

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TPC No. 71 of 2016**

Smt. Kavita Singh W/o Vasant Kumar Singh (Wrongly Mentioned As Bansat), Aged About 37 Years, R/o Through: Ambikeshwar Singh, D.M.Q.-28, Hospital Colony, Vishrampur, District (Revenue And Civil)- Surajpur, Chhattisgarh

---- Petitioner**Versus**

Vasant Kumar Singh (Wrongly Mentioned As Bansat) S/o Birendra Pratap Singh, Aged About 39 Years, R/o Quarter No.-04/D, Road No.-19, Sector-11, Jone-01, Bhilai, Tahsil & District (Revenue And Civil)- Durg, Chhattisgarh

---- Respondent

Shri S.D.Singh, counsel for the petitioner/s.
Shri Apoorv Shrivastava, counsel for the respondent.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****13/02/2017**

Petitioner / wife has moved this application under Section 24 of CPC for transfer of divorce petition pending in the Family Court, Durg to Family Court, Vishrampur.

2. Learned counsel for the petitioner submits that the respondent / husband has filed a suit seeking decree of divorce from the petitioner, which has been filed at Durg. Because of the dispute between the parties, the petitioner is presently residing at Vishrampur along with her parents and a 10 year old son. The distance of Vishrampur from Durg is about 450 Kms. Therefore, the petitioner/ wife is facing grave hardship and inconvenience in undertaking journey, all the way from Vishrampur to Durg to attend Court proceedings. It is also submitted that it is difficult for the petitioner to leave behind her 10 year old son and her movement from Vishrampur to Durg causes serious inconvenience to her son. It is also submitted that the petitioner has no independent source of income and not financially sound also. The petitioner has remained dependent on care, support and financial

assistance from her parents and after judicial intervention, she is getting litigation expenses and maintenance from her husband. Therefore, it is prayed that the case may be transferred from Family Court, Durg to Family Court, Vishrampur.

3. Learned counsel for the respondent, however, opposes prayer and submits that the petitioner is not justified in seeking transfer of the case merely because she happened to reside at Vishrampur. Relying upon two decisions of the Supreme Court in the cases of **Preeti Sharma v. Manjit Sharma**¹ and **Anindita Das v. Srijit Das**², learned counsel for the respondent sought to urge that on mere asking, the case could not be transferred. He submits that the respondent having taken up the remedy of filing suit for decree of divorce is in a position of '*dominus litus*'. Unless there is extraordinary reason, he should have right to prosecute the case at the place of his choice. It is further submitted that the wife and the son, both are being paid maintenance of Rs.12,000/- per month and whenever she undertakes journey to attend the case at Durg, she is also paid Rs.1,000/- per journey. Moreover, litigation expenses of Rs.7,000/- have already been paid to the petitioner. It is also submitted that though the distance between Vishrampur and Durg is about 450 kms, Vishrampur is well connected with Durg through conveyance of Railways. It is further submitted that the respondent is a Teacher in Kendriya Vidyalaya and he has other responsibilities also including maintenance of his own parents.

4. Though learned counsel for the respondent has placed reliance upon two decisions of the Supreme Court in the cases of **Preeti Sharma** (supra) and **Anindita Das** (supra), before the aforesaid decisions and thereafter, judicial trend has been to transfer the cases to ensure better convenience of the wife. The Court has to be only satisfied with the fact that transfer of the case would result in better convenience of the wife. This has been the judicial approach. For this proposition, it is apposite to refer to few decisions of the Supreme Court as follows -

In the case of **Anju Ohri v. Varinder Ohri**³, transfer petition was allowed for better convenience of the wife who was residing at Delhi by transferring the case from Chandigarh to Delhi on the considerations of better convenience of the wife.

In the case of **Samita Bhattacharjee v. Kulashekar Bhattacharjee**⁴, petition for transfer of matrimonial case filed by wife was allowed. The wife was staying at

1 (2005) 11 SCC 535

2 (2006) 9 SCC 197

3 (2007) 15 SCC 556

4 (2008) 17 SCC 482

Howrah (West Bengal) with a minor child in her parental home, whereas the case instituted by the husband was pending in the Family Court, West Tripura, Agartala. On the consideration that the wife was living at Howrah with a minor child, application for transfer was allowed.

In yet another decision of the Supreme Court in the case of **Purnima Sailani v. Shailendra Sailani**⁵, on transfer petition filed by the wife having minor daughter, the proceedings were transferred from Family Court, Allahabad to Famil Court at Ulhasnagar, Maharashtra.

Similarly, in the case of **Ritu Ratan v. Sukhbans Kumar Sirohi and anr.**⁶, wife's application for transfer of the case from Tis Hazari, Delhi to the Court at Lucknow was allowed considering the fact that other cases were also transferred.

5. A common thread running through all these decisions appears to be consideration of better convenience of wife. In the present case also, the wife is staying at Vishrampur which is quite far away from Durg where the case is pending. She has got a minor son aged 10 years and the petitioner and her son, both are bound to face inconvenience while undertaking journey from Vishrampur, a remote area of the State to District – Durg, which is about 450 kms away. Leaving behind her young son aged 10 years would be equally a matter of concern and consideration for the mother as she is stated to be residing with her old aged parents and her father is stated to be a retired colliery employee. Mere fact that the wife is getting some maintenance amount or litigation expenses, that by itself, is not sufficient to relieve her of inconvenience in undertaking journey from Vishrampur to attend the Court proceedings at Family Court, Durg. Therefore, it would be for a better convenience of the wife if the case is transferred from Durg to Vishrampur.

6. In the result, this petition is allowed. It is directed that the divorce petition filed by the respondent and registered as Civil Suit No.437-A/2015 pending in the Family Court, Durg shall stand transferred to the records and file of Family Court, Vishrampur.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

5 (2009) 1 SCC 656

6 (2009) 14 SCC 682