

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 1427 of 2015

In

Matrimonial Reference No. 247 of 2014

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Rita Kumari @ Reeta Kumari, D/o Nagendra Pandey and wife of Rajesh Kumar Mishra, aged about 24 years, resident of Village – Bedwalia, P.S. – Mairawa, District – Siwan, at present resides at Village – Anwar, P.S. – Kopa Samahota, District – Saran – Pin Code 841213.

.... Petitioner

Versus

Rajesh Kumar Mishra, son of Udai Kishore Mishra, aged about 26 years, resident of village – Bedwalia, P.S. – Mairawa, District – Siwan, Pin Code – 841243.

.... Opp. Party

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Appearance :

For the Petitioner/s : Mr. Madhaw Prasad Yadaw

For the Opp. Party/s : Mr. Vijay Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4. 13-02-2017 Heard Sri Madhaw Prasad Singh, learned counsel for the petitioner and Sri Vijay Kumar Mishra, learned counsel, appearing on behalf of opposite party/husband of the petitioner.

2. The present petition has been filed by the wife of opposite party under Section 24 of the Code of Civil Procedure, 1908, with a prayer to direct for transferring the Divorce Case No. 247 of 2014 from the court of Principal Judge, Family Court, Siwan to the court of Principal Judge, Family Court, Saran at Chapra.

3. Short fact of the case is that petitioner's marriage with opposite party was solemnised on 28-06-2011 within the territorial jurisdiction of the court at Chapra. After the marriage,



the petitioner led peaceful married life for some time in her laws' house. Subsequently, she went with her husband to his working place at Calcutta and she lived there for three months. Thereafter, the petitioner for some time came to her matrimonial house and thereafter, demand of dowry was made. The petitioner thereafter resided in her-laws' house at Siwan, but finally, she was dropped by her in-laws to her parents' house on 20-12-2014. After some time from petitioner's side, a complaint case was filed, vide Complaint Case No. 1082(C) of 2015 for offence under Sections 323, 379, 406 and 498(A) of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, 1961 against her husband and her in-laws member. Subsequently, she noticed that her husband had filed the present divorce case and thereafter, the petitioner approached this Court by filing the present petition.

4. It was submitted by Sri Madhaw Prasad Yadav, learned counsel for the petitioner that petitioner is residing at Chapra with her old parents and being lady, it is difficult for her to regularly attend the proceeding in the divorce case at Siwan from Chapra. Besides this, it has been argued that complaint case is already pending. It was submitted that her husband had already appeared in the complaint case in the court at Chapra. Accordingly, a prayer has been made for transferring the record



from Siwan to Chapra.

5. Sri Vijay Kumar Mishra, learned counsel for the opposite party/husband has vehemently opposed the prayer for transfer. It was submitted by learned counsel for opposite party that in view of Section 21 of the Hindu Marriage Act, 1955, a case can be transferred to a court where first proceeding was pending. According to learned counsel for the opposite party, since divorce case was earlier filed by the husband in the court at Siwan, even the case, which was filed by the petitioner at Chapra, is required to be transferred.

6. Besides hearing, I have also perused the materials available on record. So far as objection raised by learned counsel for the opposite party regarding objection of transfer by way of referring to Section 21 of the Hindu Marriage Act is concerned, it is evident that if under the Hindu Marriage Act, proceedings are pending at two different places, then a proceeding may be transferred to the place where first proceeding was initiated. It appears that the submission made by learned counsel for the opposite party is misconceived. It is not a case that two proceedings under the Hindu Marriage Act are pending at two different places. In the present case, the wife has filed complaint case for offences committed by her husband and other under the



Indian Penal Code, which is pending at Chapra and as such, the submission of learned counsel for the opposite party regarding non-transferring of the case, in view of provisions contained in Hindu Marriage Act, is not sustainable.

7. So far as claim of petitioner for transfer of case is concerned, admittedly, the petitioner is lady and for lady, it would be difficult for her to regularly attend a proceeding from Chapra to Siwan. Moreover, it has been accepted by both the parties that husband has already appeared in the complaint case before the court at Chapra and as such, for the ends of justice, it is necessary to direct for transferring the record of Divorce Case No. 247 of 2014 from the court of Principal Judge, Family Court, Siwan to the court of Principal Judge, Family Court, Saran at Chapra. The record of the case is directed to be transferred forthwith.

8. It goes without saying that after receipt of the record of Divorce Case No. 247 of 2014 from Siwan court to Saran at Chapra, the petitioner will render full cooperation to the court below for early disposal of the divorce case.

9. With above observation, the petition is allowed.

(Rakesh Kumar, J.)

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