

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TPC No. 18 of 2020**

- Smt. Priti Namdev W/o Luxman Namdev, aged about 33 years, R/o Brahman Road Nagar – Ambikapur, P.S. & Tahsil – Ambikapur, District Surguja (C.G.)

---- Petitioner**Versus**

- Luxman Namdev S/o Chhedilal Namdev, aged about 37 years, R/o village & Post Bhatgaon, P.S. & Tahsil – Bilaigarh, District Baloda Bazar - Bhatapara (C.G.)

---- Respondent

For Petitioner	:	Shri A.N. Pandey, Advocate.
For Respondent	:	Shri Anand Kesharwani, Advocate.

Hon'ble Smt Justice Rajani Dubey**Order on Board****21/01/2021**

1. This is a petition under Section 24 of the Code of Civil Procedure, 1908 (in short 'CPC) seeking transfer of Civil Suit Case No.19-A/2019 (Luxman Namdev Vs. Smt. Priti Namdev), pending before Family Court, Balodabazar to the Family Court Ambikapur, District Surguja.
2. Brief facts of the case are that the marriage of Smt. Priti Namdev applicant herein was solemnized with the non-applicant Luxman Namdev on 15.02.2015 at Ambikapur (C.G.) according to Hindu custom and out of their wedlock a baby child was born. After sometime of marriage, the respondent-husband started harassing the applicant-wife physically and mentally and committed maarpeet with her and demanded dowry. Now, the applicant-wife is residing at Ambikapur, District Surguja

whereas, respondent-husband is residing at District Balodabazar. The applicant-wife filed an application under Section 125 of Cr.P.C. for grant of maintenance against the respondent-husband before the Family Court, Ambikapur (C.G.) which is pending before Judge, Family Court, Ambikapur (C.G.). During the pendency of application filed under Section 125 of Cr.P.C. before the learned Family Court, Ambikapur, the respondent-husband, on 21.03.2017, filed an application under Section 13 (i) (a) of Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce before the learned Judge, Family Court, Balodabazar, District Balodabazar (C.G.) which is pending before the learned Judge, Family Court, Balodabazar (C.G.). Upon receipt of the notice from the Family Court, Balodabazar, she has entered into appearance and some mediation proceedings were also conducted by the learned Judge, Family Court, Balodabazar but all the efforts went into vain. Now, she has filed the instant petition before this Court stating *inter alia* that presently she is residing at Ambikapur having no source of income and there is no male person to accompany her to attend the Court at Balodabazar which is 450 km away from Ambikapur. Therefore, the Case No.19-A/2019 pending before the Family Court, Balodabazar be transferred to the Family Court, Ambikapur for hearing and disposal in accordance with law.

3. Shri A.N. Pandey, learned counsel for the applicant submits that the applicant/wife is residing at Ambikapur, District Surguja (C.G.). The distance between Ambikapur to the Family Court, Balodabazar, where matrimonial suit has been instituted by respondent/husband is more than 400 kms and being a lady it is very difficult for her to travel more than 400 kms. To attend the court

proceedings at Balodabazar. He further submits that it is settled position of law that the convenience of wife is relevant factor over the convenience of the husband. Therefore, application for divorce pending in the file of Family Court, Balodabazar be transferred to the file of Family Court, Ambikapur.

4. On the other hand, learned counsel for respondent-husband formally opposed the petition.
5. I have heard learned counsel for the parties and considered the rival submission and have perused the memo of petition and other papers.
6. Admittedly, the distance between Ambikapur, District Surguja, where the applicant/wife is residing, to the Family Court, Balodabazar is about 450 kms. Being a lady it would be highly inconvenient for the applicant to travel alone from Ambikapur to Balodabazar and vice versa especially at evening after attending the hearing.
7. Hon'ble Supreme Court in the matter of **Rajani Kishore Pardeshi Vs. Kishor Babulal Pardeshi** reported in **2005 12 SCC 23**, has observed that the convenience of wife is to be preferred over the convenience of the husband. Further, Hon'ble Supreme Court in the matter of **Sumita Singh Vs. Kumar Sanjay and another** reported in **2001 10 SCC 41**, has observed that if husband files suit against wife, then convenience of wife must be looked into.
8. Thus, having ascertained the legal position, as aforesaid and keeping in view the law laid down in aforesaid cases, and particularly, keeping in view that distance between Ambikapur, District Surguja to Family Court, Balodabazar is about 450 kms., the instant transfer petition deserves to be and is hereby allowed. It is directed that Civil Suit Case No.93-A/2019 (**Luxman**

Namdev Vs. Smt. Priti Namdev) filed for divorce under Section 13 (i) (a) of the Hindu Marriage Act, 1955 by respondent/husband before the Family Court, Balodabazar (C.G.) is hereby withdrawn from the said Court and same is transferred to the file of Family Court Ambikapur, District Surguja, for hearing and disposal in accordance with law. The Judge, Family Court, Balodabazar is directed to transmit the record of the above case to the Judge, Family Court, Ambikapur, District Surguja (C.G.)

9. Parties shall appear before the Family Court, Ambikapur on **04.03.2021**. No order as to costs
10. Interlocutory application, if any, stands disposed of.
Certified copy as per rules.

Sd/-

(Rajani Dubey)
Judge