

22.11.2021
Item No.10
Ct. No.7
CHC
(disposed of)

**C.O.987 of 2021
IA NO: CAN/1/2021
(Physical Hearing)**

**Smt. Jhumai Sarkar Nee Dutta
Vs.
Chiranjib Sarkar**

Md. Nauroz Rehber,
Md. Jawwad
...for the petitioner

Mr. Anjan Ganjan,
Mr. Dyutimay Pal,
Mr. Malayasree Maity,
Ms. Moumita Dhar
...for the opposite party

This is to consider an application seeking transfer of Matrimonial Suit No.707 of 2019 from the court of learned Additional District and Sessions Judge, at Baruipore, District- 24 Parganas (South) to the court of learned District and Sessions Judge at Burdwan, District- Purba Burdwan.

Instant transfer application has been filed by the petitioner/wife, whose marriage was solemnized on 19th April, 2018 and subsequently, registered on 11th December, 2019 under the provisions of Hindu Marriage Act, 1955. The petitioner/wife is submitted to have been driven out from her husband's house/matrimonial home on 20th December, 2020 and since then the petitioner has been residing with

her parents at Village: Kakuria within Kalna Police Station, District: Purba Burdwan. The opposite party/husband is a railway man, presently serving at Sealdah having his official quarter at Baruipore.

Md. Nauroz Rehber, learned advocate representing the petitioner/wife primarily has taken three principal grounds in support of her transfer application. The grounds taken are that she is highly apprehensive of her life in the event she is made to appear at Baruipore Court simply to contest the Matrimonial Suit brought against her by husband/opposite party. The second ground referred in the transfer application is that the paternal home, where the petitioner has been residing after being deserted by her husband, is situated at a distance of 135 K.m. away from Baruipore. Lastly, her father is a senior citizen and it is not possible for her to perform journey alone after incurring huge expenses as, she has no income of her own. Though, petitioner has instituted two cases one under Sections 498A/320 I.P.C against her husband and another application seeking maintenance under Section 125 Cr.P.C. against her husband, at Kalna Court, but the petitioner has proposed for transfer of the pending Matrimonial Suit to Kalna Court from Baruipore Court. Upon taking such grounds, petitioner has sought for the transfer of the Matrimonial Suit as referred above.

Per contra, Mr. Anjan Ganjan, learned advocate representing the opposite party/husband submits that the instant transfer application is purely harassive one and there is no justification to transfer the case from Baruipore to the court of District Judge Burdwan, merely on the ground of apprehension of life, which has no basis under the law. More so, the husband is a railway man now working at Sealdah, and it would be very difficult on his part to take part in the hearing process of the Matrimonial Suit if the case is transferred to Kalna, Burdwan from Baruipore Court, and such proposed transfer would surely affect his service. In such conspectus, learned advocate for the opposite party raises objections against the proposed transfer. Apart from raising such objection, learned advocate for the opposite party adverting to paragraph '5' of the transfer application submits that though the Matrimonial Suit has been filed in the year 2019, but the petitioner/wife has claimed to have been driven out from her matrimonial home on 20th December, 2020, which is absolutely impossible and fictitious also.

Admitted position is that the petitioner has been staying apart from her husband and she is now at the mercy of her parents. Two other criminal cases, as disclosed above, are admittedly pending before the learned Magistrate Court at Kalna, Purba Burdwan.

As regards the objection taken by the learned advocate for the opposite party with regard to the alleged fictitious date of being driven out from the matrimonial home, the Court is of the view that the point so taken may be relatable to the adjudication of pending Matrimonial Suit and the criminal cases, but such point being remotely connected with the instant transfer application, has got no direct relevance to decide the transfer application.

Though, one of the grounds taken for the transfer is the apprehension of life of petitioner, but no cogent evidence is produced to that effect for arriving at objective satisfaction of the Court as regards the probable/possible apprehension. As such, mere apprehension is not sufficient to be gone into further. Importantly the husband has been working for gain as a railway man at Sealdah presently.

The comparative advantages and consequent harassment of the parties are of highest significance to decide the transfer application. At the same time, the Court is not oblivious to take in view that the wife has no existing income at the moment, though she has filed a maintenance case against her husband at Kalna Court. There is nothing to reveal that petitioner/wife has still been favoured with interim maintenance for her sustenance. The approximate distance to be covered by the petitioner for

participating in the hearing process of the pending Matrimonial Suit at Baruipore Court is about 130 K.m. away from Kalna. Since the opposite party/husband has been performing railway job at Sealdah at the moment, it would be also difficult for him to ensure his appearance on each day of hearing of the Matrimonial Suit in the event of transferring the case from Baruipore to Kalna Court within District: Purba Burdwan.

Taking into accounts such comparative advantages and disadvantages and consequent harassment of the parties, the Court is of the view that if the pending Matrimonial Suit is transferred to a suitable location, where it is expected to curtail the comparative harassment of the parties to a considerable degree, that would not cause any prejudice to either of the parties to this case.

Chandannagar Court is such a place, which is about 58 K.m. away from Kalna, while Burdwan is about 45 K.m. away from the paternal home of the petitioner where she has been presently residing. The approximate distance from Baruipore, where the opposite party/husband is having his railway quarter, to Chandannagar is about 80 K.m. Chandannagar is the place, which can be effectively and conveniently commuted not only from Kalna, but also from

Baruipore having availability of several conveyances to reach over there.

Having considered the submission of both sides and looking into the comparative advantages and harassment of the parties, the transfer application is disposed of directing transfer of the pending Matrimonial Suit No.707 of 2019 from the court of learned Additional District Judge, Baruipore to the court of learned Additional District Judge, 1st Court, Chandannagar, District; Hooghly within a fortnight from the date of communication of this order.

Since expenses are involved to undertake journey from paternal house of the petitioner to Chandannagar Court, learned advocate for the petitioner is given liberty to file an application for the expenses to be incurred by the petitioner and if any such application is filed, that will be disposed of by transferee court providing sufficient opportunities of hearing to either of the parties to this case.

Learned advocate for the opposite party/husband, however, assures the Court that necessary expenses for undertaking the journey by petitioner from her parental house to Kalna to and fro shall be borne by the opposite party/husband.

The Court makes it clear that learned Additional District Judge, 1st Court, Chandannagar after receipt

of the case record shall proceed to go ahead with the proceeding.

Both the parties are accordingly directed to ensure their appearance before the transferee court on 21st January, 2022.

With the above observations/directions, the transfer application stands disposed of. The connected application being CAN 1/2021 is also disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)