



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

MISCELLANEOUS CIVIL APPLICATION NO.694 OF 2024

Samina Firdaus D/o Sarfaraz Pathan,
Age 25 years, Occ. Household,
R/o Ward No.5, Firdaus Colony,
Gandhi Nagar, Malegaon Jahangir, District
Washim

...Applicant

// VERSUS //

Shoeb Khan S/o Saeed Khan,
Age 28 years, Occ. Business/Labor
R/o Haji Chhote Khan Mistry Mahal Qila, near
Sahil Masjid near Hanif Kirana Store, Mahal
Qila Mahal Qila, Nagpur

... Non-applicant

Shri Syed Ali, Advocate for applicant.
Shri N.Z. Mirza, A.P.P. for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/01/2025

ORAL JUDGMENT

1. The applicant is invoking the jurisdiction of this Court under Section 24 of the Code Civil Procedure, 1908 (hereinafter referred to as "CPC").
2. The necessary facts in brief are as follows:-

The applicant is legally wedded wife of the non-applicant and since last few months as there is a matrimonial dispute between them, she is residing at her parental house. As per the allegations, due to the domestic violence and cruelty meted out to her, she constrained to leave matrimonial house and now staying with her parent. She had filed petition under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “Act of 2005”) bearing PWDVA Application No.22 of 2023 against the non-applicant. The non-applicant has also filed the petition for dissolution of marriage bearing No.B/6/2024 which is pending in the Family Court, Nagpur. As per the contention of the applicant, she has no independent source of income and is completely dependent upon her parents and elder brother. The distance between the Malegaon Jahangir where she resides and the Nagpur is more than 250 km and there is nobody to escort her to attend the proceedings and therefore, it is most inconvenient place to attend the proceedings. It is further contention that the non-applicant is already attending the proceeding at Malegaon Jahangir wherein, the applicant has filed the petition under the Act of 2005. For all above these reasons, she claimed that the matrimonial petition pending in the court of Family Court -2 Nagpur bearing No.B/6/2024 be transferred to the Civil Court, Malegaon Jahangir.

3. The said application is strongly opposed by the non-applicant on the ground that, the applicant has suppressed several material facts and does not come with clean hand before this Court. He submitted that, though applicant has filed the petition under the provisions of Act of 2005, she never faced any cruelty or any domestic violence at the hands of the present non-applicant and his family members. In fact, the family members of the applicant gave a threat to his life as well life of his family members and they have already attacked on them and therefore, he filed an application before the learned Judicial Magistrate First Class, Malegaon seeking directions to the police to investigate in the matter. After hearing and after considering his application, the learned Judicial Magistrate First Class, Malegaon directed the Police to lodge/registered the First Information Report (hereinafter referred to as "FIR") against the present applicant and her family members. Thus, if the matter is transferred to Malegaon, there is a life threat to his life as well as life of his family members and therefore, the application deserves to be rejected.

4. Heard learned counsel for the applicant as well as learned counsel for the non-applicant.

5. Learned counsel for the applicant placed reliance on the order of this Court in Misc. Civil Application No.506 of 2023 wherein,

by relying upon the decision of ***Krishna Veni Nagam ..vs.. Harish Nagam*** reported in (2017) 4 SCC 150, wherein the Hon'ble Apex Court held that:

“14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of videoconferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country videoconferencing is now available. In any case, wherever such facility is available, it ought to be fully utilized and all the High Courts ought to issue appropriate administrative instructions to regulate the use of videoconferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of video conference, proceedings may be conducted on videoconferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by videoconferencing¹³.”

By referring this judgment and by considering the convenience of the wife, the application was allowed considering the fact of distance between Pune to Darwha is 600 km.

6. Per contra, the learned counsel for the non-applicant has placed reliance on the decision of Karnatka High Court in the case of ***Smt. Sushmitha B.L. @ Uma W/o Sri. Raghavendra B.R. ..vs.. Sri Raghavendra B.R. S/o Sri Ravindra Naik***, in ***Civil Petition No.370/2024*** wherein, the Karanata High court has observed that, constitutionally, a female has got equal rights as that of a male. As a matter of fact, women are the primary victims in most situations, but that does not mean that

men are not affected by the cruelty of women. Therefore, there is necessity for a gender neutral society. Such a society aims at preventing separation of duties according to sex or gender. It will focus on equal treatment of men and women both in domestic affairs and work places. Equality should be in its truest sense and not at the expenses of either gender. However, admirable our efforts to safeguarding women may be, we should not overlook the challenges encountered by men in our society and rejected the application.

7. After hearing both the sides and on perusal of the application and various documents filed on record, it reveals that, application is filed mainly on the ground that, the distance between Malegaon Jahangir wherein the applicant is residing and the Nagpur is 250 km. The another ground raised is that, she is completely depend upon the income of the elder brother and she has no source of income. Third ground raised is that, the Malegaon Jahangir where she is residing, is most convenient place to attend the proceeding as there is nobody in the house to escort her to attend the proceedings.

8. There is no dispute as to the fact that, the non-applicant has filed an application under Section 156(3) of the CPC before the learned Judicial Magistrate First Class, (Court No.2), Malegaon Jahangir, has

passed an order directed the Police to register the FIR against the present applicant and her family members. The allegations against the present applicant and her family members that the applicant and other family members are entered into the house of the non-applicant and attacked on them. So there is a life threat to not only to the applicant but his family members also. On the basis of said directions, the crime was registered against the applicant and her family members vide Crime No.459 of 2024.

9. Thus, the application is opposed mainly on the ground that, if the non-applicant has to attend the proceeding by traveling to Malegaon Jahangir there is a life threat and his apprehension is also substantiated by the allegations which is leveled in the FIR which is registered on the directions of the learned Judicial Magistrate First Class, Malegaon Jahangir. The offence is registered against the applicant and her family members under Sections 445, 453, 456, 457, 380 and 506(2) read with Section 34 of the IPC.

10. It is well settled and the cardinal principle for exercise of power under Section 24 of the C.P.C. is that, the ends of the justice should be demanded the transfer of the suit, appeal or other proceedings, in matrimonial matters, wherever Courts are called upon to consider the

appeal of transfer, the courts have to take into consideration the economic soundness of both the parties, the social strata spouses and their behavior pattern. Admittedly, the convenience of the wife is to be looked into while considering the transfer application at the same time, the facts of the each case are looked into.

11. As far as the inconvenience of the wife is concerned, the decision on which the applicant has relied upon wherein the decision of the Hon'ble Apex Court in the case of *Krishna Venu Nagam* (Supra), the Hon'ble Apex Court has dealt with the decision and observed that, in such a situation, wherever one or both parties make a request for use of video-conference procedure may be conducted on videoconferencing. The Hon'ble Apex Court further held that, in every district in the country videoconferencing is now available and the transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of videoconferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties.

12. In view of the observation of the Hon'ble Apex Court as well as considering the apprehension raised by the non-applicant, it would be in the interest of justice to ask the applicant- wife to attend the

proceedings of the Family Court, Nagpur by availing the videoconferencing facility therefore, the contention of the learned counsel for the applicant that matter be transferred to the Court of Civil Judge Senior Division, Washim is not sustainable and the application deserves to be rejected. In view of the above, I proceed to pass the following order :-

ORDER

- a) Application is **rejected**.
- b) Liberty is granted to the applicant to seek appropriate remedy for getting transport allowance or expenses from the non-applicant if she has attended the proceedings from Malegaon Jahangir to Nagpur. She is also at liberty to avail the videoconferencing facility.

The application is **disposed**.

(URMILA JOSHI-PHALKE, J.)

C.L.Dhakate