

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 23 of 2015

1. Smt. Shereen Franklin Rodriguez W/o Shri Nigel Rodriguez, aged about 24 years, R/o Tulsi Awas, Quarter No. A-10, Phase-I, Rajkishore Nagar, Bilaspur Tahsil & District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Nigel Rodriguez S/o Shri J. Rodriguez, aged about 29 years, R/o S.E.- 348, C.S.E.B. Colony, Korba East, Tahsil & District Korba Chhattisgarh

---- Respondent

For Petitioner – Ms. Samishti Solomon, Advocate.
For Respondent – Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

04/08/2015

1. By this transfer petition (civil) filed by the petitioner seeking transfer of Civil Suit No.45A/2015 (Nigel Rodriguez v. Smt. Shereen Franklin Rodriguez) pending in the Court of Judge, Family Court Korba, C.G., under Section 22 of the Special Marriage Act, 1954 (in brevity 'the Act') for restitution of conjugal rights to the Court of Judge, Family Court Bilaspur, C.G., is being disposed of.

2. Brief facts for the instant transfer petition (civil) are that the petitioner and the respondent are husband and wife. Their marriage solemnized under the rituals and customs of Christian religion, registered as per law in the register of marriage by marriage officer (father) on 23-10-2013. After some development, the respondent filed an application under Section 22 of the Act for restitution of conjugal rights which is pending before the Judge, Family Court Korba, C.G. Out of their wedlock, about 6 months infant baby child born who is presently with the petitioner. The petitioner is presently residing in her

parent's house at Bilaspur. The grounds taken in the instant transfer petition are that the petitioner is taking care and maintaining her 6 months girl child; Korba is about 120 kms., it would be very difficult for the petitioner to attend the Court at Korba along with her infant child; the petitioner at the time of child undergone caesarean operation thereby her physical condition is not as fit as to travel upto Korba; the Court is also 10 kms. away from the railway station; till date no any maintenance is given by the respondent for travelling and maintenance; the respondent is an employee of State company regarding electricity, he has sufficient means; hence, the petition may be transferred from Family Court Korba to Family Court Bilaspur.

3. On the other hand reply has been filed on behalf of the respondent wherein the respondent denied the grounds and other facts mentioned in the transfer petition and submitted that this is not a case of divorce, this is a case of restitution of conjugal rights; before the instant matter, both appeared before the Mahila Thana, Bilaspur for counselling; the family members of the respondent and the respondent were threatened, misbehaved and abused for which on behalf of the respondent and his family members a written report was submitted before local Police Station, Bilaspur and also before the In-charge, Outpost Rampur, Police Station Korba, C.G. for the incident. It is submitted on behalf of the respondent that if the matter is transferred from Korba to Bilaspur, then the respondent and his family members may be under threat for life and other mishappenings. It is further submitted that the respondent is ready to give maintenance and travelling expenses. The petitioner used to go to Calcutta along with her infant; so it would not be inconvenient for her to attend the Court at Korba. It is prayed that the petition may be dismissed.

4. Heard both the counsel for the parties.

5. Learned counsel for the petitioner elaborately supported the grounds taken in the petition and submitted that looking to the grounds mentioned in the petition, the petition may be allowed and the pending civil suit be transferred from Korba to Bilaspur.

6. Learned counsel for the respondent duly supported the reply of the transfer petition and documents annexed along with the reply and submitted that as he is under the threat and danger for life and mishappening; also he is ready to give maintenance/travelling allowances and the petitioner is able to attend the Court at Korba, the petition may be dismissed.

7. For the purposes of appreciation of the arguments advanced on behalf of the parties, the instant transfer petition, the reply and the documents annexed are perused.

8. From close scrutiny, it emerges that the petitioner and the respondent are wife and husband, their marriage was solemnized on 23-10-2013, out of their wedlock a girl child aged about 6 months born who is presently with the petitioner, the petitioner is residing along with her parents for the moment, the child born after caesarean operation on the petitioner, the respondent is an employee of State Electrical company stationed at C.S.E.B. Colony, Korba, the respondent filed a civil suit under Section 22 of the Act regarding restitution of conjugal rights which is pending before the Judge, Family Court Korba, C.G.

9. On behalf of the respondent, report regarding misbehaviour, abuse and other nature lodged before Bilaspur police station and Outpost Rampur, Police Station Korba which goes to show that there was some incident between family members of the petitioner and family members of the respondent.

10. The petitioner being a lady, mother of an infant girl child requires grant and maintenance and the distance from Bilaspur to Korba upto to Korba Court is on higher side, to say, about more than 100 kms., there is inconvenience for

the petitioner as she underwent a caesarean operation and is maintaining the infant girl child. On the other hand, the incident regarding misbehaviour, threat and abuse to the family members of the respondent also may not be thrown away. May it be wrong or right, there is no any report or anything filed on behalf of the petitioner or her family members in the rebuttal, also the reply and the annexed documents are supported by the affidavit, prima facie, they have to be accepted for the purposes of appreciation regarding balance of inconvenience.

11. Upon considering the entire facts and circumstances, this Court is of the view that to attend the Court at Korba may cause great inconvenience for the petitioner who is a mother facing physical inability after caesarean operation and while maintaining the infant girl child, but looking to the incident, as grounds taken and the documents annexed, to avoid any further complication regarding threat, abuse or anything, it would not be proper to transfer the case at Family Court Bilaspur, C.G., instead thereof, transfer of the case to a nearest family court would serve the purpose.

12. On entire consideration of the facts, the transfer petition is liable to be allowed to the extent indicated above. Hence, the transfer petition (civil) filed by the petitioner is hereby allowed and it is ordered that Civil Suit No.45A/2015 (Nigel Rodriguez v. Smt. Shereen Franklin Rodriguez) pending in the Court of Judge, Family Court Korba, C.G., under Section 22 of the Act for restitution of conjugal rights, be withdrawn and transferred to Judge, Family Court Janjgir-Champa, C.G. for its trial/disposal in accordance with law. The Judge, Family Court Korba, is hereby directed to transmit immediately the concerned record towards the Judge, Family Court Janjgir-Champa, for further proceedings.

13. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE