

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2725 of 2016

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Swati Priyadarshni, wife of Chandra Mohan Kumar, D/o Dr. Jai Vinod Gupta,
Resident of Village + P.S. Runnisaidpur, District Sitamarhi

.... Petitioner

Versus

Chandra Mohan Kumar, son of Sri Rajendra Prasad Gupta, Resident of Village
Bhimpur, P.S. Runnisaidpur, District Sitamarhi at present Mohalla Ayachi
Gram, Road No. 2, P.S. Ahiyapur, District Muzaffarpur

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Devendra Kumar, Advocate

For the Opposite Party: Mr. Sunil Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-07-2017

Heard learned counsel for the petitioner as well as learned
counsel for the opposite party.

2. The present petition has been filed for transfer of Divorce
Case No. 267 of 2014 pending in the Court of the learned Principal
Judge, Family Court, Muzaffarpur to the Court of the learned Principal
Judge, Family Court, Sitamarhi.

3. The short facts of the case, according to the petitioner, are
that the marriage between the parties was solemnized on 06.06.2011.
The opposite party has filed subject divorce case alleging that when the
petitioner came to her matrimonial house, the opposite party and his
family members were astonished to find that the petitioner was not the
same girl with whom the opposite party had been married. Upon
objection, the father of the petitioner threatened to implicate them in



false criminal cases. It has been alleged that the petitioner has deserted the opposite party without reasonable excuse and she has been living at her paternal home at Runnisaipur, District Sitamarhi since 2013 and hence, the opposite party sought a decree of divorce.

4. Learned counsel for the petitioner submits that in fact it was the petitioner who suffered cruelty at the hands of the opposite party by reason of which she had to come to her paternal home where she has filed Complaint Case No. 1938 of 2014 under Sections 379, 504, 506 and 498A/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act in the Court of the learned Chief Judicial Magistrate, Sitamarhi which was converted into an FIR as Runnisaipur P.S. Case No. 528 of 2014. After due investigation, the police has submitted charge sheet and the opposite party has already appeared in the case. As a matter of fact, the opposite party was granted provisional bail by the Chief Judicial Magistrate vide order dated 16.06.2015 on the basis of a compromise between the parties in which the opposite party has given an undertaking to withdraw Divorce Case No. 267 of 2014 and has agreed to keep the petitioner with due dignity and honour. It is therefore submitted that on one hand the opposite party has undertaken to keep the petitioner due dignity and honour and to withdraw the divorce case, but on the other hand he appears to be adamant to pursue the divorce case as the same has not been withdrawn even after more than two years of such undertaking. It



is further stated that the petitioner is a lady a 4-year old child to look after and it is very difficult for her to make the commute to Muzaffarpur to defend the divorce case.

5. Learned counsel for the opposite party appears and opposes the prayer for transfer of the said divorce case stating that the petitioner's side had attacked the opposite party as he was going to appear in the proceeding in Runnisaipur P.S. Case No. 528 of 2014 under Section 498A of the Indian Penal Code and for which a complaint has been filed on 18.06.2016 before the learned Chief Judicial Magistrate, Sitamarhi.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court is of the view that the ends of justice will be met if the aforesaid divorce case is transferred as sought by the petitioner. It is not in dispute that Runnisaipur P.S. Case No. 528 of 2014 is pending at Sitamarhi in which the opposite party has appeared. He has also given an undertaking to withdraw the aforesaid divorce case and is ready to keep the petitioner with due dignity and honour, as recorded in the aforesaid order dated 16.06.2015 passed by the learned Chief Judicial Magistrate (Annexure-2). The contention of the opposite party that the petitioner's side has also assaulted him when he went to attend the aforesaid case and for which the opposite party has filed a complaint on 18.06.2015, has to be viewed in the light of the observations made



in the aforesaid order dated 16.06.2015 in Runnisaidpur P.S. Case No. 528 of 2014 as aforesaid. The petitioner is a lady residing in the District of Sitamarhi with a small child of four years to take care of. Learned counsel for the opposite party has also not expressed any specific reason why it would be difficult for the opposite party to attend the divorce case if the same is transferred to Sitamarhi as sought by the petitioner.

7. Having regard to the balance of convenience of the parties which clearly tilts in favour of the petitioner, this Court directs transfer of Divorce Case No. 267 of 2014 filed at the instance of the opposite party from the Court of learned Principal Judge, Family Court, Muzaffarpur to the Court of learned Principal Judge, Family Court, Sitamarhi for its disposal.

8. The petition stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15. 07.2017
Transmission Date	N.A.

