

Advocate for the respondent : Mr. M. Batt

Mr. K. Taja
Mr. N. Bakhang
T. Magria
S. Mudung

- B E F O R E -

HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER(ORAL)

07.05.2024

Heard Mr. T. Kamchi, learned counsel for the petitioner. Also heard Mr. M. Batt, learned counsel for the respondent.

2. By filing this application under Section 24 of CPC, 1908, the petitioner has prayed for transfer of the Matrimonial Case (Z) No. 01/2022 filed by the respondent for dissolution of marriage pending before the District Judge, Ziro, Lower Subansiri District to the Court of District Judge, Yupia.

3. The case of the petitioner is that she and the respondent had solemnised their marriage in the year 2014 as per the customs and traditions at Ziro and Daporijo, respectively. The petitioner belongs to the Tagin tribe and the respondent belongs to the Apatani tribe. After their marriage, they have resided at Nacho in the Upper Subansiri District when the respondent was posted there as a doctor. According to the petitioner they have resided at Ziro and B-Sector, Naharlagun also. After some years of living as husband and wife, both the petitioner and the respondent have not been able to continue their marital relationship and thereafter, they have started to live separately and the respondent was posted at Dambuk and thereafter, at Khonsa. The petitioner claims that after living separately from the respondent/husband, she had

resided at Naharlagun and finally at Itanagar in a rented house.

4. The respondent/husband has filed for dissolution of their marriage which has been registered as Matrimonial Case (Z) No. 01/2022 which is pending before the District Judge, Ziro, Lower Subansiri District. The petitioner by filing this instant application is seeking transfer of the above matrimonial case from the District Judge, Ziro, Lower Subansiri District to the Court of District Judge, Yupia on the ground that she being unemployed and residing initially at Naharlagun and now at Itanagar is finding it difficult to attend the Court of District Judge at Ziro due to her financial condition.

5. Mr. Kamchi, learned counsel for the petitioner submits that the Petitioner is staying in the house of her maternal uncle at Itanagar and looking for earning opportunity to survive her daily life. Furthermore, her parents are staying in the village at Daporijo, Upper Subansiri District, as such, the petitioner is unable to afford the to and pro expenses of hearing before the District Judge, Ziro. However, the respondent is a doctor and is financially sound compared to the Petitioner. The learned counsel submits that the District Judge, Yupia is convenient for both the parties, therefore, the aforesaid matrimonial case may be transferred to the Court of District Judge, Yupia for the interest of justice. Mr. Kamchi submits that if the aforesaid case is tried before the District Judge, Ziro, then it would be difficult for the Petitioner to bear the Hotel lodging and Counsel fees along with witnesses' expenses. He also submits that the petitioner is staying at Itanagar and the respondent is at Khonsa and the respondent has a private resident at B-Sector, Naharlagun, where his mother is staying, therefore, if the aforesaid petition is transferred to the District Judge, Yupia, it will be convenient for both the parties. In view of the above facts and circumstances, the learned counsel submits that this the Transfer petition No.8/2022 may be

allowed and prays for a direction for transferring the matrimonial/divorce petition No. 01/2022 before the District Judge, Yupia for the interest of Justice.

6. On the other hand, Mr. Batt, learned counsel for the respondent submits that the petitioner and the respondent have solemnized their marriage on 14th day of September 2014 at Ziro as per Apatani traditional custom and subsequently at Daporijo. Therefore, Yupia Court has no territorial jurisdiction to try the suit. He submits that, the petitioner is a permanent resident of Mosing village, Post Office & Police Station Nacho, District Upper Subansiri, Arunachal Pradesh and as such, the petitioner is not residing at Naharlagun or Itanagar which is clearly proved from the Annexure-C of the Affidavit-in-Opposition filed by the respondent. He further submits that the Notice was sent to the petitioner through Registered A/D Card in the address given in her Maintenance Case, however, the said Notice had returned back to the Hon'ble Court without service. Therefore, the learned counsel submits that the Matrimonial Suit may not be transferred from Ziro to Yupia without any proper reason which has no jurisdiction for trial over the Suit.

7. Mr. Batt, the learned counsel for the respondent submits that all the relatives of the petitioner and the respondent are resident of Upper Subansiri District and Lower Subansiri District. In case of transfer, the witnesses of both Parties will face unnecessary harassment by travelling such long distance to give evidence in the Yupia Court, which has no jurisdiction to try over the Suit. He therefore submits that the present Petition may not be entertained for the convenience of the witnesses. He submits that the Notice was finally served to the petitioner through her learned counsel, who appeared in the Maintenance Case which was already disposed of, otherwise Notice could not have been served till date because the petitioner has no proper address at Naharlagun or

Itanagar. He submits that it will be more convenient for the petitioner and her witnesses, who are residents of Upper Subansiri District and incur less expenditure to attend the Ziro Court than the Yupia Court because the distance from Daporijo to Ziro is 100 KM shorter distance from Daporijo to Yupia, hence, there is no justification for transfer of the Suit. In the present Case, the Petitioner sought transfer of the Suit from Ziro to Yupia Court on the ground of difficulties to meet journey expenditure as she has no source of income which is not justified ground for transfer of the Suit. He submits that the respondent is paying monthly maintenance allowance of Rs 15000/- (fifteen thousand) regularly and the petitioner being young and able body can earn more income and can comfortably contest the Suit without any problem. The learned counsel for the respondent, therefore, submits that the present petition has no any merit and same is liable to be dismissed for the interest of justice.

8. Mr. Batt further submits that when the respondent was posted at Dambuk and went for medical treatment at Vellore in the State of Tamil Nadu, the petitioner had deserted the matrimonial home. Thereafter, she never returned back to the respondent as a wife, having no alternative, the petitioner has filed the aforesaid matrimonial case for dissolution of their marriage and since, the respondent is a permanent resident of Ziro, Lower Subansiri District and the petitioner is a permanent resident of Daporijo, Upper Subansiri District, the Court at Ziro is having a jurisdiction and the District Court of Yupia has no jurisdiction.

9. Due consideration has been extended to the submissions of the learned counsels for the parties.

10. The respondent has instituted a matrimonial suit for dissolution of marriage against the petitioner, which is pending before the District Court at

Ziro, Lower Subansiri District. It is also placed on record that the petitioner after separation from the respondent husband was staying at Naharlagun and thereafter, now stated to be living at Itanagar and as proof of resident, the petitioner has submitted a certificate along with the electricity bill of the house where she is staying.

11. In the case of *Sumita Singh vs Kumar Sanjay*, reported in (2001) 10 SCC 41, the Hon'ble Supreme Court has held that it is the wife's convenience that must be looked at in a matrimonial suit where transfer is sought.

12. Having considered the facts and circumstances of the case and considering that the petitioner is residing at Itanagar and is stated to be unemployed and the respondent is a permanent resident of Ziro and being a doctor is presently posted at Khonsa, this Court is of the considered view that grounds urged are sufficient for transfer of the matrimonial from the learned District Judge, Ziro, Lower Subansiri District to the Court of learned District Judge, Yupia.

13. Accordingly, the Matrimonial Case (Z) No. 01/2022 pending before the learned District Judge, Ziro, Lower Subansiri District shall stands transferred to the Court of the learned District Judge, Yupia

14. The learned District Judge, Ziro, Lower Subansiri District is directed to transmit the Matrimonial Case (Z) No. 01/2022 to the Court of the learned District Judge, Yupia, within 1 (one) month. Thereafter, the learned District Judge, Yupia shall take up the matter from the stage of the matter in the Court of the learned District Judge, Ziro, Lower Subansiri District.

15. The instant transfer petition stands allowed and disposed of.

16. It is made clear that the petitioner shall furnish the exact address of the petitioner to the respondent so that no inconvenience is caused for issuing the notice in the proceedings.

JUDGE

Comparing Assistant