

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.39 of 2018

Richa Pathak @ Reecha Pathak W/o Pradeep Kumar @ Pradeep Kumar Pathak, D/o Pradeep Tiwary, Resident of Village- Raghunathpur, Post and P.S.- Raghunathpur, Post and P.S.- Raghunathpur, District- Siwan.

... .. Petitioner/s

Versus

Pradeep Kumar @ Pradeep Kumar Pathak, S/o Rameshwar Pathak, Resident of Village- Emergency Colony Katihar (Quarter No.676 D), P.S.- Katihar Sahayak, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 30-08-2018 Heard learned counsel for the petitioner and learned counsel representing the opposite party.

This application has been filed for transferring the Matrimonial Case No. 450 of 2107 from the court of learned Principal Judge, Family Court, Katihar to the court of learned Principal Judge, Family Court, Siwan.

The opposite party who is the husband of the present petitioner is serving in Railways and is presently posted at Katihar. He has filed the Divorce Suit in the court at Katihar. The petitioner has moved this Court for transfer on the grounds stated in the application. It is her case that for attending the court at Katihar from Siwan where she is presently residing, she has to take overnight journey by train. She has further stated that



she has no source of income and is fully dependent upon her parents. The parents are also said to be suffering from various diseases and her father is unable to move frequently, apart from that she has apprehension of her safety and implication in some cases. She has narrated that she has filed a Police case against her in-laws which is pending at Siwan, in turn her mother-in-law has also filed a complaint case in the judgeship of Siwan. It is stated that this matrimonial case has been purposely filed at Katihar to create hardship for the petitioner in contesting the matter and that being the sole intention of the opposite party, if the case is allowed to continue at Katihar, the petitioner will be deprived from contesting the case with full efforts.

On the other hand, learned counsel representing the opposite party has by filing a reply contested the statement of the petitioner. Attention of this Court has been drawn towards the fact that the family members of the petitioner had, in fact, committed acts of assault against the opposite party at Katihar and for that a first information report giving rise to Nagar Sahayak (Katihar) P. S. Case No. 69 of 2018 has been registered under various provisions of the Indian Penal Code on 27.01.2018. Learned counsel has also pointed out from Annexure-D which is hospital discharge certificate that because



of the said assault the opposite party had been treated on 26.01.2018, the kind of injuries suffered by opposite party are though not on record but as per the allegations, the family members of the petitioner had beaten the opposite party which had caused some wound on the right hand of the opposite party. It is further stated that the father of the opposite party has got disability and he is also residing with this opposite party. It is submitted that if the case is transferred to the court at Siwan, the opposite party will have threat of his life.

Responding the aforesaid submissions, learned counsel for the petitioner submits that it is difficult to believe that how on the one hand opposite party can pursue the complaint case brought by his mother in the court at Siwan and at the same time he can apprehend threat to his life in contesting the matrimonial suit, if transferred.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the statements under paragraphs 9 and 10 of the application of the petitioner in which she has expressed her difficulties and has stated that she has got no independent source of income have not at all been denied in the reply filed on behalf of the opposite party. Both the parties have stated that their parents are in old age and are not in a good



health condition to assist them in contesting the matter. Both the parties are pleading about the threat to their life.

In these circumstances, when this Court proceeds to balance the interest of the parties and take a view what prevails in the minds of this Court is that admittedly the mother of the opposite party got a complaint case against the petitioner and her family members at Siwan and the opposite party is admittedly contesting that complaint case by producing witnesses etc. He is permanent resident of Siwan. If he can manage to contest the criminal case at Siwan, it is not possible to take a view that he cannot contest the Matrimonial case also at Siwan. Admittedly, the distance between Siwan and Katihar is over 200 kilometers from one way and on this score also if the equity is weighed viz a viz the parties, this Court would be inclined in favour of the petitioner to take a view that she being a lady having no other family member to accompany her to Katihar on the date fixed in the matter, it would be only appropriate for this Court to direct transfer of the matrimonial case bearing no. 450 of 2017 from the Judgeship of Katihar to the Judgeship of Siwan.

Let the records be transferred to the court of learned Principal Judge, Family Siwan within a period of 15 days from



the date of receipt/production of a copy of this order.

This application stands allowed.

(Rajeev Ranjan Prasad, J)

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