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HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No.42 of 2015**

Smt. Asha Agrawal W/o Jayant Sharaf, Aged About 28 Years R/o Kranti Nagar Bilaspur, Tehsil And District-Bilaspur, At Present R/o C/o Ashok Agrawal , Ddr. Joshi Gali, Kotra Road Raigarh, Tehsil And District Raigarh Chhattisgarh (Non- Applicant Before The Court)

---- **Petitioner****Versus**

Jayant Sharaf S/o Shri Kamal Sharaf, Aged About 26 Years R/o Kranti Nagar Bilaspur, Tehsil And District-Bilaspur Chhattisgarh (Applicant Before The Court Below)

– Respondent

Shri Rakesh Pandey, counsel for the petitioner.
Shri Manoj Paranjape, counsel for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14.12.2015.**

By this order, transfer petition (civil) filed by the petitioner seeking transfer of Civil Suit No. 530A/2014 (Jayant Saraf Vs. Smt. Asha Agrawal), pending before Judge, Family Court, Bilaspur under Section 12 (2) (b) of the Hindu Marriage Act, 1955, (for short 'the Act') instituted on 27.10.2014 to Judge, Family Court, Raigarh, is being disposed of.

2. As per the brief facts of the petition, marriage between the petitioner and the respondent was solemnized on 21.01.2014 and after some development between the parties, the respondent had filed aforementioned Civil Suit before the Judge, Family Court, Bilaspur to declare the marriage between the parties as voidable. After receiving notice of the said Civil Suit, the petitioner had filed Civil Suit No. 11A/2015 under Section 13 of the Act for dissolution of marriage by a

decree of divorce presently pending before the Judge, Family Court, Raigarh.

3. It is submitted on behalf of the petitioner that as the marriage was not void on the ground as mentioned in the application under Section 13 of the Act, the petitioner filed said civil suit at Raigarh for dissolution of marriage by a decree of divorce. Further ground taken by the petitioner is that being a woman, every time her father has to escort her to attend the court proceedings at Bilaspur and it causes very inconvenient for her father. An application for maintenance is also pending before Judge, Family Court, Raigarh. The Police filed one charge sheet under the provisions of Section 498 A/34 of the IPC against the respondent and other family members which is pending for trial before Chief Judicial Magistrate, Raigarh. One more application for issuance of protection order under the Protection of Women from Domestic Violence Act, 2005 is also pending before the JMFC Raigarh. On 10.02.2015 the petitioner has made a written complaint regarding threatening by the respondent. When the police has not enquired and proceeded in the complaint, she re-reported the matter to the Superintendent of Police on 17.06.2015. It is further submitted that on the basis of the ground taken aforementioned Civil Suit may be transferred from Bilaspur to Raigarh.

4. The respondent in his reply to the petition submitted that after receipt of the notice of Civil Suit No.530A/2014, the petitioner has filed subsequent Civil Suit under Section 13 of the Act before the Court of Raigarh. In reply it is submitted that Civil Line Police after enquiry regarding the application of the petitioner dated 10.02.2015 held that no any cognizable offence found to have been committed. As there are litigations regarding dissolution of marriage before the Court, there is

dispute and further facts on appearance of both the parties in hearing, the Police held that the dispute is in relation with husband and wife and they have been advised to wait for the orders of the Court and to maintain peace. Further it is replied that as per Annexure-R/2, Station House Officer, Tarbahar, Bilaspur appreciated regarding the complaint and it is held that whenever the petitioner came to Bilaspur for attending the Court proceedings, she used to level false allegations against the respondent. As per Annexure - R/6, respondent has also reported the matter to the Police of Chakradharnagar, Raigarh, that when he went to Raigarh for his appearance before the Court, three unknown persons came to him and one of them slapped him. After the report the Police examined the respondent medically and reported some injuries. Police has recorded the information as an information of non-cognizable offence. It is further alleged that the respondent had prayed before the SHO Tarbahar for police protection as he was subjected for false allegation of rape and threatening. It is submitted that in rebuttal no any facts or documents have been filed by the petitioner and in order to harass the respondent, the petitioner has filed civil Suit under Section 13 of the Act before the Court of Raigarh. Hence, the petition may be dismissed as it is without any foundation.

5. Heard the matter finally.

6. Learned counsel for the petitioner duly supported the ground taken in the petition and prayed that on the ground taken in the aforementioned Civil Suit, the same may be transferred from Bilaspur to Raigarh for its trial. In support of his contention, he placed reliance on **2010 (15) SCC 354 Ajay Lawania Vs. Shobhna Dubey**, wherein Hon'ble Supreme Court held that if the petitions for grant of divorce and restitution of conjugal rights are pending, in order to avoid conflicting

decisions both the cases shall be heard by same court taking evidence and hearing arguments one after the other and separate judgments to be passed within six months. Learned counsel submits that the case law cited is applicable for this case and the matter pending at Bilaspur may be transferred to Raigarh for hearing by the same Court wherein already petition under Section 13 of the Act is pending.

7. Learned counsel for the respondent supported the reply filed by him and submitted that the sole ground regarding the incident of threatening on or before 11.02.2015 was proved to be false in an enquiry and on the other side the respondent had demonstrated that there was assault against him at Raigarh and the petitioner is in a habit of making false complaint. Respondent also prayed for police protection and he received simple injuries at Raigarh by unknown person for no cause. Learned counsel further submits that the petitioner filed petition under Section 13 of the Act after the receipt of the notice of the petition filed by the respondent at Bilaspur. Further submits that as the petitioner failed to demonstrate the reason to transfer the matter from Bilaspur to Raigarh, the petition may be dismissed.

8. In order to appreciate the arguments and the ground taken in the matter, I have perused reply and other annexed documents.

9. On close scrutiny, it is surfaced that as per the facts presented before the Court below marriage of the petitioner and the respondent was solemnized on 21.01.2014 and thereafter due to some development, the respondent filed aforementioned Civil Suit under Section 12 (2) (b) of the Act which is pending before Judge, Family Court, Bilaspur. After receipt of the notice of the above matter, the petitioner has filed another litigation under Section 13 of the Act at

Raigarh presently pending. As per other facts, one maintenance matter, one criminal prosecution against the respondent and his family members under Section 498A/34 IPC are also pending before CJM Raigarh. One application under the Protection of Women From Domestic Violence Act, 2005 for issuance of protection order is also pending against the respondent before JMFC Raigarh.

10. As per settled law, allegations regarding offence under Section 12 & 13 of the Act ought to be tried by the same Court. It is submitted on behalf of the petitioner that being a woman, she has to take support of her father while appearing before the Court at Bilaspur which causes inconvenience for her. It is also surfaced that though it cannot be appreciated as proved there are allegations regarding threatening to the petitioner and in an enquiry the Police found the application regarding allegation of threatening as false. On the other hand, there are facts and material regarding the fact that the respondent encountered unidentified attack at Raigarh from three unknown persons and prays for protection. Upon consideration of the entire facts, it goes to show that relation between the parties has become strained, there are allegations against both the parties regarding threat and other facts. Looking to the above, this Court is of the view that the matter pending before the Court of Bilaspur should be transferred to another Court and not at Raigarh. Thereby, the petition filed by the petitioner is hereby disposed of. The Judge, Family Court Bilaspur is hereby ordered that Civil Suit No. 530A/2014 be withdrawn and transferred to Judge, Family Court/ District Judge, Janjgir Champa (CG) (as jurisdiction vested) for its trial and disposal in accordance with law. The District Judge, Bilaspur is hereby directed to transfer immediately the

concerned records to the concerned court for further proceedings. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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