

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2447 of 2018

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Shashi Kumari @ Sashi Kumari Wife of Bikramjeet, Daughter of Late Bishu Prasad, Resident of Mohalla- Larkania Tola, P.S. Katihar Town and District- Katihar.

... .. Petitioner/s

Versus

Bikramjeet Son of Sri Vijay Kumar Sinha, Resident of Mohalla- Belwaganj, P.S.- Laheria Sarai, District- Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Opposite Party/s : Mr. Alok Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 19-07-2019

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

2. The petitioner being the wife of the opposite party has filed the present case under Section 24 of the Code of Civil Procedure seeking transfer of Matrimonial (Divorce) Case No. 11 of 2017, filed by the opposite party, which is pending in the Court of Principal Judge, Family Court, Darbhanga to the Court of Principal Judge, Family Court, Katihar.

3. The petitioner and opposite party were married on 13.05.2007 and on 18.02.2008, a son was born out of the wedlock. The opposite party alleging cruelty against the petitioner filed the present Matrimonial (Divorce) Case on 19.01.2017. The petitioner



has also filed Complaint Case at Katihar under Section 498A of the Indian Penal Code and also a Maintenance case before the Principal Judge, Family Court, Katihar on 12.06.2018, which is pending.

4. Learned counsel for the petitioner submitted that she is living with her mother at Katihar as the father had died and has no income to maintain herself. It was submitted that her son is residing at Purnia and studying in school and the cost of education comes to around Rs. 3,000/- per month. It was submitted that the opposite party suffers from mental disorder and used to behave abnormally with the petitioner and was also torturing her. Learned counsel submitted that the opposite party was employed in the Indian Navy, but was given retirement on medical ground because of his unfit mental condition in November, 2011. Learned counsel further submitted that fact of him suffering from mental illness has been admitted by the opposite party himself in the pleadings in the Matrimonial Case filed by him. It was contended that the opposite party is financially solvent earning Rs. 50,000/- from his pension from the Navy and also the emoluments from the State of Bihar being engagement in the Health Department and further that he runs a dance school at Darbhanga from where also he gets Rs. 50,000/- per month, and thus, the total income comes to Rs.



1,00,000/- per month. Learned counsel submitted that the Hon'ble Supreme Court in **Reena Bahri vs. Ajay Bahri** reported as **(2002) 10 SCC 136**, has held that the wife having a small child residing at Bombay and there being nobody to accompany her to Delhi as also that other proceedings were already there in Bombay which the husband had to defend, the Court had allowed such transfer petition. He also relied upon the decision of a co-ordinate Bench in **Smirti Singh vs. Anupam Ranjan** reported as **2011(2) PLJR 989**, where despite the husband opposing the prayer for transfer on the ground that he will meet the travel expenses of the wife and that he was apprehending danger to his life from brother of the wife, the Court had held that payment of travel expenses by husband is not sufficient to meet the inconveniences which the wife will have to face while coming from Madhepura to Patna and had, thus, transferred the case.

5. Learned counsel for the opposite party submitted that the behaviour of the petitioner was such that it resulted in depression to the opposite party due to which he had to seek psychiatric treatment. It was submitted that after retirement, he came to Darbhanga but the petitioner refused to live with him and used to misbehave with his relatives. It was further submitted that the opposite party is paying Rs. 3,000/- per month to the petitioner



and, thus, she is having sufficient money to contest the case at Darbhanga. Further, learned counsel relied upon a decision of the Punjab and Haryana High Court in **Suneha Rani vs. Sanjeev Kumar** dated 12.01.2016 in **TA No. 949 of 2015** in which it has been held that mere inconvenience to attend the Court at another place cannot be a ground for transfer and the application for such transfer has been dismissed. For the same proposition, he relied upon another decision of the Punjab and Haryana High Court in **Sunita vs. Ashok Lamba** dated 27.01.2016 in **TA No. 19 of 2016**.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

7. The petitioner not having any source of income and also her father having died, clearly is in a disadvantageous position. This would, thus, be a major consideration for the Court to consider her convenience. Further, the fact that the opposite party was blessed with a child and after retirement from service in the Indian Navy in the year 2011, the divorce case having been filed only in the year 2017, clearly demonstrates that the opposite party had no genuine and real grievance against the petitioner. Moreover, his *bona fide* is also suspect for the reason that for six years after returning to Darbhanga, when his wife and son were



not with him, he took no steps, either to be reunited with the wife or for custody of the son. Thus, his plea of torture by the petitioner has to be taken with a pinch of salt. The Court also finds that in the facts and circumstances of the present case, the decision of the Hon'ble Supreme Court in **Reena Bahri** (*supra*) and of a co-ordinate Bench in **Smirti Singh** (*supra*) fully covers the issue in favour of the petitioner.

8. As far as the decisions relied upon by learned counsel for the opposite party of the Punjab and Haryana High Court in **Suneha Rani** (*supra*) and **Sunita** (*supra*), the Court would only indicate that the same do not help the opposite party in any way for the reason that it has only been held that inconvenience of the wife should not be the sole factor. In the present case, the Court has arrived at the conclusion that there are many other accompanying facts and circumstances which favour the petitioner and support her contention that for the ends of justice, the pending Matrimonial case filed by the opposite party at Darbhanga be transferred to Katihar.

9. For reasons aforesaid, the application is allowed. The Matrimonial (Divorce) Case No. 11 of 2017, pending before the Court of Principal Judge, Family Court, Darbhanga stands transferred to the Court of Principal Judge, Family Court, Katihar.



The Principal Judge, Family Court, Darbhanga is directed to transmit the records of the case to the Principal Judge, Family Court, Katihar within two weeks from the date of production of a copy of this order before him positively. Upon receipt of the records, the Principal Judge, Family Court, Katihar shall give a new number to the case and the same shall proceed in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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