

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2756 of 2018

Dr. Nishi Singh, Wife of Dr. Chandan Kumar, Daughter of Prof. Dr. Arvind Kumar Singh, Resident of Lichi Bagan, Professor Colony, Anathaiya Road, Near Durga Asthan, P.S. Katihar, District- Katihar, Bihar.

... .. Petitioner/s

Versus

Dr. Chandan Kumar, Son of Sudhir Prasad Singh, Resident of Nagar Palika Road, P.S. Town Thana, District- Khagaria, Pin Code- 851204, Bihar. At present residing at Flat no. 403, Gauri Apartment, Munnachak, P.S. Patrakar Nagar, Kankarbagh, Patna- 800020.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pratik Kumar Sinha, Adv.

For the Opposite Party/s : Mrs. Soni Shrivastava, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 20-11-2018

This application has been preferred by wife of the opposite party seeking transfer of the pending Matrimonial Case No.551 of 2018 from the court of learned Principal Judge, Family Court, Patna to the Court of learned Principal Judge, Family Court, Katihar. The matrimonial case has been instituted by the opposite party under Sections 13(1) (ia) (ib) of the Hindu Marriage Act, 1955.

Learned counsel representing the petitioner submits that the marriage between the parties was solemnized on 15.07.2013, but thereafter the petitioner had to face repeated and consistent harassment at the hand of the opposite party. This gave rise to a matrimonial discord and the petitioner lodged a complaint case being C.A. No.2498 of 2015 for the matrimonial violence and



cruelty as also under the provisions of the Dowry Prohibition Act, the complaint case is pending in the court of learned S.D.J.M., Katihar.

Learned counsel further submits that the petitioner having been left to live alone is presently residing in the district of Katihar. She has given birth to a child and is somehow meeting her expenses with financial assistance getting from her father who is a professor in the university situated in the town of Katihar.

Learned counsel further submits that the petitioner has instituted a maintenance case also at Katihar, but presently she is not getting any maintenance for herself. In paragraph 14 of the present petition the following grounds have been set-forth for transfer of the matrimonial case:-

- i. The petitioner herein is not having any income of her own to lead her and her baby livelihood in the district of Patna and therefore is dependent on his father and as such residing in Katihar, who is a professor in the university situated in the town of Katihar;
- ii. The petitioner herein is having a baby of few year who is recently admitted to St. Karen's High School, Katihar in the town of Katihar;



- iii. The mother of the petitioner herein is a handicapped lady who can't lead her life without the day to day help of her husband;
- iv. The two cases as mentioned above are being contested by the parties in the district of Katihar. First being the Complaint Case-C.A.No.41 of 2017 pending before the learned S.D.J.M., Katihar & the second being the Matrimonial Case No.396 of 2016 filed under section 125 of the Cr.PC before the Learned Principle Judge, Katihar.
- v. That opposite party herein, husband is a resident of Khagaria which is much nearer to Katihar than that to Patna;
- vi. That the district Patna is very far from district of Katihar where the petitioner is residing, so much so that it takes one complete night to travel from Katihar to Patna by train;
- vii. The petitioner herein being a lady cannot travel alone and make parvi, that too alongwith a baby of few years.

On the other hand, the opposite party has contested the submissions of the petitioner. It is his case that the petitioner has indulged in making false allegations against his family members and sole intention of the petitioner is to harass the opposite party and his family members. The allegations of demand of dowry and



matrimonial violence have been denied. The opposite party has controverted the statements and the grounds set-forth by the petitioner in paragraph 14 of her application by making specific statements that the petitioner is practicing at Shiv Dental Clinic & Research Centre at Katihar and as such it is incorrect to state that she has no means to earn her livelihood. The opposite party has also contended that his mother is suffering from cancer and in this connection he has to accompany his mother during her visit to Mumbai for follow-up treatment. He had denied that he is a resident of Khagaria, but has admitted that his old parents reside at Khagaria. He has further submitted that only because the petitioner happened to be a lady, it is not a good ground to seek transfer of the case as only her convenience or inconvenience would not be the deciding factor. He has further stated that he would be ready to bear all the expenses of travelling and stay of the petitioner at Patna for the purpose of the divorce case and presently he is regularly paying Rs.5,000/- for the maintenance of the child. At last, it has been contended that the opposite party is ready to keep his wife with full dignity and honour, but it is the petitioner who is not willing to establish the matrimonial relationship.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that even though the parties



have been contending to some extent on the allegations against each other, but this Court sitting in its jurisdiction under Section 24 of the Code of Civil Procedure is not going into the merit of the case. The consideration would be limited to the guiding factors with respect to the cases relating to transfer. In the present case, while balancing the interest of both the parties, one thing which has prevailed in the mind of this Court is that the petitioner is having a minor daughter who has been admitted in St. Karen's School and that the mother of the petitioner is handicapped lady who cannot lead her life independently and, therefore, prima-facie it appears that the petitioner would be in difficulty if she is compelled to attend the family court at Patna. In his reply, the opposite party has not denied that the mother of the petitioner is a handicapped lady and cannot lead independent life without the help of her husband. The opposite party has only stated that because the petitioner is allegedly working at hospital so someone is there to take care of the baby. This Court, therefore, finds the equity and the interest of justice compel this Court to take a view that the convenience of the petitioner be given a preference over the convenience of the opposite party in order to provide her an opportunity to contest the case effectively.



This application is thus allowed. Let the records of the Matrimonial Case No.551 of 2018 be transferred from the court of learned Principal Judge, Family Court, Patna to the court of learned Principal Judge, Family Court, Katihar. Since two other cases are also pending at Katihar, if a prayer is made on behalf of the opposite party for fixing a convenient date to enable him to attend the other cases also on the same date during his visit from Patna to Katihar, the learned Principal Judge, Family Court, Katihar shall consider the same and shall ensure that a convenient date may be given to the opposite party. The parties are expected to cooperate in disposal of the cases at the earliest.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

