar therefore, the case be transferred to the Court of learned JMFC, Pune. He relied on the decision of a learned Single Judge in the case of *Shekhar Shivdas Mahire & Ors. vs. Sou. Sarikabai Shekhar Mahire & Anr.*³ and more particularly, on paragraphs 7 to 14. He therefore, submits that the case be transferred to the Court of learned JMFC, Pune.

3 2010 SCC OnLine Bom 578

30. It is true that perusal of the FIR shows that the many incidences have taken place either at Mumbai or at Pune. However, it is also mentioned that the marriage was fixed at Junnar and very crucial aspects were not disclosed and therefore, the marriage was fixed by concealing important aspect.

31. In the FIR it is also stated that in November 2020, she was assaulted and thrown out of the house and thereafter she went to Narayangaon, Junnar. Thus this is not the case, where it can be said that no incident has taken place at Junnar.

32. Mr. Jagtap, learned Counsel appearing for the Applicant relying on the said decision in the case of ***Shekhar Shivdas Mahire & Ors.*** (supra) submitted that Courts at the place at which the complainant resides will have no jurisdiction to entertain the complaint and the Court within whose local jurisdiction the offence is committed will have jurisdiction to enquire into the said offence. Although it is correct that major incidents narrated in the FIR have taken place at Mumbai or Pune, however, as noted herein above, this is not a case where nothing has taken place at Junnar.

33. In any case, one more factor which is required to be taken into consideration is that DV case filed by the Respondent-Wife has also been filed in the Court of learned JMFC, Junnar.

34. Mr. Natu, learned Counsel appearing for the Respondent No.1-Wife has also relied on the decision of the Supreme Court in the case of *Rupali Devi vs. State of Uttar Pradesh & Ors.*⁴, while answering Reference, the Supreme Court held that the Court at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also has jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the IPC.

35. Accordingly, no case is made out for transfer of the said proceedings bearing R.C.C. No.361 of 2023 pending before the Court of learned Joint Civil Judge, Junior Division and JMFC, Court, Junnar to the Court of learned JMFC, Pune.

4 (2019) 5 SCC 384

36. Both the learned Counsel state that said DV case bearing P.A. No.990 of 2020 and R.C.C. No.361 of 2023 be tried together. Accordingly, the concerned learned JMFC is requested to try both these cases together.

37. The Criminal Application (ST) No.6639 of 2024 is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]