

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 48 of 2016

- Smt. Rubina Akhtar W/o Sajid Khan, Aged About 29 Years D/o Sattar Mohammad Qureshi, R/o Shivaji Chowk, Santoshi Nagar, P.S. Tikrapara, Raipur, Tahsil And District Raipur, Chhattisgarh

---- Petitioner

Versus

- Sajid Khan S/o Rafiq Khan, Aged About 32 Years R/o Behind Sector 6/c, Ward No. 36, Padhimar, Bhadrpara, Balco Nagar, Tahsil And District Korba, Chhattisgarh

---- Respondent

For Petitioner	: Shri JK Gupta, Advocate.
For Respondent	: None.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

22/11/2016

Pursuant to notice issued by this court, on 12.8.2016 the respondent appeared personally and sought time to engage counsel. Thereafter, on 16.9.2016 also time was granted to him to engage a counsel, making it clear that if he does not engage any counsel by 18.11.2016 he himself shall argue the matter. On 18.11.2016 also no representation was made on behalf of the respondent. However, in the larger interest of justice, the case was directed to be taken up today, but today also there is no representation on behalf of the respondent. In the facts and circumstances of the case, the matter is heard finally with the assistance of the State counsel.

02. According to the petitioner/wife, her marriage was solemnized with the respondent on 20.5.2009 as per Muslim rites and out of the wedlock, a female child Palak Khan was born on 18.2.2010 and a male child Mohd. Kaif Khan was born on 16.6.2012. As the petitioner was ill-treated by the respondent, she was compelled to leave his company and is presently living at Raipur along with her parents. The petitioner has filed an application under Section 125 of Cr.P.C. before the Family Court, Raipur for grant of maintenance which is pending there for consideration whereas the respondent/husband has filed an application under Section 125(2) of the Muslim Marriage Act bearing Civil Suit No.216-A/15 before the Family Court, Korba for restitution of conjugal rights. The present petition has been filed by the petitioner/wife seeking transfer of Civil Suit No.216-A/15 from Family Court, Korba to Family Court, Raipur on the following grounds:

- that the petitioner, having two minor children, is living at her parental house where except her aged father, there is no other male member to accompany her to attend the case at Korba.
- that distance between Korba and Raipur is more than 200 km, therefore, it gets very difficult for the petitioner to attend the Court at Korba on every date of hearing and unless she stays at Korba in the night, she cannot attend the Court next day. This apart, she has to incur heavy expenses in travelling, lodging etc.
- that the petitioner has no relation at Korba and therefore, it is difficult for the petitioner being a lady to stay there even for a day and to contest the case.

- that whenever the petitioner goes to Korba for attending the court proceedings, the respondent threatens her of dire consequences and as such, there is danger to her life.

03. State counsel has duly assisted the Court.

04. Having regard to the facts and circumstances of the case, in particular the fact that the petitioner, who is a lady, has to travel a long distance of more than 200 km all alone to attend the case at Korba where she has no relation and has to incur heavy expenses therefor and further that her application under Section 125 of Cr.P.C. is already pending before the Family Court, Raipur, in view of judgments of the Hon'ble Apex Court in the matters of ***Amita Shah Vs. Virendra Lal Shah, (2003) 10 SCC 609 and Simi Mehrotra Vs. Anil Mehrotra, (2002) 10 SCC 70***, the transfer petition is allowed.

05. Consequently, Case No.216-A/15, Sajid Khan Vs. Smt. Rubina Akhtar, pending before the Principal Judge, Family Court, Korba is hereby withdrawn and transferred to Family Court, Raipur. Principal Judge, Family Court, Raipur shall ensure disposal of both the cases expeditiously by trying the same together.

Parties to appear before the Principal Judge, Family Court, Raipur on 7th December, 2016. In case the respondent fails to appear on the said date, the Family Court, Raipur shall issue notice to him informing him about the next date.

Sd/
(Pritinker Diwaker)
Judge

Khan