

HIGH COURT OF CHHATTISGARH, BILASPUR

TPCR No. 23 of 2016

1. Smt. Shivani Singh W/o Shri Dhanesh Singh Aged About 37 Years R/o Quarter No. 401, Raghuveer Enclave, Vidhik Seva Marg, Bilaspur, District Bilaspur, Chhattisgarh.
2. Keshar Singh S/o Late Shri Ram Lakshn Singh Aged About 65 Years R/o Quarter No. 401, Raghuveer Enclave, Vidhik Seva Marg, Bilaspur District Bilaspur, Chhattisgarh.
3. Smt. Asha Singh W/o Shri Keshar Singh Aged About 64 Years R/o Quarter No.401, Raghuveer Enclave, Vidhik Seva Marg, Bilaspur, District Bilaspur, Chhattisgarh.
4. Amit Singh S/o Shri Keshar Singh Aged About 39 Years R/o Quarter No.401, Raghuveer Enclave, Vidhik Seva Marg, Bilaspur, District Bilaspur, Chhattisgarh.
5. Smt. Rashmi Singh W/o Shri Amit Singh Aged About 38 Years R/o Quarter No.401, Raghuveer Enclave, Vidhik Seva Marg, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioners

Versus

1. Dhanesh Kumar Singh S/o Late Shri Balram Singh Aged About 40 Years R/o Main Road, Korba, District Korba, Chhattisgarh.
2. Disha Singh (minor) D/o Dhanesh Kumar Singh Aged About 12 Years Represented By Her Natural Guardian Dhanesh Singh (Father) R/o Main Road, Korba, District Korba, Chhattisgarh.
3. Yuvraj Singh (minor) S/o Dhanesh Kumar Singh Aged About 9 Years (Minor), Represented By His Natural Guardian Dhanesh Singh (Father) R/o Main Road, Korba, District Korba, Chhattisgarh.

---- Respondents

For petitioners - Shri Atul Kumar Kesharwani, Advocate.
For respondents – Shri Rajkamal Singh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

20/07/2017

1. This is a petition seeking transfer of proceeding which is filed before the CJM, Korba under Section 97 and 98 of Cr.P.C. read with Section 19, 20, 22, 23, 24 and 25 of Mental Health Act, 1987 and National Legal Services Authority (Legal Services to the Mentally ill Person and persons with mental disabilities) Scheme, 2010.

2. Learned counsel for the petitioners would submit that proceeding u/s 97 & 98 of Cr.P.C. alongwith provisions of Mental Health Act, 1987 was filed by Dhanesh Kumar Singh who is husband of Smt. Shivani Singh petitioner No.1 alongwith two minor children Disha Singh and Yuvraj Singh wherein Keshar Singh, Asha Singh, Amit Singh and Rashmi Singh were made party. Prayer was made to get respondent No.1 Shivani Singh examined by doctors for her mental health and get her treated. It is contended that like nature of the petition was earlier filed before CJM Korba which was dismissed on 8/07/2015 wherein court of Judicial Magistrate prima facie examined petitioner No.1 i.e. wife/respondent and assessed the capacity to understand things and prima facie enquired mental status and was found fit and further came to definite finding that respondent/wife has not been forcefully kept by the family members i.e. father and mother and other family members and it was held that wife was residing separately because of the matrimonial dispute. Consequently, dismissed the petition. It is stated that after dismissal of the petition another application of same nature was filed for which present transfer petition is filed wherein transfer has been sought for. It is stated on the similar nature of application, the CJM Korba and the CJM, Korba have registered the case and summons have been issued to the petitioners herein. Learned counsel further referred to order sheet of the second complaint of 24/06/2016 and would submit that respondent No.1 who is practicing advocate tried to exert pressure on the court and had clamped allegation on court. Consequently, Chief Judicial Magistrate transferred the case to some court of Judicial Magistrate. It is stated that the wife is now working at Pune. A divorce case is also pending before Family Court, Bilaspur. As such, it would be convenient for the wife to attend the case at Bilaspur. He further submit that reading of order sheet dated 24/06/2016

shows that there are chances of physical assault as pressure is being exerted by respondent No.1. Therefore, considering the convenience of the petitioner No.1 itself primarily who is wife and now residing at Pune, Bilaspur would be more convenient for her to attend the court proceeding.

3. Per contra, learned counsel for the respondents would submit that on the earlier occasion petition like nature which was filed subsequently before Chief Judicial Magistrate was dismissed because of the fact at that time respondent was not in possession of the medical document about the mental health of the wife but subsequently the doctor who treated the wife were also examined and their evidence were also placed before the court and the CJM after going through entire documents and evidence was convinced of the fact that wife needs medical attention and the case was registered. It is further stated that presently respondent/husband is in custody of two children, therefore this would also be most inconvenient for him to go to Bilaspur leaving the children alone. Therefore, transfer petition may be dismissed.

4. Perused the file. Court is not examining the validity of the complaint on merits at this moment since application is only confined to transfer of the proceeding which was subsequently filed by the husband before CJM, Korba. The record would show that initially in the month of 2015 an application was filed by the husband Dhanesh Kumar Singh against wife Shivani Singh under Section 97 and 98 of Cr.P.C. read with 24 and 25 of Mental Health Act, 1987. Same was dismissed on 8/07/2015 by the CJM with certain observation about sound state of mind of wife. Subsequently, another application of the like nature was again filed on 5/08/2015 and the court of Judicial Magistrate by an order dated 27/10/2015 registered the same by prima facie holding that wife is suffering with sychosis disease. Since it has been observed that court is not going into merits of this case

as such prima facie document which are filed i.e. the order sheet of 24/06/2016 become relevant. Order sheet order dated 24/06/2016 shows that during the second proceeding which was registered the husband/non-applicant Dhanesh Singh with the allegations that on the date that his son Yuvraj was beaten by the father of the wife made a complaint and when he was advised to lodge report before concerned police station, instead he clamped allegation on the court that he will not get justice before the court of CJM, Korba and CJM Korba taking into such allegation recorded the same and transferred the same to the court of Judicial Magistrate. Therefore prima facie it appears that respondent himself has raised doubt that he may not get fair and impartial justice.

5. Court at this moment also cannot ignore the fact that petition has been filed by wife as has been held in case of **Abdul Nazar Madani Vs. State of T.N. and another** reported in **(2000) 6 SCC 204** the purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. It is further held that in the present case court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. The supreme court in case of **Abdul Nazar Madani (supra)** has held as under:-

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No

universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the large interest of the society.”

6. Further in case of **Satish Jaggi Vs. State of Chhattisgarh and others** reported in **2007 (1) CCSC 555 (SC)** has reiterated the view expressed in case of **Abdul Nazar Madani (supra)** and has transferred the case by holding that court has to ensure that justice not only done but also seen to be done. Likewise in case of **Sesamma Phillip and ors. Vs. P. Phillip and ors.** reported in **AIR 1973 SC 875** the physical safety of the wife and the evidence of the wife was considered to transfer the case from Delhi to other place Durg at 1500 kms away. In the instant case, as has been stated that the wife is residing at Pune, therefore in the facts of this case and another matrimonial case is pending before the court at Bilaspur, I deem it proper to transfer the case pending before JMFC, Korba to the court of CJM, Bilaspur for further adjudication. Consequently, Criminal Case No.2715/2015 which is pending before the Judicial Magistrate First Class, Korba stands transferred to the court of Chief Judicial Magistrate, Bilaspur.

7. Accordingly, the petition is disposed of. Parties shall appear before the court on 18th August, 2017.

Sd/-

(Goutam Bhaduri)

JUDGE