

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.64 OF 2019

Mr. Santosh Machindra Mulik ... Applicant  
Versus  
Mrs. Mohini Mithu Choudhari ... Respondent

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Mr. Abhijit Sarwate a/w Mr. Ajinkya Udane for the Applicant.  
Mr. Suhas B. Rohile for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 15 NOVEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Misc. Civil Application seeks transfer of a criminal proceeding filed under Section 12 of Domestic Violence Act, 2005 (“Act”) (Criminal M.A. No.4832 of 2018) and pending before the Court of Judicial Magistrate, First Class, Pune to the Family Court at Pune to be tried along with a pending divorce petition between the parties (P.A. No.1403 of 2017). It is submitted that the Criminal Misc. Application was filed by the Respondent-wife after the divorce proceeding was served on her and after she filed a written statement in the proceeding. It is submitted that in the interest of justice, particularly, having regard to Section 26 of the Act, the Criminal Misc. Application may be transferred to the Family Court at Pune,

where both proceedings can be conveniently tried by that court.

3 Learned Counsel for the Respondent opposes the application. Learned Counsel submits that the Family Court has no authority or jurisdiction to consider a domestic violence proceeding filed under Section 12 of the Act. Learned Counsel for the Applicant relies on two judgments of our courts, namely, **Sandip Mrinmoy Chakraboarty Vs. Reshita Sandip Chakrabarty**<sup>1</sup> and **Minoti Subhash Anand Vs. Subhash Manoharlal Anand**<sup>2</sup> in support of his application for transfer. In these judgments, learned Single Judges of our court had allowed transfer of domestic violence proceedings from the files of Judicial Magistrates to Family Courts, relying on Section 26 of the Act. Section 26 provides for relief available under Sections 18, 19, 20, 21 and 22 of that Act being capable of being sought in pending legal proceedings before family courts affecting the aggrieved person and the respondent, whether such proceedings were initiated before or after the commencement of the Act. In response, learned Counsel for the Respondent relies on a Division Bench judgment of Chhattisgarh High Court in case of **Smt. Neetu Singh Vs. Sunil Singh**<sup>3</sup>. Relying on this judgment, it is submitted that the option to proceed before a family court in a pending matrimonial proceeding under Section 26 of the Act is available to the aggrieved party, who is the respondent in the present case. It is submitted that if the Respondent does not choose to avail of this option, it cannot be thrust on her.

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1 2018 SSC OnLine Bom 2709

2 Misc.C.A. No.255 of 2015 decided on 10 Dec. 2015

3 AIR 2008 Chhattisgarh 1

4 The question in this Misc. Civil Application, which seeks transfer of a proceeding, is not about who has the option to file such proceeding under the Act or to have the same transferred to the Family Court. The question is, whether it is in the interest of justice to have the two proceedings heard together and if the Family Court is the proper court to hear the proceedings together, where it has jurisdiction to consider the reliefs prayed for in the domestic violence proceeding filed before the criminal court. If the two matters have to be heard together, and it is certainly in the interest of justice that they be so heard, they can come only before the Family Court. So far as jurisdiction of that court is concerned, having regard to Section 26 of the Act and the judgments of our courts ruling in favour of such jurisdiction, it cannot possibly be urged that the Family Court lacks such jurisdiction.

5 Learned Counsel for the Respondent further submits that transfer of the criminal proceeding curtails the right of the Respondent-wife to file an appeal, which she ordinarily would have had if the proceeding were to be decided by the criminal court. We are concerned in the present case essentially with the justice of the case in having the two matters heard together. On the one hand, we have a situation where two different courts would be required effectively to consider the same set of circumstances and could have arrived at two different conclusions or, even possibly, conflicting conclusions, and on the other hand, if this situation were to be avoided, and it appears to be imperative that it be avoided, one

particular stage of challenge would be missed. In any event, since from the domestic violence proceeding that may be heard along with the matrimonial proceeding before the Family Court, an appeal would lie to this court, and in that sense, no party can be said to be losing his/her right of appeal, what is lost is a further right of revision. That, however, is no ground to deny transfer of proceedings on the basis of the principle of justice noted above.

6 The Misc. Civil Application is, accordingly, allowed in terms of payer clause -(a). At the request of the parties, the Family Court at Pune is requested to dispose of the proceedings expeditiously.

**(S.C. GUPTE, J.)**