

(2012) 08 BOM CK 0113

In the Bombay High Court

Case No : Misc. Civil Application No. 24 of 2012

Sau. Mangal Gaikwad

APPELLANT

Vs

Ambadas Gaikwad and Ravi Gaikwad

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13(1)(ia)(ib)
Penal Code, 1860 (IPC) — Section 323, 324, 452, 498A, 504

Citation : (2013) 1 BomCR 128 : (2012) 6 MhLj 661

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Milind M. Patil Beedkar, for the Appellant; N.B. Narwade, Advocate for Respondent No. 1. Respondent No. 2 Served, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith Heard finally with consent of the parties. This application is filed seeking transfer of Hindu Marriage Petition No. 56 of 2012 pending on the file of the Court of 5th Joint Civil Judge, Senior Division, Ahmednagar to the Court of the Civil Judge, Senior Division, Beed.

2. The background facts as disclosed in this application for filing the same, are as under.

? The marriage of the applicant and respondent No. 1 was solemnized at Beed on 22nd January, 2006. A son by name "Om" is begotten out of their wedlock, who is five years old and staying with the applicant at Beed.

? It is the case of the applicant that, after marriage, she went to her husband's house at Avhane (Kh.) District Ahmednagar and was treated well by respondent No. 1 and his family members initially for one month and thereafter started illtreatment to her. It is further case of the applicant that, after shifting to Ahmednagar, the respondent-husband and his family members demanded Rs. 2,00,000/- for purchasing flat and furniture. She was being insulted and illtreated by the husband and his relatives. It is further case of the applicant that,

by consuming liquor, the respondent-husband used to beat her. After delivery of a child, the respondent-husband demanded Rs. 2,00,000/- from father of the applicant and in case, such demand is not fulfilled, the respondent-husband threatened the applicant that, the applicant has to go back to her parent's house. It is the case of the applicant that, on non fulfillment of the demand of the respondent-husband, the applicant was driven out from matrimonial house and therefore, she went to reside with her parents. It is further case of the applicant that, on 25th June, 2011 the husband alongwith his relatives came to her maternal house at Beed and beaten her. Therefore, the applicant filed complaint being Regular Criminal Case No. 502 of 2011 for the offence punishable under sections 498A, 452, 324, 323, 504, 506(II) of the Indian Penal Code against the husband and his relatives in the Court of the Chief Judicial Magistrate, Beed and same is pending. The applicant has filed an application for granting monthly maintenance u/s 125 of the Criminal Procedure against her husband which is also pending in the Court of the Chief Judicial Magistrate, Beed. The applicant has also filed proceedings u/s 12 of the Women's Domestic Violence Protection Act, 2005 against the respondent-husband and his relatives in the Court of the Judicial Magistrate, First Class, Beed and same is pending.

3. It is the case of the applicant that, the respondent-husband only with intention to harass the applicant, has filed Hindu Marriage Petition No. 56 of 2012 in the Court of the Civil Judge, Senior Division, Ahmednagar u/s 13(1) (ia)(ib) of the Hindu Marriage Act, 1955 for divorce. It is further case of the applicant that, said divorce petition is filed by the respondent-husband on false and fabricated grounds including the very wild and ugly allegations of the illicit relations between applicant and present respondent No. 2. It is case of the applicant that, such allegations are nothing but an attempt to pressurize the applicant who has filed the criminal proceedings against the respondent-husband and his relatives.

? The summons from the Court of 5th Joint Civil Judge, Senior Division, Ahmednagar is received by the applicant at Beed. This application is filed for transfer of the proceedings from Ahmednagar to Beed.

4. The Counsel for the applicant submits that, the applicant has no independent source of income, she is dependent and living under the shelter and mercy of her father at Beed. The learned Counsel for the applicant submits that, recently, she is appointed as Peon in the office of the Taluka Inspector of Land Records, Paranda District Osmanabad. It is submitted that, she has to look after her son who is school going small child. Her father being Government servant, is unable to accompany the applicant for attending the dates in the Court at Ahmednagar, which is more than 120 Kms., from Beed. She has also apprehension and threat to her life and her son at the hands of the respondent-husband and his relatives at Ahmednagar. It is submitted that, the marriage was performed at Beed and since the applicant was driven out by respondent No. 1, she is forced to stay at Beed. Therefore, considering the aforesaid facts and circumstances and in the interest of justice, it is expedient to transfer Hindu Marriage Petition No. 56 of

2012 from the Court of 5th Joint Civil Judge, Senior Division, Ahmednagar to the Court of the Civil Judge, Senior Division, Beed. The learned Counsel appearing for the applicant invited my attention to the grounds taken in the application and submitted that, this application may be allowed.

? In support of the contention that, the convenience of the wife should be looked into, in a proceedings filed by the husband, the learned Counsel for the applicant pressed into service reported judgment of the Supreme Court in the case of Sumita Singh Vs. Kumar Sanjay and Another, and also another reported judgment of this Court in the case of Special Land Acquisition Officer (2) Vs. Aventis Pharma Ltd. and Others, .

5. On the other hand, the learned Counsel appearing for the respondent-husband invited my attention to the contentions raised in the affidavit in reply and submitted that, the allegations made by the applicant in the application are denied in toto. It is submitted that, the facts in the case of Sumita Singh (supra) can be distinguished since distance in that case was 1100 Kms., The learned Counsel further submits that, baseless allegations are made in the application. It is submitted that, at no point of time, the respondent-husband has illtreated or demanded any amount from the father of the applicant for purchasing flat or furniture. It is further submitted that, at no point of time, the respondent-husband has insulted the applicant or asked her father or other relatives to pay any amount. She was not driven out from the matrimonial house. It is submitted that, the applicant has instituted various proceedings at Beed just to harass the respondent, since the respondent has filed Hindu Marriage Petition No. 56 of 2012. It is submitted that, the allegation that if the applicant travels to Ahmednagar, there is threat to her life, is devoid of any merits. On the contrary, father of the applicant and relatives have assaulted the respondent twice. He has filed complaint in the Police Station, Paithan and Shevgaon.

? It is submitted that, the applicant was insisting to leave village Avahane and therefore, the respondent shifted to Ahmednagar, however, at Ahmednagar also, the applicant did not behave properly with the respondent-husband. It is submitted that, the respondent-husband started residing at Ahmednagar, however, in the month of June, the parents of the applicant came to the house of respondent and left the house by taking all golden ornaments and cash amount and also the applicant. It is submitted that, on many occasions, the respondent requested the parents of the applicant to send the applicant to the matrimonial house, however, they told the respondent that, after delivery of child, they will send the applicant back to the husband, but they did not do so. It is submitted that, all the relatives of the respondent tried to made sincere efforts to bring back the applicant to the house of the respondent-husband, however, she did not turn up. It is submitted that, the respondent was beaten by the relatives of the applicant. The learned Counsel also invited my attention to other contentions raised in the affidavit in reply and submitted that, the respondent-husband is ready to take the custody of minor son and to maintain him. It is submitted that,

at present, the respondent is serving at Takali Dhokeshwar, 36 Kms. away from Ahmednagar, and therefore, it is not the case that, the respondent is staying at Ahmednagar. Therefore, relying upon the averments in the affidavit in reply, annexures thereto and oral submissions, the learned Counsel for the respondent-husband submits that, the Court at Ahmednagar has territorial jurisdiction to deal with the pending proceedings, therefore, this Court may not interfere.

6. I have given anxious consideration to the rival submissions. Upon careful perusal of the application, grounds which are agitated by the applicant are that, it is inconvenient for the applicant to travel to Ahmednagar, since the distance is 120 Kms., from Beed to Ahmednagar; secondly, there is a minor child of five years and the applicant has to look after him and his interest; thirdly, at least three proceedings instituted by the applicant are pending at Beed where the husband is attending those proceedings; fourthly, there is a threat of eminent danger if the applicant travels to Ahmednagar and attend the proceedings. Therefore, in my opinion, though the allegations are denied by the respondent-husband, however, in stead of entering into the allegations and denial, in a proceedings initiated by the husband, convenience of the wife should be looked into, as held by the Supreme Court in the case of Sumita Singh (supra), and also another reason that, there is five years minor child and the applicant has to look after that child. These are two main grounds, apart from other grounds raised by the applicant, which would tilt the balance of convenience in favour of the applicant.

7. Though the applicant is serving as Peon at present in the office of Taluka Inspector of Land Records at Paranda District Osmanabad, however, the fact remains that, the applicant has to attend her five years minor child at Beed, therefore, it may be difficult and inconvenient for the applicant to attend the proceedings being Hindu Marriage Petition No. 56 of 2012. It is not in dispute that, the respondent-husband is attending the pending proceedings before the competent Court at Beed, instituted by the wife. Therefore, already the respondent-husband is attending the proceedings at Beed. The contention of the respondent-husband that, there is threat to his life and he was beaten by the father and relatives of the applicant is concerned, if such incident happens in future, he will be at liberty to file appropriate application before the concerned Court. The incidence of assault or threat to the respondent-husband which is stated in the affidavit in reply, is not at Beed. It is the case of the respondent-husband that, he is assaulted or threatened by the relatives of the applicant at Paithan and Shevgaon. Therefore, in my opinion, for the reasons aforesaid, Misc. Civil Application deserves to be allowed, same is allowed.

8. Hindu Marriage Petition No. 56 of 2012 pending before Court of the 5th Joint Civil Judge, Senior Division, Ahmednagar shall stand transferred to the Court of the Civil Judge, Senior Division, Beed. The concerned Court is directed to forward entire proceedings in respect of Hindu Marriage Petition No. 56 of 2012 to the Court of the Civil Judge, Senior Division, Beed, within one week from receipt of

copy of this order. The applicant or her relatives will produce the copy of this order to the concerned Court at Ahmednagar. Rule made absolute on above terms. Misc. Civil Application stands disposed of.