

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.611 of 2015

In
Matrimonial Reference No. 118 of 2012

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1. Abhilasha Kumari. W/o Neeraj Kumar, D/o Uma Shankar Jaiswal.
Resident of At - Teli para Marg, Apurva Press, Dumka, P.O. + P.S.-
Dumka, Distt.- Dumka (Jharkhand).

.... Petitioner/s

Versus

1. Neeraj Kumar Jaiswal. S/o Sri Jaiprakash Jaiswal. R/o Vill Sheo
Narayanpur, P.S.- Kahalgaon, Distt.-Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Onkar Kumar, Adv.

For the Respondent/s : Mr. Roy Shivaji Nath

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 20-07-2015 In this case petitioner is making a prayer for transfer
of Matrimonial Case No.118 of 2012 from the court of Principal
Judge, Family Court, Bhagalpur (Bihar) to the court of Principal
Judge, Family Court, Dumka (Jharkhand) on the ground that it is
very difficult for the petitioner to attend the case at Bhagalpur.

The facts of the case is that Neeraj Kumar Jaiswal,
the sole O.P. entered into marriage with the petitioner on 28th
November 2009 as per Hindu rites and rituals at her maternal
house in Dumka and started discharging matrimonial obligation
and also enjoyed the matrimonial right but after one month of the
marriage, the sole O.P. and his mother started behaving with the
petitioner in such a manner to isolate and neglect her. Sister of the



sole O.P. was meddling into the house hold affairs. They used to torture the petitioner to the extent that even proper food and necessary materials were not provided to her. Many types of allegations has been made in the transfer application such as on n the instigation of other family members, the O.P. also neglected the petitioner and deprived her of necessary materials. After some time, demand was raised of luxury car and additional amount of money and when it was not fulfilled, they increased t he degree of torturing the petitioner mentally and physically, without any rhyme and reason. After some time she conceived and gave birth to a child. Allegation has been made that the child was not properly maintained and they were not providing proper milk, medicine etc. On 11th April 2013 the sole O.P. forcibly took her to Dumka and left there and filed the present matrimonial case at Bhagalpur.

Counsel for the petitioner submits that normally this Court has no jurisdiction to transfer the case from Bihar to Jharkhand but in view of Section 23(3) C.P.C. transfer can be made. He has placed reliance on the order passed by a Judge of Jhuarkhand High Court reported in 2003(3) JLJR 588 whereas counsel for the O.P. submits hat it is a matter of inter State transfer and this Court does not hold such power to transfer the case lies

only with the Hon'ble Supreme Court in terms of Section 25 C.P.C. specially deals with the power of the Hon'ble Supreme Court to transfer a case from one State to another.

In view of specific provision of power conferred on amendment of Civil Procedure Code effected in 1976, this Court in exercise of power under Section 23(3) C.P.C. cannot pass order for transfer the case from Bhagalpur to Dumka which falls in the State of Jharkhand, placed reliance on the judgment of Hon'ble Supreme Court reported in AIR 2009 SC 285 (Durgesh Sharma v. Jayshree).

Having considered the rival contention of parties, this Court has to decide whether this Court can exercise power to transfer a case from one Court to another Court which lies outside the State under Section 23(3) or after the amendment Section 25 of the CPC. only Hon'ble Supreme Court can exercise such power. It is relevant to quote Sections 23(3) and 25 of the C.P.C. which are as follows:

Section 23(3) : Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.”



Section 25: Power of Supreme Court to transfer suits, etc.—(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to High Court or other Civil Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or

vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

When power after the amendment of Section 25 of CPC in the year 1976 whereby such power has been conferred specifically only upon Hon'ble Supreme Court, such power cannot be exercised by the High Courts. Identical issue came for consideration before the Hon'ble Supreme Court in the case of Durgesh Sharma (supra) where the Hon'ble Supreme Court held that only Hon'ble Supreme Court can pass order of inter state transfer, relevant to quote Para 77 and 78 as follows:

Para 77 : We are unable to uphold the contention.

In our considered view, the fallacy in the argument lies in the fact that it presumes and presupposes that



Section 23 of the Code is a substantive provision which authorizes a Court mentioned therein to order transfer. It is not so. The said section, as held by us, is merely a procedural one or a machinery provision and provides mode, method or manner in approaching a Court for making an application. It does not empower a Court to effect transfer. Moreover, Section 25 of the Code is a 'complete Code' dealing with substantive as well as procedural law. Section 23, in our opinion, therefore, cannot be interpreted in the manner suggested by the learned counsel appearing for the wife.

Para-78: After the commencement of the Constitution and establishment of the Supreme Court (this Court), Parliament thought it proper to amend Section 25 of the Code and accordingly, it was substituted by empowering this Court to order transfer from one High Court to another High Court or to one Civil Court in one State to another Civil Court in any other State. It is, no doubt, true that even when Section 25 in the present form was substituted by the Amendment Act of 1976, sub-section (3) of



Section 23 of the Code has neither been deleted nor amended. That, however, is not relevant. Since in our considered view, Section 23 is merely a procedural provision, no order of transfer can be made under the said provision. If the case is covered by Section 25 of the Code, it is only that section which will apply for both the purposes, namely, for the purpose of making application and also for the purpose of effecting transfer. On the contrary, reading of sub-section (3) of Section 23 of the Code in the manner suggested by the learned counsel for the respondent-wife would result in allowing inroad and encroachment on the power of this Court not intended by Parliament. Section 23, therefore, in our considered view, must be read subject to Section 25 of the Code. The decisions taking a contrary view do not lay down correct law. We, therefore, overrule them. Even if such power was with a High Court earlier, it stood withdrawn with effect from January 01, 1977 in view of Section 25 of the Code as amended by Code of Civil Procedure (Amendment) Act, 1976.

In view of aforesaid discussion, this Court is not

agreeable to the submission of the counsel for the petitioner and even a harsh case cannot confer the power to High Court to transfer the case from one State to another State, in absence of such power this Court cannot entertain such application otherwise the order passed will be nullity.

In such view of the matter, this petition is misconceived and not maintainable. Liberty is given to the petitioner, if so advised, she may take proper steps by filing an application before the appropriate Court.

Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

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