

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Civil) No. 40 of 2015**

Smt. Priyanka Sharma W/o Shri Tripesh Sharma, Aged About 31 Years C/o Shri Dinesh Tiwari, R/o Kashyap Colony, Street No.3, Old Bus - Stand Bilaspur, Chhattisgarh

---- Petitioner

Versus

Shri Tripesh Kumar Sharma S/o Shri Shankerlal Sharma, Aged About 35 Years Presently, R/o Kayast Para, Behind Panch Mukhi Temple, District Durg, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Adil Minhaj, Advocate.
For Respondent	:	Shri P.R. Patankar, Advocate.

Order On Board**19/11/2015**

1. The matter is heard finally.
2. By this order, Transfer Petition (Civil) filed by the Petitioner seeking transfer of HMA No. 153A of 2015 (Tripesh Kumar Sharma vs. Smt. Priyanka Sharma) filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of the marriage by a decree of divorce pending before the Third Additional Principal Judge, Family Court, Durg, Chhattisgarh to the Judge, Family Court, Bilaspur, Chhattisgarh, is being disposed of.
3. Brief facts of the instant transfer petition are that the Petitioner and the Respondent are legally wedded husband and wife and the marriage was solemnized as per Hindu rituals and customs on 2.12.2010 at Raipur. Out of their wedlock, a girl child was born on 25.1.2012, named as Tanishi @ Pari. Thereafter, a dispute arose between the parties and the Respondent – husband had filed the above-mentioned case seeking dissolution of the marriage by a decree of divorce, which is pending before the Court below.

From the written statement of the Petitioner, proceedings are yet to be commenced. The Petitioner prays that the matter may be transferred from Durg to Raipur on the ground that the Petitioner is suffering from cervical pain in the spinal cord. The doctor advised not to travel till recovery, not to lift the weight and she is taking care of her three year old child. The Petitioner has no source of income and facing financial hardship, residing with her parents and dependent on them. Hence, the Petitioner prays that the aforementioned case be transferred from Durg to Bilaspur.

4. Respondent had filed the written response/ objection to the petition and submits that vide order dated 24.6.2015 it is evident that the Petitioner had filed an application under Section 13 of the Family Courts Act, 1984 for the assistance of *amicus curiae*, but till today the Court has not decided the application and the same is pending. Further grounds taken that the ailment is not of a permanent nature, no other matrimonial dispute or matter is pending before any Court and the cause of action arose at Durg, the marriage was solemnized at Raipur and as such the same may be transferred to Raipur or Bemetara. It is further stated in the reply that on the date of hearing, the Petitioner always comes alongwith 5 to 6 persons and they used to threat the Respondent that once the case is transferred to Bilaspur then he has to face the dire consequences. Learned counsel for the Respondent further submits that from Durg to Bilaspur transport facilities are available. Learned Counsel further submits that the Respondent is ready to bear the traveling expenses from Bilaspur to Durg or Raipur or Bhemetara and therefore, the petition may be dismissed.

5. Heard Learned Counsel for the parties.

6. Learned counsel for the Petitioner relying on the grounds taken in the

petition, submits that on the basis of the said grounds, the petition may be transferred from Durg to Bilaspur.

7. Learned counsel for the Respondent relying on the grounds taken in the reply to the petition, submits that on the basis of the facts and grounds mentioned in the reply, the petition may be dismissed.

8. For the purposes of appreciation regarding the arguments advanced on behalf of the parties and the facts mentioned in the petition and in the reply, the application and other annexed documents are perused.

9. On a close scrutiny, it appears that the Petitioner and the Respondent are legally wedded wife and husband and their marriage was solemnized on 2.12.2010 at Raipur. Out of their wedlock, a girl child was born on 25.1.2012 presently in the custody of the Petitioner. The Petitioner is a housewife. She has no independent source of income and living and taking shelter in the house of her parents. As per documents regarding medical ailment, it is clear that presently she is suffering from pain in the cervical region and the doctor has advised not to travel till recovery. No other matrimonial matter is pending between the parties. From perusal of the order-sheet dated 24.6.2015, it appears that even after filing of the application for legal assistance by amicus curiae till today no order has been passed. The prayer to avail the assistance of amicus curiae has to be disposed of as early as possible as the matter is pending at Durg and the Petitioner has to come from Bilaspur. On perusal of the order-sheet dated 24.7.2015, it is evident that the trial Court warned the parties if the parties remained absent in the mediation proceedings Court shall impose cost of Rs.500/-. Looking to the entire spirit of mediation and matrimonial dispute, the said appreciation and the order is not desirable. Regarding any threat by the

near relatives belongs to the Petitioner, the Respondent did not lodge any report or complaint in any police station or also not before the Court below. In absence of any such facts, *prima facie* the element of threat may not be considered as correct. Since the Petitioner is having about three years old girl child dependent on her and being mother she has to take care of her. She is suffering medical problem regarding cervical pain and has no independent source of income, I am inclined to allow the petition.

10. Consequently, on entire consideration of the facts, the transfer petition is liable to be allowed. Hence, it is allowed and it is ordered that the HMA No. 153A of 2015 (Tripesh Kumar Sharma vs. Smt. Priyanka Sharma) filed under Section 13 of the Hindu Marriage Act for dissolution of marriage by a decree of divorce. pending before the Third Additional Principal Judge, Family Court, Durg, District Durg be withdrawn and transferred to Judge, Family Court, Bilaspur for its trial in accordance with law. The Court below is hereby directed to transmit the matter immediately to the concerned Court for further proceedings.

Sd/-

Chandra Bhushan Bajpai
Judge