

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

CRIMINAL APPLICATION (APPLN) NO.75 OF 2021

Smt. Shital w/o Aditya Jibhkate,

Versus

State of Maharashtra, through P.S.O., Police Station Bajaj Nagar, Nagpur and others.

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

Court's or Judge's Order

Shri Karan Gajra, Adv. h/f Ms S.P. Sontakke, Adv. for applicant.

Shri S.D. Sirpurkar, A.P.P. for respondent no.1/State.

Shri A.N. Jaiswal, Advocate for respondent nos. 2 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 03 MARCH 2022

This is an application filed under Section 407 of the Criminal Procedure Code by the wife seeking transfer of Regular Criminal Case No.1951 of 2021 from the file of learned Judicial Magistrate First Class, Nagpur to the Court of learned Judicial Magistrate First Class, Akola.

2. Heard the learned Counsel for the respective parties.

3. The learned Counsel for the applicant submits that mainly, on three grounds, present application has been moved. The first ground is financial condition of the applicant as she is not earning.

4. The second ground is that her incapacity due to her medical health. It is submitted that she suffered third miscarriage in the month of March, 2021. Thereupon, the Doctor has advised her to take bed rest.

5. The third ground is that there are three matrimonial matters pending in the Akola Court including Domestic Violence proceedings, application for Maintenance and proceedings for Restitution of Conjugal Rights.

6. It is also submitted that there is a threat to her life. The learned Counsel for the applicant has placed reliance upon the judgment of the Single Bench of the Gujarat High Court in the case of Rajeshreeben Dharmendrabhai Patadia Vs. State of Gujarat & Ors. reported in **2001 SCC OnLine Guj 416**.

7. On the other hand, the learned Counsel for the respondent No.1 strongly opposed the application and submits that the role of the applicant in the Criminal Case No.1951 of 2021 is very limited and it is not necessary for her to attend the said matter on every dates. Whereas, considering the role of respondent Nos. 2 to 4, who are the accused persons in the criminal case, they required to attend proceedings on every dates and if the matter is transferred to Akola, any default in

attending the said criminal case would result in issuance of bailable or non bailable against the respondent No.2.

8. It is submitted that there are 22 witnesses in the said criminal case and all the witnesses are from Nagpur and therefore, their convenience is also relevant.

9. He further submits that the case at Nagpur is not a matrimonial proceedings like divorce petition or application for maintenance or proceedings under domestic violence, but it is a criminal case and therefore, the matrimonial and the criminal case cannot be considered on the same footing. He, therefore, submits that looking to the above referred factors, this Court may not consider the request of the applicant for transfer of its said criminal trial to Akola. In support of his submission, the learned Counsel for the respondent Nos.2 to 4 has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of Jyoti Mishra Vs. Dhananjaya Mishra reported in **(2013) 3 SCC (Cri.) 1107**.

10. To consider the rival contentions, I have perused the record and also I have gone through the judgment cited by both the parties.

11. The Hon'ble Supreme Court of India in the case of Jyoti Mishra (*supra*) has observed thus:

“5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case of a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.

6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

12. In the teeth of above said observations of the Hon'ble Supreme Court of India, I revert back to the facts of the present case.

13. There is no dispute that the case pending at Nagpur is a Criminal Case No.1951 of 2021. The crime was registered at Nagpur and there are as many as 22 witnesses, who are from Nagpur. Thus, convenience of the witnesses is also relevant.

14. The criminal case cannot be equated with the matrimonial proceedings as the criminal case is on

somewhat different footing. In a criminal case, the consequences of non-appearance of accused would be quite drastic and thus, the said consequences cannot be ignored while considering the request of transfer of criminal trial to Akola, for her convenience.

15. In that view of the matter, I am not inclined to allow the present application. Accordingly, the application is **rejected**.

[ANIL S. KILOR, J.]

R.S.Sahare