

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Criminal) No.22 of 2018**

- Harish Kumar Banjare S/o Hem Das Banjare Aged About 40 Years R/o- Qtr, No. 204/2, Cross Road-2, Zone-2, Near Divisional Railway Hospital, WRS Colony, Tahsil And District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

- Smt. Smrita Banjare W/o Harish Banjare Aged About 36 Years Present R/o- Qtr. No. B/4, Sagar Sadan, Vidya Vihar Colony, Vidyut Nagar, Durg, Tahsil And District- Durg, Chhattisgarh.

---- Respondent

For the Petitioner : Shri AD Kuldeep, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

07.9.2018.

1. This is an application filed under Section 407(1)(a) of the Code of Criminal Procedure, 1973 (for short 'the Code') for transfer of MJC No.1127/2017 filed by the respondent under Sections 12, 18, 19, 20, 22 & 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act 2005'), from the Court of Judicial Magistrate First Class, Durg to the Court of Chief Judicial Magistrate, Raipur.

2. As per the version of the applicant, some other case relating to the husband and wife is pending before the Court of Raipur and the applicant is serving in Railway Department, Raipur, therefore, it is not inconvenient for him to attend the Court of Durg regularly.

3. Section 27 of the Act, 2005 reads as under:

27. Jurisdiction.- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

4. In view of the provisions of the said Act, the respondent being the resident of Durg can file application in the Court of Durg and there is no irregularity in it. Under Section 407 of the Code the Court has power to transfer the case which reads as under:

“407. Power of High Court to transfer cases and appeals-

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.”

5. In the matter pending before the Court, the applicant is not required to attend in every hearing. His attendance is required only when he is willing to enter into witness box. Otherwise he may be represented through counsel for other proceedings. Distance between Raipur and Durg is 40 km and looking to the distance it cannot be said that traveling to Durg will cause inordinate inconvenience.

6. Transfer of a case cannot be made only on the ground that one party wishes transfer of the case. Looking to the facts and circumstances of the case and also looking to the ground of the transfer, this Court is of the view that it is not a case where case pending before the Court of Durg should be transferred to another Court.

7. Accordingly, the application is rejected at the motion stage itself.

Sd/-
(Ram Prasanna Sharma)
JUDGE