

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****TPCR No. 3 of 2015**

- Smt. Namita Karsh aged 27 years, D/o. Sudhir Karsh, wife of Parmanand Karsh
- Sudhir Kumar Karsh S/o P.R.Karsh Aged About 54 Years
- Brindawati Karsh W/o Sudhir Kumar Karsh Aged About 46 Years
- Hemant Karsh S/o Sudhir Kumar Karsh Aged About 24 Years

All R/o EWS-32, Nehru Nagar, Bilaspur, P.S. Civil Line, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh

- Anil Karsh S/o P.R. Karsh Aged About 44 Years R/O Village/Post Sapos, Tahsil Dabhra, District Janjgir-Champa, Chhattisgarh

---- Petitioners**Versus**

- State Of Chhattisgarh Through: The Police Station Darri, District Korba, Chhattisgarh

---- Respondent

For petitioners	: Shri Somnath Verma, Advocate.
For Respondent/State	: Shri Chitranjay Patel, Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

26/03/2015

1. By this transfer petition (criminal), the petitioners seek transfer of Criminal Case No. 860/2012 (State -v- Sudhir and others) pending in the Court of JMFC, Katghora, Distt. Korba CG to the Court of appropriate jurisdiction at Bilaspur for its disposal in accordance with law.
2. As per facts of the case, petitioner No. 1 Smt. Namita Karsh and Parmanand Karsh are legally wedded husband and wife. Petitioner No. 1 filed an application under Section 125(3) of the Code of Criminal Procedure, 1973 (in brevity 'Code') for recovery of maintenance allowance bearing MJC No. 11/2013 (Namita Karsh -v- Parmanand Karsh before the Judge, Family Court, Bilaspur. Husband of petitioner No. 1 Parmanand filed another

application under Section 126(2) of the Code for setting aside exparte order bearing MJC No. 548/2013 (Parmanand Karsh -v- Smt. Namita Karsh) pending before the Judge, Family Court, Bilaspur. The husband of the petitioner No. 1 Parmanand filed a Civil Suit No. 18-A/2013 under Section 13 of the Hindu Marriage Act for dissolution of marriage by a decree of divorce before the Family Court, Camp Court, Katghora, Distt. Korba which stands transferred by the Order of this Court on TP (C) No. 8/2014 to Judge, Family Court, Bilaspur.

3. On the complaint of the husband of petitioner No. 1, P.S. Darri, Distt. Korba submitted a charge sheet against all the petitioners in the Court of JMFC, Distt. Korba bearing Criminal Case No. 860/2012 (State -v- Sudhir Karsh and another) which is presently pending at Korba. The petitioners are residing at Bilaspur. They are suffering monitory loss and physical harassment, feeling unsafe in going to Katghora. Petitioner No.1 is having her ill healthy minor child. Most of the maintenance allowance is being spent on fare. They are fearing from threatening of Parmanand, husband of petitioner No. 1. Korba is 80 km away from Bilaspur, petitioners have no source of income and depending on maintenance allowance and that too is spent in going to Katghora court towards fare of bus, rickshaw and rail. Petitioners are facing problem in attending Katghora Court. Petitioner No. 1 is a woman. Looking to ill health, her child cannot live without anybody. She requires medicines and care from time to time. Hence the petitioners by filing the transfer petition prayed for transfer of above mentioned case from Katghora to Bilaspur for its disposal in accordance with law.
4. Heard learned counsel for the parties finally at motion stage.
5. Learned counsel for the petitioners during arguments submitted that on the basis of the facts and grounds taken in the petition, the above mentioned criminal case may be transferred from Katghora to Bilaspur.

6. On the other hand, learned counsel for the State opposed the petition.
7. For appreciating the arguments advanced on behalf of the parties, I have perused the material available in the record.
8. Upon minute scrutiny, it appears from the record of the case that the petitioners are praying for transfer of a State case pending before the JMFC, Katghora bearing Criminal Case No. 860/2012 (State -v- Sudhir and other) in which all the petitioners are prosecuted by Darri police upon the report lodged by Parmanand, husband of the petitioner No. 1.
9. The other above-mentioned proceedings are in connection with Sections 125 and 126 of the Code and also for the proceedings under Section 13 of the Hindu Marriage Act between the petitioner No. 1 Smt. Namita Karsh and her husband Parmanand. The above-mentioned State case is against 5 petitioners. Witnesses are from concerned jurisdiction. As per order in the TP(C) No. 8/14, Parmanand is working as Engineer, presently residing at Jharsaguda (Orissa) which goes to show that he is residing many 100 km away from either Katghora or Bilaspur. No any complaint is made against Parmanand residing in Katghora regarding any threat or any other incident while going for attending the Court at Katghora. In the said State case, quite obvious there is no question for identification of the petitioners as they are close relatives of the complainant. Nobody alleged any complaint in the Court or in the police for any criminal activities of Parmanand to prove the fact that they are threatened or ill treated by said Parmanand. Also the applicants are represented through counsel. On account of any illness or problem of any of the petitioners, There are provisions in the Code regarding dispensation of personal appearance for once or for entire trial. There is no mention in the petition that how the other petitioners feel inconvenience and what is their inability.
10. Transferring a matter pending between husband and wife for divorce is on

different grounds and transfer of a criminal case lodged by State is assessed on the basis of different facts.

11. Looking to the entire facts and circumstances of the case, grounds given for transfer of the case concerned from Katghora to Bilaspur at a distance of 81 km does not inspire confidence on the basis of above-mentioned facts.

12. Consequently, I do not find any ground for allowing the petition for transfer of above-mentioned criminal case from Katghora to Bilaspur. Hence the petition is hereby dismissed as not maintainable at motion stage itself.

Sd/

Chandra Bhushan Bajpai

JUDGE

Pathak