

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved On: 19th of December, 2023
Pronounced On: 29th of December, 2023.

TrP (Crl) No. 27/2023

Tariq Wali S/O Wali Muhammad
R/O Dangiwach, District Baramulla.

... Petitioner

Through: -

M/S Syed Taha, Syed Urfa Aijaz and Peerzada Aabid, Advocates.

V/S

- 1. Benish Aijaz W/O Tariq Wali**
D/O Syed Aijaz Hussain
R/O Court Road, Shopian.
- 2. Aliza Tariq (Minor) D/O Tariq Wali**
Through her Mother, namely, Benish Aijaz
R/O Dangiwach, District Baramulla
At Present Shopian.

... Respondents

Through: -

Mr Z. A. Shah, Senior Advocate with
Mr A. Hanan, Advocate.

Clubbed With:

TrP (Crl) No. 28/2023

Tariq Wali S/O Wali Muhammad
R/O Dangiwach, District Baramulla.

... Petitioner

Through: -

M/S Syed Taha, Syed Urfa Aijaz and Peerzada Aabid, Advocates.

V/S

- 1. Benish Aijaz W/O Tariq Wali**
D/O Syed Aijaz Hussain
R/O Court Road, Shopian.
- 2. Aliza Tariq (Minor) D/O Tariq Wali**
Through her Mother, namely, Benish Aijaz
R/O Dangiwach, District Baramulla
At Present Shopian.

... Respondents

Through: -

Mr Z. A. Shah, Senior Advocate with
Mr A. Hanan, Advocate.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE
(JUDGMENT)

01. The above titled two Criminal Transfer Petitions, clubbed together, are proposed to be decided by this common Order in view of the involvement of the common parties and the identical questions of facts and law, required to be decided.

02. The Petitioner-Tariq Wali claims to be the husband of Respondent No.1-Benish Aijaz and father of Respondent No.2-Aliza Tariq (minor). The Respondents had filed a case bearing No. 89 titled '**Aliza Tariz v. Tariq Wali**', under Section 125 of the Code of Criminal Procedure and same is pending before the Court of learned Additional Special Mobile Magistrate, Shopian. The Respondents have also filed a case bearing No. 114 titled '**Benish Aijaz & Anr. v. Tariq Wali**', under Section 12 of the Protection of Women from Domestic Violence Act (for short 'the D. V. Act') before the same Court of learned Additional Special Mobile Magistrate, Shopian.

03. The Respondent in the aforesaid proceedings, that is the Petitioner herein, through the medium of these two Criminal Transfer Petitions, seeks transfer of both the cases pending before the Court of learned Judicial Magistrate (Additional Special Mobile Magistrate), Shopian under Section 407 of the Code of Criminal Procedure from the said Court to a Court of competent jurisdiction at Srinagar.

04. In both these Petitions, the Petitioner has pleaded that he and Respondent No.1 herein entered into wedlock with each other in September, 2015 and, out of the said wedlock, Respondent No.2, a female child, was begotten, who is now of the age of 06 years; that the matrimonial relationship between the couple got strained, as a consequence whereof, the parties got involved into multiplicity of legal proceedings; that an

application came to be filed by the Respondent No.1 herein (wife) under Section 488 of the Jammu & Kashmir Criminal Procedure Code as also a Complaint by her under the provisions of the Domestic Violence Act, 2005, however, the earlier round of litigation culminated into a compromise between the parties, on the basis of which, the National Lok Adalat passed an Award on 17th of April, 2021.

05. It was alleged that, thereafter, a fresh course of legal proceedings was started by the Respondent No.1 herein (wife) and a Complaint was filed by the Respondents under the provisions of the D. V. Act in the month of March, 2022 and maintenance proceedings were initiated under Section 125 of the Code of Criminal Procedure on behalf of the minor/ Respondent No.2 herein, in the month of September, 2022 and execution proceedings with respect to the Award of the National Lok Adalat in the month of March, 2022, all before the Trial Court at Shopian; that the Petitioner has been ordered to pay a cumulative maintenance of Rs.45,000/-, i.e., Rs.25,000/- to the Respondent No.1-wife and Rs.20,000/- towards the Respondent No.2-minor child.

06. The Petitioner further alleged that since the brother of the Respondent No.1 herein (wife) is a Lawyer by profession and represents his sister before the Court below, as a result of which, the matrimonial relationship between the parties has already taken an ugly shape in the form of registration of an FIR against the Petitioner at the instance of the said Lawyer at Police Station, Shopian and that on every date of hearing, there is a charged atmosphere in the Court, threatening the Petitioner herein. In this backdrop, it has been prayed that both the proceedings pending before the Court of learned Additional Special Mobile Magistrate, Shopian be ordered to be transferred to any Court of competent jurisdiction at Srinagar.

07. Pursuant to notice having been issued, the Respondents have filed Objections to these Petitions, asserting therein that the purpose of filing these Transfer Petitions is not the convenience of the parties, which is only a pretext, but it is aimed to somehow deny payment to the

Respondents herein; that there were several cases pending between the parties prior to 17th of April, 2021, which culminated into an Award by the National Lok Adalat, in terms of which the Respondent No.1 herein (as wife of the Petitioner herein) was to receive Rs.40,000/- per month from the date of award and the Respondent No.2 herein (as minor child of the Petitioner herein) was to receive an amount of Rs.9,80,005/-, being the sum of arrears of maintenance payable under the earlier Order of the Court at Shopian in terms of Section 23 of the D. V. Act dated 30th of September, 2019 and Rs.10.00 lacs as Fixed Deposit withdrawable at the age of majority; that out of the said amount, which by now has accumulated to Rs.11.60 lacs, the Petitioner has only paid a sum of Rs.7.41 lacs as against the maintenance allowance of Rs.40,000/- per month towards the Respondent No.1 herein and Rs.4.19 lacs continue to be in the arrears; that the Petitioner claims to have deposited a sum of Rs.8.00 lacs as against the aforesaid deposits to be fixed in the name of the minor in terms of the Award in some account which is accessible and maintained by himself and unreachable to the Respondents and, assuming that to be true, Rs.6,01,995/- continue to be in the arrears.

08. It was alleged that the Petitioner, for avoiding payment of the aforesaid amount, has formed a practice to delay proceedings and has sought transfer of these Petitions; that the plea of convenience of parties is false and is only intended to deny payment to the Respondents; that the brother of the Respondent No.1 herein practices at Shopian as a Junior Advocate for the last two years and that the Petitioner has made preposterous allegations and statements against him.

09. It has been admitted by the Respondent No.1 that she, in order to protect and save her daughter from any kind of trauma, decided to seek her admission in Foundation International School at Srinagar; that there is no inconvenience to either of the parties to contest their cases at Shopian, even from the residence at Srinagar of the Respondents or Petitioner from Baramulla. Finally, it has been prayed that both the Petitions be dismissed.

10. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

11. It is not in dispute that the Respondents are presently staying at Baghat-i-Barzulla, Srinagar on rent, regarding which copy of the lease and license deed has also been placed on record. Further, the minor child is also stated to have been admitted in a School at Srinagar, therefore, for all practical purposes, the Respondents are residents of Baghat-i-Barzulla, Srinagar and, as such, they have to go a long way from Srinagar to Shopian to attend their cases, which cannot be said to be convenient in any manner whatsoever. The Petitioner is also a resident of Dangi-wacha, Baramulla, therefore, it is also inconvenient for him to travel all along from Baramulla to Shopian to contest the cases.

12. Viewed from any angle, including the requirement of long travel for both the parties from Srinagar to Shopian and from Baramulla to Shopian as also the presence of the brother of the Respondent No.1 herein (wife) in the Court at Shopian representing her as an Advocate and making the surcharged atmosphere in the Court complex, it appears that it is not convenient for either of the parties to contest the cases at Shopian. Therefore, in the considered opinion of this Court, a case is made out for transfer of both these Petitions to some other Court of competent jurisdiction at Srinagar.

13. Accordingly, both the aforesaid cases pending before the Court of learned Additional Special Mobile Magistrate, Shopian; one bearing file No. 89 titled '**Aliza Tariz v. Tariq Wali**', filed under Section 125 of the Code of Criminal Procedure and the other bearing file No. 114 titled '**Benish Aijaz & Anr. v. Tariq Wali**', filed under Section 12 of the D. V. Act, are ordered to be transferred to the Courts at Srinagar. The Petition under Section 125 of the Code of Criminal Procedure, on its transfer, is assigned to Family Court, Srinagar, whilst the Petition, in terms of the D. V. Act, is transferred to the Court of learned Chief Judicial Magistrate, Srinagar for Magisterial Trial.

14. Both the aforesaid Criminal Transfer Petitions are, thus, **allowed** on the above terms, along with any connected CrlM pending therewith. It is, however, made clear that any observation made or finding returned in this Order, for purpose of disposal of these two Petitions, shall not have any bearing with regard to the merits of the cases and that the same shall be taken to its logical conclusion as per law, expeditiously. Copies of this Order shall be forwarded, to be communicated for information and compliance, to the Trial as well Transferee Courts.

15. Registry to place a copy of this Order across both these connected files.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

December 29th, 2023

"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |