

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No. 2377 of 2018

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Soni Kumari @ Soni Devi, Wife of Ghanshyam Shah, Daughter of Late Balmiki Prasad Shah, Resident of Village-Bari Nima, P.O. Khiribandh P.S. Jagdishpur, District of Bhagalpur.

... .. Petitioner/s

Versus

Ghanshyam Prasad @ Ghanshyam Sah Son of Bharat Shah @ Gochchi Shah, resident of Village- Amarpur, Ward No. 8, P.S. Amarpur, District -Banka.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh, Advocate
For the Opposite Party/s : Mr. Gopal Prasad Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 17-07-2019

Heard learned counsel for the petitioner and learned counsel for the opposite party.

2. The petitioner, who is the wife of the opposite party has filed the present case under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Matrimonial (Divorce) Case No. 56 of 2016, pending before the Court of Principal Judge, Family Court, Banka to the Court of Principal Judge, Family Court, Bhagalpur.

3. The petitioner and opposite party were married on 18.05.2005 and thereafter it is alleged that she was tortured for dowry and had left the matrimonial home and filed Akbarnagar PS Case No. 03 of 2013 on 10.01.2013, under Sections 498(A)/34 of



the Indian Penal Code, which is still pending. Further, the petitioner has also filed Maintenance Case No. 161 of 2017 under Section 125 of the Code of Criminal Procedure, 1973, which is pending in the Court of Principal Judge, Family Court, Bhagalpur.

4. Learned counsel for the petitioner submitted that the petitioner was tortured for demand of dowry and earlier when she has come to her parents' home, there was Panchayati held and the petitioner had gone to the matrimonial home but soon thereafter again she was tortured and thrown out from the matrimonial home due to which she has filed case under Section 498 (A) of the Indian Penal Code and because she has no independent source of income, she has filed a maintenance case also. It was submitted that the opposite party is pursuing, both the criminal case and the maintenance case at Bhagalpur and, thus, for him it would not be inconvenient if the present case is also transferred to Bhagalpur where already he is pursuing the other two cases. It was further submitted that the opposite party is earning his livelihood by running a tempo and thus, he is quite solvent to pursue the matter at Bhagalpur. Learned counsel relied upon a decision of the Hon'ble Supreme Court in **Reena Bahri v. Ajay Bahri**, reported as **(2002) 10 SCC 136**, the relevant being at paragraph no. 3.



5. Learned counsel for the opposite party has filed counter affidavit submitting that petitioner has been resisting living in the matrimonial home due to which he was forced to file the case. It was further submitted that in the matrimonial divorce case when the parties had appeared before the Court below, the petitioner had refused to live with the opposite party.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, taking an over all view in the matter, the Court finds that a case for transfer has been made out. The petitioner being the wife and without any financial support, coupled with the fact that the opposite party is earning by running a tempo and that already he is pursuing two other cases at Bhagalpur the present case is also required be transferred to Bhagalpur where all three cases will be pursued by the opposite party.

7. Accordingly, the application is allowed. Matrimonial (Divorce) Case No. 56 of 2016 pending before the Court of Principal Judge, Family Court, Banka stands transferred to the Court of Principal Judge, Family Court, Bhagalpur. The Principal Judge, Family Court, Banka shall transmit the records of case to the Court of Principal Judge, Family Court, Bhagalpur within two weeks from the date of production of a copy of this order



positively. Upon receiving the records of the case, the Principal Judge, Family Court, Bhagalpur shall give a fresh number and the case where the case shall proceed in accordance with law.

(Ahsanuddin Amanullah, J.)

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