

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2563 of 2016

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Priyanka Sinha wife of Abhishek Kumar daughter of Prof. Arbind Kumar Sinha, resident of Saroj Sadan, Red House Compound, Professor Colony, Road No. 6, Besides Blue Bird School, P.O. and P.S. Rampur, District Gaya.

.... Petitioner/s

Versus

Abhishek Kumar son of late Jitendra Prasad Srivastava, resident of Shrikunj, 1/12, Vivekanand Marg, North Sri Krishnapuri, P.S. Sri Krishnapuri, Patna.

.... Opp. Party/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.
: Mr. Alok Kumar Jha, Adv.
For the Opp. Party/s : Mr. Arbind Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

10 01-08-2018

The present petition has been filed for transferring the Matrimonial Case No. 980 of 2015 pending in the Court of learned Principal Judge, Family Court, Patna to the Court of learned Principal Judge, Family Court, Gaya.

The said matrimonial case pertains to restitution of conjugal rights.

The learned counsel for the petitioner has submitted that since a divorce case is pending at Gaya, filed at the behest of the petitioner herein and the opposite party has already entered appearance in the said divorce case and has also filed a written statement, hence, there is no impediment for the opposite party to attend the proceedings at Gaya, in case the present matrimonial



case, filed by the opposite party for restitution of conjugal rights is transferred to Gaya. It is further submitted that apart from the said divorce case filed by the petitioner, some other cases are also pending at Gaya i.e. Cr. Complaint Case No. 827 of 2017 (pending before the learned Court of Chief Judicial Magistrate, Gaya) and Misc. Case No. 127 of 2016 (pending before the learned Court of Principal Judge, Gaya). Lastly, it is submitted that the petitioner being a lady and having a small child, who is studying at Gaya, it is difficult for her to travel to Patna to attend the proceedings of the said matrimonial case. It is also the case of the petitioner that on account of financial hardship especially since the opposite party has failed to provide any maintenance to the petitioner herein, it is difficult for her to attend the proceedings of the ongoing matrimonial case at Patna. Lastly, it is submitted that as far as the matrimonial case at Patna is concerned, it is pending for appearance of the petitioner herein, inasmuch as only notice has been issued in the said case to the petitioner herein and thereafter, the further proceedings of the said case had been stayed by this Court by an order dated 24.07.2017.

Per contra, the learned counsel for the opposite party has submitted that the petitioner is a smart lady and the opposite party apprehends threat to his life. It is further submitted that the



petitioner has a mother aged about 70 years old, who is ill and therefore, it is difficult to travel to attend the proceeding at Gaya.

I have heard the learned counsel for the parties and perused the material on record and I find that there is no impediment in transfer of the present matrimonial case from Patna to Gaya in view of the fact that the opposite party is already attending the divorce case at Gaya, he has already filed a written statement and the witnesses are being examined. Reference in this regard be had to a judgment of the Hon'ble Apex Court, reported in (2000)10 SCC 172 (Jaishree Vs. Abhirup). The other judgments on the subject matter are the ones reported in (2001)10 SCC 41 (Sumita Singh Vs. Kumar Sanjay and another), 2010 (4) PLJR 848, and 2011 (2) PLJR 989 (Smirti Singh Vs. Anupam Ranjan).

For the reasons mentioned herein above, the Matrimonial Case No. 980 of 2015 pending in the Court of learned Principal Judge, Family Court, Patna is directed to be transferred to the learned Court of Principal Judge, Family Court, Gaya.

The present petition is allowed.

(Mohit Kumar Shah, J)

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