

GAHC040006302023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Tr.P.(C)./2/2023

Smti Mihee Kanham
W/o Shri Abo Kanham,
Resident of B.N. Colony Chimpu, PO/PS Itanagar, District Papum Pare, Arunachal Pradesh 791111

VERSUS

Abo Kanham
S/o Shri Banlai Kanham,
Permanent Resident of Village Niausa, PO/PS Longding, District Longding, Arunachal Pradesh 786631.
Present Address C/o SSP (Fire and Emergency Service) cum Nodal Officer HQ State Disaster Response Force (SDRF) Chimpu, Itanagar.

Advocate for the Petitioner : Jyoti Zongluju

Advocate for the Respondent : Tabit Tapak

**BEFORE
HONBLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 18.07.2024

Heard Ms. J. Zongluju, learned counsel for the petitioner and Mr. T. Tapak, learned counsel for the sole respondent.

2. This petition under Article 226 of the Constitution of India, *read with* Section 24 of the Code of Civil Procedure, 1908 has been preferred by the petitioner-wife seeking transfer of the divorce petition filed under section 10 (1) (i) (ix) and (x) of the Indian Divorce Act, 1869 by the respondent husband against her being registered as No. KSA/TS(DVR) No.04/2022 (*Shri Abo Kanham Vs. Smti. Mihee Kanham*) from the Court of the District & Sessions Judge, Khonsa, Tirap District to the Court of the District & Sessions Judge, Papumpare District, Yupia.

3. The learned counsel for the petitioner submits that the petitioner is wife and the respondent is husband and their marriage was performed in the year 2004. Out of their said marriage, they have begotten two sons. However, due to the marital discord developed between them, they are now separately staying at Itanagar.

4. The learned counsel for the petitioner, Ms. Zongluju submits that due to physical and mental harassment caused by the respondent, the petitioner has filed domestic violence case against the respondent husband before the Court of the Judicial Magistrate First Class-cum-Civil Judge (Junior Division), Capital Complex, Yupia in the year 2021 being registered as DV Case No.37/21, under Section 12 of Protection of Women from Domestic Violence Act, 2005. But the said case was withdrawn on the insistence of the respondent husband. However, subsequently, the petitioner has filed a maintenance petition against the respondent husband before the Court of Judicial Magistrate First Class, Yupia for maintenance of the wife and children under Section 125 of the Cr.P.C as the petitioner failed to maintain the family. The said maintenance case is still pending adjudication before the JMFC Court at Yupia.

5. It is submitted that the respondent husband thereupon has filed a divorce petition before the Court of the District & Sessions Judge at Khonsa against the petitioner seeking divorce against her. It is submitted that the said divorce petition has been deliberately filed at Khonsa which is more than 500 Kms from Itanagar in order to cause unnecessary harassment to the petitioner while fully knowing that the petitioner is stationed at Itanagar.

6. The learned counsel for the petitioner further submits that the petitioner is a mere housewife with no independent earning source and as such, she cannot afford to bear the expenses to go to Tirap District to attend divorce case in the Court of District & Sessions Judge at Khonsa, and at the same time to attend

court at Yupia for maintenance case. Therefore, the petitioner prays to withdraw the said Divorce petition No. KSA/TS(DVR) No.04/2022 on the file of District Judge of Khonsa and transfer the same to the District Court at Yupia.

7. The learned counsel for the petitioner further submits that the respondent is government employee working under the Police Department as Constable having posted at Itanagar, he is presently staying at Itanagar. Further, their two children are also prosecuting their studies at Itanagar. As such, no prejudice would cause to the respondent, if the above-mentioned divorce case is transferred from the Court of the District & Sessions Judge, Khonsa, to the Court of the District & Sessions Judge, Yupia.

8. In support of her submission, the learned counsel for the petitioner has relied upon a case; *Rajani Kishor Pradesh v. Kishor Babulal Pardeshi*, reported in *2005 (12) SCC 237*, wherein, the Hon'ble Apex Court has held that "*while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one court to another should ordinary be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.*"

9. On the other hand, the learned counsel for the respondent, Mr. Tapak, while referring to the objection filed by the respondent submits that the petitioner has deserted her respondent husband and at the movement, the

petitioner does not have any settled address and as at the time of filing of the said divorce case, the petitioner was staying at Tirap, therefore, the divorce case was filed before the Court of the District & Sessions Judge at Khonsa. Hence, according to the learned counsel for the respondent the petitioner is not entitled for any relief.

10. Heard learned counsel for parties and perused the material available on record and considered.

11. After perusal of record, it appears that the respondent husband has filed divorce petition under section 10 (1) (i) (ix) and (x) of the Indian Divorce Act, 1869 seeking dissolution of marriage solemnised between the parties. The said petition is pending before the court of District Judge at Khonsa under Tirap District; whereas the maintenance petition filed by the petitioner for maintenance of wife and children is pending before the court of JMFC, at Yupia. It appears that the evidence produced to prove his case in the said divorce petition and the evidence in the maintenance petition under section 125 Cr.P.C more likely would be common. For the convenience of both the parties and the witnesses likely to appear in those two the cases, this court is of the opinion that as far as possible these two cases should be tried in one station.

12. Having regards to the contention raised by the learned counsel for the parties and on consideration of to the grounds raised by the petitioner, this

Court deems it fit to allow the present transfer petition.

13. As a result, the present transfer petition is allowed. Accordingly, the case KSA/TS(DVR) No.04/2022 (*Shri Abo Kanham Vs. Smti. Mihee Kanham*) pending before the Court of the District & Sessions Judge, Khonsa, ordered to be transferred to the Court of the District & Sessions Judge, Yupia, for further trial and disposal.

14. The parties are directed to appear before the transferee Court at Yupia, on 30.08.2024 and thereafter, the District Court at Yupia would regulate the hearing.

15. With the observation made above, this transfer petition stands disposed of.

JUDGE

Comparing Assistant