

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 68 of 2016

Smt. Gita W/o Shri Sunil, Aged About 33 Years R/o Mines Colony Vishrampur,
Revenue & Civil District- Surajpur, Chhattisgarh

---- Petitioner

Versus

Sunil Kumar S/o Shri Shital Prasad, Aged About 33 Years R/o House No.433,
Gero Road, Shanti Nagar Supela Bhilai, Tehsil- Durg, Revenue & Civil District-
Durg, Chhattisgarh

---- Respondent

For Applicant	:	Ms. Sarina Khan, Advocate
For Respondent	:	Shri S.K. Agrawal and Shri Purendra Khichariya, Advocates

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/03/2017

Heard.

1. This petition has been filed by the petitioner seeking transfer of matrimonial dispute pending in the Court of Family Judge, Durg.
2. The petitioner is the wife of respondent -Sunil Kumar. Respondent- husband has filed a suit for grant of decree of divorce against the petitioner.
3. Learned counsel for the petitioner argued that the petitioner is presently a destitute lady and residing at Vishrampur, District -Surajpur. She has no means of income and she has to maintain a child aged 8 years. The petitioner is finding it very difficult to contest at Durg not only for the reasons that she has to come all the way from Vishrampur to Durg but also because the respondent, because of his influence and position, is engaged in harassment of the petitioner. Learned counsel for the petitioner further submits that as the petitioner had already moved an application for transfer of the case before this Court, she did not appear before the Court below, awaiting the orders passed by this Court and

the in the meantime, the learned Family Judge has proceeded ex-parte against the petitioner. Therefore, for all these reasons, the petitioner prays that case may be transferred to Family Court at Surajpur which is adjacent to Vishrampur.

4. On the other hand, learned counsel for the respondent submits that the petitioner is not entitled to an order of transfer of the case because she has wrongly stated regarding her residence at Vishrampur. According to information of the respondent, the petitioner is residing at Durg only which is reflected from the fact that in her application under Section 125 Cr.P.C. filed before the Family Court in the month of July, 2016, she gave her address at Durg only. It is next submitted that the petitioner has now been proceeded ex-parte in the divorce suit on account of her non-appearance, which shows that the petitioner is not appearing. Therefore, the petitioner is not entitled to relief of transfer of the case.
5. There has been abundance of authorities and consistent view taken by the Supreme Court in number of cases that the guiding factor for considering application for transfer of a case is the better convenience of wife, noted by this Court in the case of **Smt. Kavita Singh Vs. Vasant Kumar Singh**¹, as under:

“4.....In the case of *Anju Ohri v. Varinder Ohri*², 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*³, petition for transfer of matrimonial case filed by wife was allowed. The wife was staying at 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

1 TPC No.71 of 2016, decided on 13.2.2017

2 (2007) 15 SCC 556

3 (2008) 17 SCC 482

the case of *Purnima Sailani v. Shailendra Sailani*⁴, on transfer petition filed by the wife having minor daughter, the proceedings were transferred from Family Court, Allahabad to Family Court at Ulhasnagar, Maharashtra.

Similarly, in the case of *Ritu Ratan v. Sukhbans Kumar Sirohi and anr.*⁵, 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.”

6. True it is that at the time when the application for grant of maintenance under Section 125 Cr.P.C. was moved, the petitioner had shown her address at Durg, now before this Court, it has been categorically stated in affidavit that she is residing at Vishrampur. The respondent has sought to assert that the daughter of the petitioner is still studying at Durg, however, the document (Annexure R-4) placed on record shows that daughter's admission has been withdrawn from the school at Durg.
7. The place where the petitioner is now residing is at Vishrampur which is too far away from Durg and if she is required to undertake journey frequently with a minor daughter aged 8 years, definitely, it would result in serious hardship to her.
8. In these circumstances, it would be appropriate that the divorce petition filed by the respondent-husband and registered as Civil Suit No.357 of 2016 pending in the Family Court, Durg is transferred to Family Court, Surajpur.
9. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen

4 (2009) 1 SCC 656

5 (2009) 14 SCC 682