



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Transfer Application No.16 of 2025

Iti Dayal

.... Applicant

Versus

Ritesh Kumar Srivastava

..... Respondent

Present:-

Mr. Siddharth Bankoti, learned legal aid counsel for the applicant.

Mr. Sandeep Kothari, learned counsel for the respondent.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Criminal Transfer Application under Section 447 of the BNSS, the applicant has sought the transfer of Criminal Misc. Case No. 41 of 2020, under Section 125 Cr.P.C., pending before the Family Court, Almora, to the Family Court, Haridwar.

2. Drawing attention to the transfer application, learned counsel for the applicant submits that the applicant instituted Criminal Misc. Case No. 41 of 2020 under Section 125 Cr.P.C. before the Family Court, Almora, in the year 2020 against respondent Ritesh Kumar Srivastava. It is submitted that the applicant's father retired from Kumaun University on 14.07.2022, and thereafter the applicant, along with her mother and minor son, permanently shifted to Haridwar in the year 2022. The principal ground on which the transfer is sought is that the applicant is now permanently residing at Haridwar, and the distance between Haridwar and



Almora is more than 300 km, requiring nearly 12 hours of travel one way. It is submitted that the journey is long, expensive, and exhausting, particularly through the hilly terrain. It is further stated that it takes the respondent about 12 hours to reach Almora from Delhi, whereas the journey from Delhi to Haridwar takes only about 2½ hours.

3. Learned counsel for the applicant further submits that the applicant is fully dependent upon her mother as she is not employed. It is also submitted that the applicant has a minor son whose schooling is adversely affected, as it practically takes three days to travel from Haridwar to Almora, attend the court proceedings, and return to Haridwar. It is further stated that she has no relative in Almora with whom she can stay overnight. On these grounds, the present transfer application has been filed.

4. Per contra, learned counsel for the respondent, Mr. Sandeep Kothari, submits that the grounds urged in the present transfer application are wholly untenable and do not justify the transfer sought. He further submits that the applicant herself had instituted the maintenance proceedings under Section 125 Cr.P.C. before the Family Court, Almora, and after shifting to Haridwar, she can conveniently participate in the proceedings through video conferencing. In fact, it is submitted that she had participated in the proceedings through video conferencing, which has been specifically stated in the counter-affidavit filed by the respondent.



5. Learned counsel for the respondent would draw the attention of the Court to paragraph No. 10 of the reply affidavit/counter-affidavit, wherein it has been stated that the applicant has continued to pursue the matter through her learned counsel. It is further stated that the applicant has appeared in person in the maintenance proceedings before the Family Court, despite allegedly residing in Haridwar, and had also tendered her evidence in February 2024. Thus, the applicant's alleged permanent shift to Haridwar in 2022 did not prevent her from appearing before the Court and adducing her evidence in the said maintenance proceedings.

6. In paragraph No. 11 of the reply affidavit, it has been categorically stated by the respondent that the present transfer application is wholly misconceived and is liable to be rejected. It is further submitted that appropriate directions may be issued to the learned trial Court for the expeditious disposal of the proceedings under Section 125 Cr.P.C. It is also contended that the applicant has the option of participating in the proceedings through video conferencing and, in any event, her learned counsel is always available to represent her before the trial Court.

7. Learned counsel for the respondent has further drawn the attention of the Court to an online application preferred by the applicant before the Family Court, Almora, seeking permission to participate in the proceedings under Section 125 Cr.P.C. through video conferencing.



8. Learned counsel for the respondent has also drawn the attention of the Court to the order dated 21.05.2021, from which it is evident that the applicant had appeared before the Family Court, Almora through video conferencing and was heard on her interim application for maintenance. He has further referred to paragraph No. 5 of the reply affidavit, wherein it has been stated that the applicant is presently posted in District Sirmaur, Himachal Pradesh. A copy of the prospectus of Eternal University, Himachal Pradesh, downloaded from the official website of the University, has been enclosed as Annexure No. 1 to the reply affidavit, wherein the name of the applicant appears as Dr. Iti Dayal in the Akal College of Education, and her designation is shown as Assistant Professor at Serial No. 16 in the faculty details.

9. In reply to the submissions advanced on behalf of the respondent, learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in *N.C.V. Aishwarya v. A.S. Saravana Karthik Sha*, reported in 2022 SCC OnLine SC 1199, and has drawn the attention of the Court to paragraph No. 9 of the said judgment.

10. Paragraph No. 9 of the said judgment is reproduced hereunder for ready reference:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the



Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

11. While it is settled that the convenience of the wife is generally taken into consideration while deciding an application for transfer, the facts of the case in *N.C.V. Aishwarya* (supra), wherein the proceedings arose out of a petition under Section 9 of the Hindu Marriage Act, stand on a different footing. Therefore, the said judgment is distinguishable on facts. Even otherwise, in the present case, it is open to the applicant to participate in the proceedings under Section 125 Cr.P.C. through video conferencing.

12. In the present case, the applicant has, in fact, participated in the proceedings under Section 125 Cr.P.C. through video conferencing. Moreover, she is not residing at Haridwar. From the material available on record, it is evident that she is working at Eternal University, Sirmaur, Himachal Pradesh. Thus, the grounds urged by the applicant do not appear to be tenable.



13. In view of the fact that it is open to the applicant to participate in the proceedings through video conferencing, this Court does not find any sufficient ground to transfer the case from the Family Court, Almora, to the Family Court, Haridwar. Accordingly, the present transfer application is dismissed.

(Siddhartha Sah, J.)
17.07.2026

BS
BALWAN
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