

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION NO. 4878 OF 2021

C/W

CRIMINAL PETITION NO.8940 OF 2021

In CrI.P.No.4878/2021

BETWEEN:

1. Sri Rahamathulla Khan,
S/o Late Fayazulla Khan,
Aged about 39 years,
2. Smt. Rehana Banu,
W/o Late Fayazulla Khan,
Aged about 61 years,
3. Fathima Shabreen,
D/o Late Fayazulla Khan,
Aged about 28 years,
4. Azmathulia Khan,
S/o Late Fayazulla Khan,
Aged about 37 years,

All are resident of
Hirekolale, 1st Cross,
Besides Khadariya,
Sunni Majeed,
Uppalli, Chikmagalur-577101.

...Petitioners

(By Sri N.R.Ravikumar, Advocate)

AND:

Smt. Umme Salma,
W/o Rahamathulla Khan,
Aged about 28 years,
R/at No.878, 11th Cross,
1st Main Road, Gangodanahalli,
Nayandahalli Post,
Bengaluru-560039.

...Respondent

(By Sri M.D.Maskoor Hashmi, Advocate)

This Criminal petition is filed under Section 407 Cr.P.C. praying to transfer the case C.Misc.No.55/2020 pending on the file of the IV M.M.T.C., Traffic Court, Bengaluru to the Principal Judge, Family Court at Chikmagalur.

In Crl.P.No.8940/2021

BETWEEN:

1. Mrs. Ummesalma,
W/o Mr.Rahamathulla Khan,
Aged about 29 years,
2. Master Fasnaar Khan,
S/o Mr. Rahamathulla Khan,
Aged about 5 years 6 months,
Since Minor,
Rep. by his Natural Guardian
Mother i.e., Petitioner No.1

Both Residing at
30/1A, 8th Cross,
Gangodanahalli,
Bengaluru South,
Nayandahalli,
Bengaluru-560039.

...Petitioners

(By Sri M.D.Maskoor Hashmi, Advocate)

AND:

Mr. Rahamathulla Khan,
S/o Mr. Faizulla Khan,
Aged about 40 years,
Computer Engineer,
R/o Hirekolale Road,
1st Cross, Beside Khadaria
Sunni Masjid, Uppalli,
Chikmagalur-577101.

...Respondent

(By Sri N.R.Ravikumar, Advocate)

This Criminal petition is filed under Section 407 Cr.P.C. praying to transfer the case bearing C.Misc.No.47/2020 on the file of the learned Principal Family Judge, Family Court at Chikmagalur filed by the petitioners under Section 125 of Cr.P.C. against the respondent vide Annexure-A to the learned Principal Family Judge, Family Court, Bengaluru and etc.

These Criminal petitions coming on for *orders* this day, the Court made the following:

ORDER

These two petitions are disposed of by a common order.

2. Heard Sri N.R. Ravi Kumar and Sri Maskoor Hashmi, learned counsel for the parties.

3. Criminal Petition 4878/2021 is filed seeking transfer of proceeding in C.Misc.55/2020 pending on the file of IV MMTC, Traffic Court, Bengaluru to the Court of Judicial Magistrate First

Class, Chikmagalur. Criminal Petition 8940/2021 is filed seeking transfer of Crl. Misc. 47/2020 from Family Court, Chikmagalur to Family Court, Bengaluru. C. Misc. 55/2020 is a proceeding under section 12 of the Protection of Women from Domestic Violence Act instituted by the wife against her husband, mother-in-law, sister-in-law and brother-in-law. Crl. Misc. 47/2020 is instituted by the wife along with her son against her husband claiming maintenance under section 125 Cr.P.C.

4. It is submitted by Sri N.R.Ravi Kumar, learned counsel for the petitioners in Criminal Petition 4878/2021 that the second petitioner Smt. Rehana Banu is aged about 61 years. She is suffering from diabetes and other age related diseases. Petitioner No.3-Smt. Fathima Shabreen and petitioner No.4-Azmathulla Khan are unnecessarily dragged into litigation. They are all

residents of Chikmagalur. All of them cannot come over to Bengaluru on every date of hearing in connection with the case. In fact the respondent-wife is attending the court at Chikmagalur in connection with a criminal case for the offence under section 498A IPC and therefore if the proceeding in C. Misc. 55/2020 is transferred from Bengaluru to Chikmagalur, she does not face any hardship.

5. On the other hand, Sri Maskoor Hashmi, learned counsel for the wife, submits that the proceeding under section 125 Cr.P.C was instituted at Chikmagalur at the time when she was living there. When she found cohabitation was not possible, she had to relocate to Bengaluru along with her minor son. She has no support at present. She has instituted a suit O.S.209/2021 against her husband seeking restitution of conjugal rights and in the said suit, the husband

has entered appearance and filed his written statement. When the husband can come over to Bengaluru in connection with the suit, there is no impediment for them to come to Bengaluru in connection with the proceedings under Protection of Women from Domestic Violence Act. As she is living in Bengaluru, the proceeding under section 125 Cr.P.C can also be transferred to Bengaluru court. A lonely woman finds it difficult to undertake travel to Chikmagalur along with the child. On the other hand, the husband or his brother or sister, may not find it difficult to attend the court at Bengaluru. He also submits that it is not necessary that all of them should attend the court on all dates and so far none of them has appeared before the court personally. Counsel is appearing on their behalf and therefore it is not necessary to transfer the proceeding under the Protection of Women from Domestic Violence Act from Bengaluru to Chikmagalur, but the petition

under section 125 Cr.P.C may be transferred from Chikmagalur to Bengaluru.

6. Sri Ravi Kumar submits that the husband has also instituted a suit for divorce in O.S.19/2022 before the Chikmagalur court.

7. After hearing, it may be stated that in the proceedings under the provisions of the Protection of Women from Domestic Violence Act, there are four respondents including the husband as the first respondent. Just because four respondents are there in the proceedings under Domestic Violence Act, it is not necessary that all of them should attend the court at Bengaluru on every date of hearing. Anyway they are represented by a counsel and they may appear before the court whenever their presence is necessary or it is enough if their counsel makes representation. On the other hand, so far as the wife is concerned, she has a small child to be looked after. It

appears that she has taken shelter in the house of her father. The plight of a lonely woman undertaking travel from Bengaluru to Chikmagalur is quite different from husband or any other member of his family coming to Bengaluru from Chikmagalur. So far as the mother of the husband is concerned, she need not come to Bengaluru and she may appear only if her presence is absolutely necessary. Moreover in the petition filed by the wife for transfer of Crl.Misc.47/2020, she has stated that she has already instituted a suit O.S.209/2021 at Family Court, Bengaluru against her husband seeking restitution of conjugal rights and the husband has entered appearance and filed written statement. This being the position, the husband may not find it difficult to attend the courts at Bengaluru in connection with other cases. He might have instituted a suit at Chikmagalur for divorce, but it is a different aspect altogether. Likewise, the wife may have to

attend the court at Chikmagalur in connection with criminal case in relation to offence under section 498A IPC, but in the said case she is just a witness and her presence on all the dates of hearing is not necessary. Taking into all these aspects into consideration, it is expedient to transfer Crl. Misc.47/2020 which is now pending on the file of Principal Family Judge, Chikmagalur to the Family Court at Bengaluru. Transfer of C.Misc.55/2020 from the Court of IV MMTC, Traffic Court, Bengaluru to the Court of Judicial Magistrate First Class, Chikmagalur, does not appear to be expedient. In this view, the following :

ORDER

- (i) Criminal Petition 4878/2021 is dismissed.
- (ii) Criminal Petition 8940/2021 is allowed. Crl. Misc. 47/2020 pending

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on the file of Family Court, Chikmagalur, is transferred to the court of Family Court, Bengaluru.

- (iii) The records in Cri. Misc. 47/200 shall be transmitted to the Family Court, Bengaluru.

**Sd/-
JUDGE**

ckl/-