

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Cr.) No.12 of 2014**

Smt. Shashi Chouhan, W/o. Manoj Chouhan, D/o. Shri LP Singh, aged about 42 years, R/o. Karamchari Colony, Bhanupratappur, District North Bastar Kanker (CG)

---- Applicants

Versus

1. Manoj Kumar Chouhan, S/o. Bala Ram @ Balram Chouhan, aged about 42 years,
2. Balram @ Bala Ram Chouhan, S/o. Late Bhola Ram Chouhan, aged about 75 years,
3. Smt. Laxmi Chouhan, S/o. Balram @ Bala Ram Chouhan, aged about 72 years,
All R/o. Sector-1, Street ACB Qtr. No.8/A, Police Station Bhilai Bhatti, District Durg (CG)
4. Smt. Kavita Thakkar W/o. Vipin Nand Thakkar, aged about 40 years, R/o. Super D, Qtr. No. 137, CSEB Colony, Korba, District Korba (CG)
5. State of Chhattisgarh, through Station House Officer, Police Station Bhilai Bhatti, District Durg (CG)

---- Non-applicants

Shri BP Singh, counsel for the appellant.
Shri Amiyakant Tiwari, counsel for respondents 1 to 4.
Ms. Sangeeta Mishra, Panel Lawyer for the State.

Order On Board

02/9/2015

By this order, transfer petition (criminal) filed by the applicant seeking transfer of Criminal Case No.302/12 (State vs. Manoj Chouhan & Ors.) under Section 498-A/34 of the IPC pending before the Court of Judicial Magistrate First Class, Durg to the Court of Judicial Magistrate First Class, Bhanupratappu, District North Bastar, Kanker, is being disposed of.

2. As per the brief facts of the petition, marriage between the applicant and non-applicant No.1 was solemnized on 31.01.2008 with Hindu rites and customs. Non-applicants 2, 3 & 4 are parents and sister of non-applicant No.1. On the ground of cruelty, the applicant

lodged First Information Report and the police after due investigation filed charge sheet before Judicial Magistrate First Class, Durg against non-applicants 1 to 4 and the same is pending for evidence of prosecution. The ground taken in the petition are that the non-applicants are applying delaying tactics to harass the applicant with interior motive and the trial Court kept mum and therefore, fair and impartial could not be done. Further taken the ground that application filed under Section 9 of the Hindu Marriage Act is pending before District Judge, Bhanupratappur against the non-applicant No.1, therefore, it will be justified if the criminal case also transferred from Judicial Magistrate First Class, Durg to Judicial Magistrate First Class, Bhanupratappur. The applicant is a lady and is a teacher by profession and there is no other male except her old aged father and it is very difficult for the applicant to attend the court lonely. The distance of Durg to Bhanupratappur is 155 kms. and being a lady it would be very difficult for her to attend the Court at Durg. During the Court proceedings, the non-applicants never attended the Court in time and whenever they attended the Court, they used filthy language against the applicant and her father. She could not report the matter to the police and despite oral request, no action has been taken against the non-applicants. Hence, it is prayed that above mentioned criminal case may be transferred from Durg to Bhanupratappur.

3. On behalf of the non-applicants, reply has been filed wherein they denied the facts and ground taken by the applicant and submitted that in order to create pressure on the trial Court to hold up the trial the instant petition has been filed. The applicant is one of the prosecution witnesses, she has to record her statement for once for which she was summoned by the trial Court. The applicant has suppressed the fact

that she is regularly appearing before the Family Court at Durg. Transfer of a case filed on behalf of the State is an exception. The applicant has failed to prove the exceptional circumstances and failed to make out a prima facie case in her favour. Non-applicants 2 & 3 are aged about 75 and 72 years and non-applicant No.4, sister of non-applicant No.1, is presently residing at Korba, hence it would be more inconvenient for them to attend the Court proceedings at Bhanupratappur. On behalf of the non-applicants, it is submitted that the petition may be dismissed.

4. Heard both the contesting parties on the instant appeal.

5. Learned counsel for the applicant shortlisted the ground for transfer of petition and submitted that the applicant is a lady and is resideing at Bhanupratappur and Durg is about 155 km away from Bhanupratappur, She is a Govt. teacher, she has to take leave to attend the court proceedings, the non-applicants have taken adjournments of the case many times. Due to long distance, it would be inconvenient for her to attend the court proceedings at Durg, hence the application may be allowed and the case as above mentioned may be transferred.

6. On the other hand, learned counsel for the non-applicants submits that this is State case filed by Bhilaibhatti Police. The applicant is merely a witness, she has to appear once for her statement, she is not required to appear in each and every day as the State has filed the case. Once she appeared before the Court Durg, and without recording her evidence, she prayed for adjournment on the ground that her petition is pending before Hon'ble High Court and next date of hearing is fixed for this month. Non-applicants 2 & 3 are very old aged persons and non-applicant No.4 is residing at Korba after her marriage. It would

be inconvenient for them to go to Bhanupratappur to attend the Court proceedings. Transfer is exception of general law. For any safety and security, the applicant can get the help of the State. No any biasness or arbitrariness is shown or proved on behalf of the applicant, hence, instant transfer petition may be dismissed.

7. On behalf of the non-applicants, the petition is opposed.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the material available on record.

9. On close scrutiny, it appears that the police of Bhilaibhatti filed a State case under Section 498A read with Section 34 of the IPC against the non-applicants which is pending before Judicial Magistrate First Class, Durg wherein after framing of the charges, the matter is listed for examination of the witnesses. In the said State case the applicant is merely a witness, she is not the applicant. As per procedure, she has to appear before the Court to record her statement, there were 15 witnesses listed in the said prosecution case along with present applicant. Most of them belong to territorial jurisdiction of Durg. No sufficient reason is shown as to why any prayer in writing was not made before the trial Court or any written report regarding any alleged misbehaviour was presented before the local police. As the present applicant is a government teacher by profession she can very well write an application or complaint to the concerned Superintendent of Police and other officials. Learned counsel for the applicant submitted regarding Annexure-A/5 along with present petition. The same cannot be held as any complaint regarding any offence committed during trial.

10. On due consideration, looking to the entire facts and circumstances, the applicant has failed to show a good case regarding transfer of instant case from Durg to Bhanupratappur.

11. In the considered view of the Court, the instant transfer petition (criminal) is liable to be and is hereby dismissed.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**