

HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 16 of 2019**

- Mr. Harshal Thakur S/o Rameshwar Prasad Thakur Aged About 30 Years R/o House No. A-55, Steel City, Avanti Vihar Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

- Smt. Madhavi Thakur W/o Harshal Thakur Aged About 28 Years R/o Ward No. 10, Shankarpur, Bajrang Chowk, Near Tulsi Medical, District Rajnandgaon Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Goutam Khetrapal, Adv.
For Respondent	:	Mr. Prasoon Agrawal, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****24.02.2020**

1. The petitioner filed this transfer petition under Section 407 of Cr.P.C. for transferring the case No. 56/2019 filed under Section 125 Cr.P.C. which is pending between the parties before Family Court, Rajnandgaon.

2. The petitioner filed this transfer petition on the ground that the respondent is his wife and their marriage was solemnized on 23.11.2017, according to Hindu Rites & Rituals. Two petitions between the parties filed under Sections 9 & 13 of the Hindu Marriage Act were transferred by this Court on 24.07.2019 at Family Court, Durg. The respondent filed maintenance case before Family Court Rajnandgaon. The petitioner was threatened by the brother of the respondent against which the petitioner had written letters to the police authority and filed transfer petition before this Court and by order Dated 24.07.2019 (in TPC Nos. 23/2019 & 29/2019) both the cases which are pending between the parties were transferred to the Family Court Durg. The next contention is that the petitioner is not in a position to defend properly himself at family Court Rajnandgaon, so, in the interest of justice, case no.

56/2019 (under Section 125 of Cr.P.C.) may be transferred to the Family Court Durg. In support of his case, learned counsel for the petitioner placed reliance in the decision of Supreme Court in the matters of ***Jaswant Singh v. Barinder Kaur (TA No. 635 of 2011 (O&M))*** reported in ***2012 SCC Online P&H 10341*** and ***Aarthi v. R.M. Rajesh Kumar*** reported in ***[(2016) 14 SCC 224]***

3. learned counsel for the respondent opposes the prayer of the applicant submitting that no threat has been given by the respondent's brother and if the same has been done, applicant should have been made a complaint before the police station against the respondent's brother. The order of transfer of Civil Suit filed under Sections 9 & 13 of the Hindu Marriage Act, 1955 cannot be equated to the transfer of application under Section 125 of Cr.P.C., which is invoked only when the wife is unable to maintain herself because the proceedings under Sections 9 & 13 of the Hindu Marriage Act, 1955 comes to an end upon passing of the order by the learned Family Court with regards to the same but under Section 125 of Cr.P.C, respondent/wife is required to be enforced against her husband. The enforcement of the order under Section 125 Cr.P.C. is to be made at a place where wife resides. He further submits that it is well settled principle of law that the convenience of the lady party to the case is to be preferred and the case be transferred to the place where she resides. In support of his case he also placed reliance in the decision of Supreme Court in the matters of ***Pijush Banerjee v. Paromita Banerjee*** reported in ***2002 SCC Online Cal 392*** and ***Neelam Kanwar v. Devinder Singh Kanwar*** reported in ***[(2000) 10 SCC 589]***.

7. Heard learned counsel for the parties and perused the material on record including the impugned order.

8. Respondent filed a petition under Section 125 Cr.P.C on 01.03.2019. Petitioner submitted that a threat has been made by the brother of the respondent but petitioner did not file any document which can prove the threat made by the respondent. During this period, the grounds which are mentioned under Section 407 of Cr.P.C to be taken for the purpose of filing the

petition for transfer do not cover the ground like the present one.

9. Hon'ble Supreme Court in the matter of **Pijushy Banerjee** (Supra) held in para 6 as under:-

“Be that as it may, as I have pointed out at the very outset, the grounds which are mentioned under Section 407 of the Cr.P.C. to be taken for the purpose of filing a petition for transfer do not cover a ground like the present one, namely, threat given by some people with dire consequences. This is a matter which constitutes a law and order problem and is the concern of and should be addressed to the local administration, more particularly, the police force, and if anything untoward really takes place, then that is the responsibility of that branch of administration of the State and, at any rate, it cannot form a ground on which a court can be competent to transfer a case from the District Court to another in this regard of the letter and spirit of the provisions of Section 407 of the Cr.P.C. discussed above. To allow a petition like this on such a ground, even assuming that it has been proved to be true, will set the dangerous trend of giving the impression to the litigant public at large that the administrative machinery is so callous that it cannot control even a small number of unruly elements or cannot tackle such a few trifling and stray instances of acts of indiscipline so that a litigant party cannot safely attend the court of law and as a result his litigation has to be transferred to the court of another place.”.

13. Considering the overall material & circumstances of the case, in the light of above judgment, I am of the view that the grounds which have been made out in the application for transfer the petition filed under Section 407 of the Cr.P.C. are not sufficient to transfer the case.

14. Thus, the petition filed by the applicant has no substance and is hereby dismissed.

15. If petitioner faces any threat or harassment by the respondent, he will immediately file an application before Superintendent of Police, Rajnandgaon regarding the threat and Superintendent of Police, Rajnandgaon shall immediately take

appropriate action and provide him necessary protection.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sahu