



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 311 OF 2021

Pooja Sanjay Gondage

.. Applicant

Versus

State of Maharashtra & Ors.

.. Respondents

.....

- Ms. Rekha Musale a/w Ms. Shama Mulla & Ms. Tejasweeta Bhosale
i/by The Laureate for Applicant
- Ms. Sangita E. Phad, APP for State

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 16, 2024

ORAL JUDGMENT:

1. Heard Ms. Musale, learned Advocate for Applicant and Ms. Phad, learned APP for State. None appears for Respondent Nos.2 to 6.
2. By filing the present Application, Applicant - wife seeks transfer of her Criminal Case i.e. RCC No. 203/2018 pending before the JMFC, Majalgaon, District Beed to JMFC, Thane.
3. Respondent Nos. 2 to 6 have been duly served as noted by the Registry as far back as on 03.03.2022. It is an irony that the Application has remained pending since then. From the series of orders passed by this Court, it is gathered that Respondent Nos. 2 to 6 have remained absent on almost all dates. Matter was listed before me for the first time on 09.10.2024. It was posted for hearing today. It cannot be protracted any further in the facts of the present case.

4. At the outset, Ms. Musale would submit that Applicant is presently residing in Rama Mata Chawl, Ambika Nagar-2, Wagale Estate, Thane (W) along with her mother and brothers. She would submit that out of the wedlock between Applicant and Respondent No. 2, one son has been born in the year 2016 who would now be about 8 & 1/2 years old. She would persuade me to read the grounds stated in the Application which are serious in so far as Applicant and her family members are concerned. The contents of paragraph Nos. 3(III) and (IV) are such that they cannot be disbelieved and it shakes the conscience of this Court. Apart from providing support, medical care, schooling, education etc. to the son who is residing with Applicant for whom she is the primary caregiver, it is seen that there are severe financial constraints faced by Applicant as also her family. It is averred that mother of the Applicant is a debris collector and both her brothers are young and hence there is no fixed family income.

5. Ms. Musale would submit that in the proceedings seeking maintenance, Court has issued notice. She would also inform the Court that Applicant has lodged FIR dated 25.05.2018 with Wagle Police Station, Thane (W) as averred in paragraph No. 3(X) of the Application for the offences punishable under Sections 498-A, 323, 504, 406 r/w 34 of IPC. In view of the above grounds and proximity of distance between the two destinations and the hardship that would

be encountered by Applicant, she would urge the Court to allow the present Application.

6. Ms. Phad, learned APP appearing for State would submit that considering the Application and the grounds stated therein, this Court be pleased to pass appropriate orders in accordance with the provisions of Section 407 of Cr. P.C. in accordance with law.

7. I have perused the record of the case and the pleadings in the present Application. Before I advert to the same, Ms. Musale would draw my attention to one more fact and seeks indulgence of the Court to pass appropriate directions and orders considering the power of Court to pass order for transfer of Criminal Cases as contained in Chapter XXXI of Cr.P.C. and more particularly under Section 407 of Cr.P.C. She would submit that Applicant has filed D.V. Act proceedings bearing D.V. Application No. 398/2018 before JMFC, Court No. 1, Thane. Averment to that effect is made in paragraph No. 3(XII) at page No. 9 of the Application. She would submit that said Application has been dismissed for default on 08.09.2023. She would submit that Applicant has informed that due to the financial constraints, it would be virtually impossible for her to revive and restore the said Application which has been stood dismissed for non-prosecution and seek setting aside of the order dated 08.09.2023. She would inform the Court that despite this, Applicant has informed her that she would

see what she can do to restore the said Application. She is mentioning this fact before this Court only because of two reasons. One is that for the past several years since Applicant's separation from Respondent No. 2, she has not received a single farthing towards her maintenance or for maintenance of her son who is residing with her. Second reason is more important because it is linked with the subject matter of the present Application. She would candidly submit that when the D.V. Application No. 398/2018 was pending in the Court of JMFC, Thane, she filed the present Application seeking transfer of RCC No. 203/2018 from JMFC, Magalgaon, Dist. Beed to JMFC, Thane in order to avoid multiplicity of proceedings, two different trials and conflict of decisions in the interest of justice. However by order dated 08.09.2023, D.V. Application No. 398/2018 has been dismissed for want of prosecution by Applicant as she could not attend the proceedings. Reasons for the same have been explained by her and she would therefore urge the Court to consider its power under Section 407 of Cr.P.C. for reviving and restoring the said dismissed D.V. Application No. 398/2018. She would submit that if this Court considers passing a direction to restore the said Application in the present Application it would go long way in ameliorating and redressing the difficulty and hardship faced by the poor Applicant as it would aid and assist her. She would submit that Applicant is in a

helpless position and she would not be in a position to afford to appoint Advocate. She would also inform the Court that she has advised Applicant to approach District Legal Services Authority, Thane but the difficulty that is faced by Applicant is that she is not educated beyond her schooling (eighth standard) and it would lead to further delay. She would submit that in order to give solace to Applicant, this Court be pleased to exercise its powers as enumerated under Section 407 (1)(c) which states that an order under this Section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, can be passed.

8. I have considered the above submissions made by Ms. Musale. Section 407 of Cr.P.C. states power of High Court to transfer cases and appeals. For convenience Section 407 is reproduced hereunder:-

"407. Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections [177](#) to [185](#) (both

inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under Sub-Section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under Sub-Section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose; Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under Sub-Section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the

applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under Sub-Section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

9. Considering the facts in the present case which have been delineated herein above and the grievance made by Applicant through her Advocate, this is a fit case in my opinion to be considered on the oral Application made by the learned Advocate for Applicant seeking restoration of the dismissed D.V. Application No. 398/2018 under the Domestic Violence Act filed by Applicant before JMFC, Thane. This is in view of the fact that the averments made in the Application and the annexures appended to the Application clearly justify intervention of this Court for reviving and restoring the dismissed D.V. Application though the said Application may not be the subject matter of the present Application filed before me which seeks transfer of RCC No. 203/2018 filed by Applicant before the JMFC, Magalgaon, Dist. Beed which is clearly interdependent with the said D.V. Application No. 398/2018 which has been dismissed for default and non-prosecution. Issues in both the proceedings will undoubtedly be the same. In that view of the matter, there can be no hesitation whatsoever in view of

the extant powers vested in this Court under Section 407 (1)(c) read with Section 407 (2) of Cr.P.C. to consider the request made by Applicant through her Advocate for restoration of the D.V. Application No. 398/2018. It would be a travesty of justice if Applicant is required to file Application for seeking restoration of her D.V. Application considering her present status and undoubtedly it would lead to further delay. More than one year has already passed after dismissal of the D.V. Application and the Applicant has been helpless due to financial constraints to seek restoration of the said Application. It is only through the medium of the present Application which was filed and pending on the record of this Court prior in point of time that the Applicant has given instructions to her Advocate to consider restoration of the said D.V. Application, otherwise this Court would not have been aware of the same. Be that as it may, problems, hardship and difficulties of Applicant cannot be multiplied further by requiring her to file Application for restoration of the said proceedings. In this view of the matter, I am of the opinion that under the extant power exercised by this Court under Section 407 of Cr.P.C. order dated 08.09.2023 passed by JMFC, Thane dismissing D.V. Application No. 398/2018 for non-prosecution is required to be quashed and set aside. Accordingly, I direct that the order dated 08.09.2023 passed in D.V.

Application No. 398/2018 is quashed and set aside. D.V. Application No. 398/2018 is restored to the file of learned JMFC, Thane.

10. In view of my above observations and findings and more specifically in view of the imprimatur of the Supreme Court in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Shah¹**, present transfer Application is also required to be allowed. Apart from proximity of distance between the two destinations, hardship of the Applicant is clearly evident which cannot be disregarded or even disbelieved. In that view of the matter, present Application is allowed in terms of prayer clause (a) which reads thus:-

"(a) By the appropriate order or direction of this Hon'ble Court, Criminal Case, RCC No. 203 of 2018 requires to be transferred from the file of the learned Judicial Magistrate First Class No. 2, Majalgaon, District Beed to the file of the learned Judicial Magistrate First Class, Thane, District Thane."

11. Learned JMFC, Thane is directed by this Court to club RCC No. 203/2018 along with the restored D.V. Application No. 398/2018 and decide the same strictly in accordance with law in order to avoid multiplicity of proceedings, two different trials and conflict of decisions as held by the Supreme Court in the case of *N.C.V. Aishwarya* (supra).

12. There is one more request which in the facts of the present case is required to be considered by this Court which in my opinion is

1 AIR 2022 SC 4318

appropriate. It is stated that for the past several years since her separation from Respondent No. 2, Applicant has not received a single farthing towards her maintenance or for the maintenance of her son who is residing with her. The son of the Applicant who is residing with her is now 8 & 1/2 years old and his educational needs are also required to be looked into. Hence, I direct learned JMFC, Thane to hear the Interim Application seeking interim maintenance which has been filed by Applicant in her D.V. Application No. 398/2018 as expeditiously as possible and in any event within a period of six weeks from today so as to enable the Applicant to seek interim maintenance in view of the long pendency of the D.V. Application.

13. At this juncture, Ms. Phad, learned APP reminds the Court that in this case if the Court considers it fit, Advocate from the legal aid should be appointed to represent the Applicant before the JMFC Court in Thane which would go long distance in assisting the Applicant. I fully agree with the submissions made by the learned APP. In view thereof, I direct District Legal Services Authority, Thane to appoint a responsible Advocate to represent and espouse the cause of the Applicant in RCC No. 203/2018 which now stands transferred to JMFC, Thane and the restored D.V. Application no. 398/2018 along with the pending Interim Application therein. Advocate shall be appointed from the Thane Bar itself so that it will be convenient for

the Applicant to approach the said Advocate. Such appointment of Advocate shall be done within a period one week from today on the basis of a server copy of this order.

14. With the above directions, present Criminal Application stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date: 2024.10.17
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