

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****TPC No. 8 of 2019**

Smt. Pragya Agrawal W/o Ankit Agrawal Aged About 25 Years D/o Dr. Gyanendra Kumar Agrawal, R/o Fudurdihari Lakrapara, Ambikapur, District-Sarguja, Chhattisgarh

---- Applicant**Versus**

Ankit Agrawal S/o Satish Agrawal Aged About 28 Years R/o S-13, Rajiv Nagar, Post Officer- Shanker Nagar, Police Station- Pandri Raipur, Tahsil And District- Raipur, Chhattisgarh

---- Non-applicant

For applicant	: Mr. Dewashish Biswas, Adv.
For Non-applicant	: Mr. Sharad Mishra, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORAL ORDER****4-12-2019**

1. Applicant has preferred this TPC under Section 24 of the Civil Procedure Code (in short 'CPC') for transfer of Case No. 667/2018 pending before the Family Court, Raipur (CG) (Ankit Agrawal -v- Smt. Pragya Agrawal) to the Family Court, Ambikapur distt. Sarguja.
2. In brief, the applicant's case is that she is legally wedded wife of non-applicant. She is resident of Ambikapur whereas non-applicant is resident of Raipur. He has filed an application under Section 13 of Hindu Marriage Act, 1995 before Family Court, Raipur which was registered as Case 667/2018. Distance from Ambikapur to Raipur is about 340 km. She had gone through a back surgery. As per the doctor's advice she is unable to travel. She is residing in her parental house. She feels difficulty to go to Raipur On every date to attend the court proceedings.
3. In brief, non-applicant's case is that at the time of the filing of the divorce case, applicant was residing at Raipur. Her social media posts indicate that she is not residing at Ambikapur. She can claim for travelling expenses for going to Ambikapur from Raipur.
4. Counsel for the applicant drew my attention on Annexure A-1 (collectively), Annexure A-2 and Annexure A-4 (collectively), her affidavit and her father's affidavit, and certificate of Ward Member, Fundurdihari, Central Ward No. 8, Municipal Corporation Ambikapur.

5. Counsel for the non-applicant drew my attention on Annexure R-1 (collectively), Annexure R-2 (Collectively), Annexure R-3 (collectively), and his affidavit.

6. Counsel for the applicant placed reliance in the decision of Hon'ble Supreme Court in the matter of **Rajani Kishor Pardeshi -v- Kishore Babulal Pardeshi** [(2005) 12 SCC 237] wherein it has been held that the convenience of wife is to be preferred over the convenience of the husband.

7. Counsel for the non-applicant placed reliance in the decision of Hon'ble Supreme Court in the matter of **Preeti Sharma -v- Manjeet Sharma** [(2005) 11 SCC 535] para 2 of which is relevant and is quoted below :-

“2. The grounds made out are that the petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard-pressed to defend the suit at Muzaffar Nagar. It is also claimed that there is a petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the petitioner wishes that all cases be tried at one place, she may apply for the same and we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the respondent shall pay to the petitioner and a companion travel and stay expenses on every occasion that the petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the petitioner on every occasion. With these directions, the transfer petitions are dismissed.”

8. Counsel for the non-applicant placed reliance in the decision of Hon'ble MP High Court in the matter of **Anamika Pandey -v- Shrihar Pandey** [(2015) 4 MPLJ 187] para 3 and 4 of which are relevant and quoted below :-

“3. I have considered the submission made on behalf of both the sides. It is well settled in law that though section 24 of the Code of Civil Procedure confers power on the Court to transfer the proceeding yet this power has to be exercised with circumspection and care. Convenience of parties has to be seen. See: *Kulwinder Kaur v. Kandi Friends Education Trust*, 2008 (4) MPLJ (S.C.) 9 : (2008) 3 SCC 659.

However, the Supreme Court has sounded a note of caution that leniency to women shown by Court in such transfer matters are often misused and taken advantage of by women and, therefore, the Court is required to consider each case on its merits.

4. The non-applicant has filed an application under section 9 of the Hindu Marriage Act at Satna. The matter was referred to the Mediation Centre at Jabalpur. However, the applicant/wife did not attend the mediation proceeding at Jabalpur and in clear terms stated that she is not willing to record the compromise before mediation centre. The distance between the Rewa to Satna is approximately 50 kms., which is well connected by rail as well as road. No inconvenience would be caused to the applicant/wife, if she attends the proceeding at Rewa (sic. Satna). However, it is directed that whenever the applicant attends the proceeding at Satna, the non-applicant shall incur the travelling expenses to the applicant.”

9. Counsel for the non-applicant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Anindita Das -v- Srijit Das** [(2006) 9 SCC 197] para 1, 2, 3, 4, 5, & 6 of which are relevant and quoted below :-

“1. This transfer petition has been filed by the wife on the ground that the petitioner has a small child of six years. She has further claimed that she has no source of income and it is difficult for her to attend the court at Delhi. She has further claimed that she is not keeping good health.

2. In support of this petition, a large number of authorities have been cited, namely, *Reena Bahri v. Ajay Bahri* [(2002) 10 SCC 136] , *Leena Mukherjee v. Rabi Shankar Mukherjee* [(2002) 10 SCC 480] , *Ram Gulam Pandit v. Umesh J. Prasad* [(2002) 10 SCC 551] and *Rajwinder Kaur v. Balwinder Singh* [(2003) 11 SCC 726] . These authorities are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent.

3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It

is, therefore, clear that leniency of this Court is being misused by the women.

4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The respondent is willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner is required to attend the court at Delhi. Thus, the ground that the petitioner has no source of income is adequately met.

5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out.

6. Accordingly, we dismiss the transfer petition. We, however, direct that the respondent shall pay all travel and stay expenses of the petitioner and her companion for each and every occasion when she is required to attend the court at Delhi.”

10. Hon'ble Supreme Court in the matter of **Sumita Singh -v- Kumar Sanjay and another** [(2001) 10 SCC 41] has observed that if husband files suit against wife, then convenience of wife must be looked into.

11. As per the affidavit of applicant and his father Gyanendra Kumar Agrawal, it has categorically stated in para 2 that applicant is living at village Fundurdihari, Tehsil Ambikapur, Distt. Sarguja in her maternal house. As per the certificate dated 28-11-2019 given by ward member Funderdihari, Central Ward No. 8, Minupical Corporation, Ambikapur she is living in her maternal house since October, 2018. Moreover, non-applicant has not clearly and strongly stated in his affidavit that as per his personal knowledge she is not living at village Fundurdihari Distt. Ambikapur, instead of it she is living at Raipur, he stated in para 5 of his affidavit that he is not in a position to comment upon her present whereabouts. Moreover, in the case in hand, non-applicant has not filed any document which shows that now a days she is residing at Raipur and not residing at Ambikapur. In these circumstances, non-applicant does not get any help from Annexure R-1, Annexure R-2,

Annexure R-3, and his affidavit regarding this matter that now she is not residing at Ambikapur.

12. Moreover, as per Annexure A-4 she had undergone medical treatment. Moreover, from Ambikapur to Raipur is about 340 km. Being a lady she would feel difficulty to go to Raipur on each and every date of hearing.

13. Looking to the above mentioned facts and circumstances of the case , this Court finds that the aforesaid decisions of Hon'ble Supreme Court in the matter of **Sumita Singh** (supra) and **Rajani Kishor Pardeshi** (supra) are applicable in favour of the applicant and non-applicant does not get any help from the aforesaid decisions of Hon'ble Supreme Court in the matter of **Preeti Sharma** (supra), **Anindita Das** (supra) and Hon'ble MP High Court in the matter of **Anamika Pandey** (supra).

14. Looking to the above mentioned facts and circumstances of the case, this Court finds that balance of convenience lies in favour of applicant.

15. Consequently, the instant transfer petition is allowed. It is ordered that the case No. 667/2018 pending before the Family Court, Raipur be transferred to Family Court, Ambikapur, Distt. Sarguja (CG) for its trial/ disposal in accordance with law. The Family Court, Raipur is directed to transmit the record of the above case to the Family Court, Ambikapur, Distt. Sarguja.

16. No order as to costs.

Sd/-
(Sharad Kumar Gupta)
Judge