

HIGH COURT OF CHHATTISGARH, BILASPUR

Transfer Petition (C) No.26 of 2015

1. Smt. Veena Sao, wife of Shri Suresh Kumar Sao, aged about 34 years,
2. Himanshu Sao, son of Shri Suresh Kumar Sao, aged about 03 years, Minor through his natural guardian mother Smt. Veena Sao.

Both residents of village Urkura, Post Birgaon, Tahsil and District Raipur (CG) Civil & Revenue District Raipur.

---- Petitioners

Versus

Suresh Kumar Sao, S/o. Shri Mant Ram Sao, aged about 37 years, R/o. Hathnipara Ward, Bhatapara, Tahsil Bhatapara, District Balodabazar (CG)

---- Respondent

Ms. Tuhina Pandey, Advocate on behalf of Shri BP Sharma, counsel for the petitioners.
Shri BL Dembra, counsel for the respondent.

Order On Board

04.11.2015.

By this order, transfer petition (civil) filed by the petitioner seeking transfer of MJC No.7/2015 (Suresh Kumar Vs. Minor Himanshu Sao), pending before the Court of Additional District Judge, Bhattapara, District Baloda Bazar under Section 6 of Hindu Minority & Guardianship Act, 1956 to the Court of Principal Judge Family Court, Raipur is being disposed of.

2. As per the brief facts of the petition, marriage of the petitioner No.1 and the respondent was solemnized on 25.01.1998 as per Hindu rituals at Bhattapara and thereafter dispute arose between the parties. Petitioner No.2 Himanshu Sao is born out of their wedlock, presently aged about 16-17 years (his age was wrongly mentioned as 03 years in the memo of appeal). It is submitted on behalf of the petitioners that the petitioner No.1 has filed complaint case under Section 200 of Code of Criminal Procedure, 1973 (for short 'the Code') for taking cognizance

against the respondent and others under Sections 406, 418, 494, 34 of the Indian Penal Code, which is pending before the Court of Judicial Magistrate First Class, Raipur. One application under Section 125(3) of the Code was also filed before First Additional Principal Judge, Family Court, Raipur for execution of order of maintenance and regarding the amount of maintenance so outstanding. The petitioners have also filed MJC No.97/10 under Section 127 of the Code for enhancement of maintenance amount which is pending before First Additional Principal Judge, Family Court Raipur. It is submitted that the respondent has filed application under Section 6 of the Hindu Minority and Guardianship Act for the custody of petitioner No.2 to the respondent. It is submitted on behalf of the petitioners that petitioner No.2 is studying in Class-XI, the petitioners have no source of income, they are depend upon the parents of petitioner No.1 and also on the maintenance amount of Rs.2000/- granted by the Court, petitioner No.1 is not doing any job, they are facing financial constrain and also facing difficulty in appearing before Raipur Court and also before the Bhatapara Court. Hence, it is prayed that the above mentioned MJC No.07/15 may be transferred from Bhattapara to the Judge Family Court Raipur.

3. On behalf of the respondent no any written response/objection has been filed, but he orally opposed the petition.

4. Learned counsel for the petitioners duly supported the ground taken in the petition and submitted that on the basis of the ground taken in the petition, the matter as prayed be transferred from Bhattapara to Raipur.

5. On behalf of the respondent, the application is opposed and submitted that distance between Bhattapara and Raipur is only 40 km

and there would not be any inconvenience for the petitioners to attend the Court proceedings at Bhattapara. Further submitted that the petitioners have failed to demonstrate the ground for transfer of the petition, hence, the same may be dismissed.

6. For the purpose of appreciating the arguments advanced on behalf of the parties, the material available are perused and arguments advanced are considered.

7. On close scrutiny, it appears that petitioner No.1 and the respondent are legally wedded wife and husband. Petitioner No.2 is the son born out of their wedlock, presently aged about 16-17 years, studying in Class-XI and living with petitioner No.1. The petitioners have no independent source of income. The petitioners are granted Rs.2,000/- as maintenance. The petitioners are presently residing with the parents of petitioner No.1. The aforementioned three proceedings, one for taking cognizance under various provisions of penal code, two other proceedings under Section 125(3) and Section 127 of the Code are pending before the Court of Raipur. Petitioner No.1 is a woman, petitioner No.2 is minor and also a student. On consideration of the entire facts, it would be appropriate that all the matrimonial matters along with custody of the minor and the same may be heard and disposed of at the same place. It would be convenient to all the parties to attend the proceedings at one place.

8. Consequently, the petition is allowed. It is ordered that MJC No.07/15 (Suresh Kumar Vs. Minor Himanshu Sao) under Section 6 of the Hindu Minority and Guardianship Act, 1956 pending before Additional District Judge, Bhattapara be withdrawn and transferred to the Court of Principal Judge, Family Court, Raipur for its trial and final

disposal in accordance with law. The Additional District Judge, Bhattapara 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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