

(2021) 02 GUJ CK 0063

Gujarat High Court

Case No: R/Misc. Civil Application No. 1050 Of 2019

Vaibhavi Pinkesh Solanki

APPELLANT

Vs

Pinkesh Vijaykumar Solanki

RESPONDENT

Date of Decision: Feb. 12, 2021

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 24
- Indian Penal Code, 1860 - Section 114, 323, 398A, 504, 506(2)
- Dowry Prohibition Act, 1961 - Section 3, 4
- Code Of Criminal Procedure, 1973 - Section 126

Hon'ble Judges: Dr. Ashokkumar C. Joshi, J

Bench: Single Bench

Advocate: Muhammadyusuf M Kharadi, Gaurav J Dave, Khushbu P Vyas

Final Decision: Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Heard learned Advocate Mr. Muhammadyusuf M. Kharadi for the Applicant - Wife and learned Advocate Ms. Khushbu P. Vyas for the

Opponent â€“ Husband through video conference.

2. At the request made by the learned Advocates for both the sides, the matter is taken up for final hearing today.

3. The Applicant â€“ Wife (Original Opponent) has filed this Miscellaneous Civil Application under Section 24 of the Code of Civil Procedure, 1908

for transferring the Family Suit No. 823 of 2019 pending with the Family Court at Vadodara to the Family Court at Surat on the grounds mentioned in the Application.

4. The facts in nutshell are that the Applicant is a legally wedded wife of the present opponent. The marriage between the parties took place on 25.5.2019. It is stated in the memo of application that since the inception of marriage, the applicant was subjected to physical and mental atrocity at the hands of the opponent and her family members for which the Applicant has lodged FIR with Mahila Police Station, Surat City for the offences punishable under Sections 398A, 323, 504, 114 and 506(2) of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

The Applicant has also initiated the proceedings by invoking the provisions of Domestic Violence Act 2005 on 1.1.2019 being Criminal Misc.

Application No. 1379 of 2019. The Applicant has also filed an application being Criminal Misc. Application by invoking the provisions of Section 125 of the Code of Criminal Procedure, 1860.

5. Learned Advocate Mr. M.M.Kharadi for the Applicant " Wife has vehemently and fervently argued that in the present case the Applicant " Wife is facing hardships to attend the court at Vadodara from Surat and therefore the present Application is required to be transferred from Vadodara to Surat.

6. Learned Advocate Mr. Kharadi has also drawn the attention of this court that the Opponent " Husband (Original Applicant) is working as Senior Engineer in GNFC and therefore also the Opponent is well to do in financial aspect and therefore greater hardship is caused to the Applicant " Wife and therefore also the matter may be transferred from Vadodara to Surat. It is further submitted that distance between Vadodara and Surat is more than 170 kmts.

7. In support of his submission, learned Advocate for the Applicant has placed reliance on the following judgments:

- (i) 2018 (13) SCC 650 " G.R.Bhuvaneshwari v. G.S.Puttaraju
- (ii) 2016 (14) SCC 356 " Vaishali Shridhar Jagtap v. Shridhar Vishwanath Jagtap
- (iii) 2016 (3) SCC 69 " Tejalben v. Mihirbhai Bharatbhai Kothari
- (iv) 2015 AJEL-HC 233147 " Shraddha w/o Kumar Kamalbabu Bhatt v. Kumar Kamalbabu Bhatt
- (v) 2013 (3) GLR 2759 " Sonal Shreyansh Vasa v. Shreyansh Hitendbhai Vasa

8. Per contra, learned Advocate Ms. Khushbu P. Vyas for the Respondent " Husband has heavily opposed this Application and stated that the

Applicant is working as Fashion Designer and she has a four wheeler car and therefore the Applicant is well to do and she can very well attend the

court at Vadodara. Further, learned Advocate Ms. Vyas has placed reliance upon the medical papers and submitted that the Opponent " Husband is

suffering from kidney stone and she has also placed reliance on different whats app messages and has placed reliance upon the judgment of the

Hon'ble Supreme Court, passed in Transfer Petition (Civil) Nos. 191 and 146 of 2005 in case of Anindita Das v. Srijit Das decided on 29.8.2005 and

submitted that the Hon'ble Supreme Court has dismissed the Transfer Petition filed by the Appellant Wife on the ground of distance, therefore, the

distance is not material. Further, the same observations was made by this court in Miscellaneous Civil Application No. 21 of 2019 in case of Rutva

Jitendra Patel v. Jay Dilipkumar Patel decided on 14.10.2019, wherein distance between Ahmedabad to Vadodara is discussed as 100 kmts and this

court has referred to Anindita Das's case (supra) and disallowed the said Application filed by the Applicant " wife. However, the Opponent "

Husband therein was directed to pay of Rs.1000/- for to and fro expenses, including ancillary expense to the Applicant wife therein as and when

attends the proceedings at Vadodara in that case.

9. Having heard the arguments advanced by the learned Advocates for both the sides, prima facie it appears that the Applicant " Wife is working as

Fashion Designer and having four wheeler Motor Car (LMV) for which copy of RC Book is produced by the learned Advocate for the Opponent "

Husband which is having Registration No. GJ 05 RC 9383 and the Registration is dated 3.11.2017. Therefore, prima facie, it appears that there is

some substance in the arguments advanced by learned Advocate for the Opponent - Husband Further, it is an undisputed fact that there is no child out

of the wedlock. Further, learned Advocate for the Opponent " Husband categorically buttress her arguments that the reliance placed on citations by

the learned Advocate for the Applicant " Wife are not applicable in the facts and circumstances of the present case.

10. In the judgment of the Hon'ble Supreme Court in case of G.R.Bhuvneshwari v. G.S.Puttaraju (supra), the Hon'ble Supreme Court has set aside the order of the High Court and the matter was transferred from the Court of Civil Judge Senior Division, Maddur to the Family Court at Mysore. The Hon'ble Supreme Court has observed in the judgment that the Appellant wife is employed as a teacher and is a single mother responsible for looking after her 9 year old son who is studying at a school at Mysore.

10.1 However, the facts in the case on hand are different. As such there is no child out of the wedlock. Further, in the present case as discussed earlier, the Applicant wife is having four wheeler car in her own name and therefore the facts and circumstances are different and this case is not helpful to the applicant.

11. In the judgment of the Hon'ble Supreme Court in case of Vaishali Shridhar Jagtap (supra), the Hon'ble Supreme Court has set aside the impugned order and the matter filed by the Opponent Husband in Family Court Bandra, Bombay is ordered to be transferred to the court of competent jurisdiction at Barshi. The Hon'be Supreme Court has held in the said judgment that the distance between Mumbai and Barshi is around 400 kilometers and four cases between the parties are pending at Barshi and held that apparently, the comparative hardship is more to the appellant wife, which aspect of the matter, unfortunately is missed to take note of by the High Court.

11.1 However, the facts in the case on hand are different. The distance between Vadodara and Surat is approximately 170Kmts. Further, as discussed earlier, there is no comparative hardship to the Applicant wife and therefore the authority cited by the learned Advocate for the Applicant is not helpful to the Applicant wife.

12. In the judgment in case of Tejalben v. Mihirbhai Bharatbhai Kothari (supra), the Hon'ble Supreme Court has allowed the appeal and transferred the proceedings from Rajkot to Jamnagar.

12.1 However, the facts in the case on hand are different and therefore the said authority is not helpful to the Applicant wife.

13. In the case of Shraddha v. Kumar Kamalbabu Bhatt (supra), this court has allowed the Application filed by the Applicant wife and transferred

HMP / Family Suit filed by the Opponent Husband therein from the Family Court, Ahmedabad to the Family Court at Rajkot considering the fact that

to and fro distance between Ahmedabad and Rajkot is 400 kmts. and has also discussed the financial condition of the Applicant and the family

background was also taken into consideration and the difficulty faced by the Applicant wife to get leave from job and travel from Rajkot to

Ahmedabad and to appear before the Family Court at Ahmedabad.

13.1 However, as discussed above, the facts in the case on hand are different. In the present case the distance between Vadodara and Surat is 170

kmts. and to and fro journey would not be more than 340 kmts. Further the financial condition of the Applicant wife is better since she is having four

wheeler vehicle and therefore so far as the comparative hardship is concerned, the Applicant wife has no such hardship and therefore the authority

cited by the learned Advocate for the Applicant is not helpful to the Applicabnt wife in the case on hand.

14. In the case of Sonal Shreyansh Vasa v. Shreyansh Hitembhai Vasa (supra), this court has held that the Applicant wife therein has to travel the

distance of 400 kms. to attend every hearing of the Court at Bhuj and being a lady she would have to be accompanied by her father, or any other male

member of the family. Not only would this involve considerable inconvenience and hardships, it would also prove to be expensive in the long run and

therefore, the applicant wife would face greater inconvenience in travelling from Vadodara to Kachchh on every date of hearing with her father. The

educational qualifications and salary of the applicant would hardly have any nexus to the inconvenience and hardship faced by her in travelling from

Vadodara to Bhuj accompanied by her father. Convenience of the wife must be looked into and therefore allowed the application and transferred the

proceedings from Bhuj â€“ Kachchh to Family Court Vadodara.

14.1 However, as discussed above, the facts in the case on hand are totally different. It is nobody's case that the Applicant â€“ wife is required to

travel with the family. Further, as discussed earlier, in the present case the distance between Vadodara and Surat is 170 kms. In the judgment cited by

the learned Advocate for the Applicant wife the distance is 400 kms from Bhuj to Vadodara and therefore the facts and circumstances are different.

Therefore this authority is also not helpful to the Applicant wife.

15. The ground mentioned by the Opponent Husband that he is having a kidney stone is not a major ground as submitted by the learned Advocate for the Opponent Husband.

16. Therefore, considering the totality of the facts and circumstances of the case, this court is of the view that since the Applicant wife is not having any hardship and having the job of fashion design and also having the four wheeler vehicle in her name, upon such premises, it appears that there is no much hardship to the Applicant wife compared to the Opponent " Husband. Moreover, there is only a single matter pending with the Court at Vadodara.

17. In Miscellaneous Civil Application No. 21 of 2019 in case of Rutva Jitendra Patel v. Jay Dilipkumar Patel decided on 14.10.2019, wherein distance between Ahmedabad to Vadodara is discussed as 100 kmts and this court has referred to Anindita Das's case (supra) and disallowed the said Application filed by the Applicant " wife.

However, the Opponent " Husband therein was directed to pay of Rs.1000/- for to and fro expenses, including ancillary expense to the Applicant wife therein as and when attends the proceedings at Vadodara. Therefore, in the present case, since the Opponent Husband is Senior Engineer in the GNFC, it appears that the order of expenses is required to be passed in the present case.

18. In view of the discussion made herein above, in fieri the Application deserves to be dismissed and accordingly stands dismissed. However, The Opponent " Husband shall pay Rs.1000/-(Rupees One Thousand) to and fro expenses, including ancillary expense, to the Applicant - wife as and when she attends the proceedings at Family Court at Vadodara from the date of this order.

19. Rule is discharged. The interim relief granted earlier shall stand vacated.

20. After the pronouncement of this judgment, learned Advocate Mr. M.M.Kharadi for the Applicant-wife has requested to stay the order for 8 weeks for approaching the Hon'ble higher forum. Per contra, learned Advocate Ms. Khushbu P. Vyas for the Opponent-Husband has requested this

court that interim stay was granted, but today, this court has pronounced the judgment after hearing both the sides, and therefore, such stay, may not be granted. Further, the expenses of Rs.1000/- is also fastened upon the Opponent - Husband to pay to the Applicant " wife for attending the court at Vadodara.

21. Pursuant to the facts and circumstances of the case, the request made by learned Advocate for the Applicant is not acceded to.