

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TP(C) No. 24 of 2020**

- Smt. Shinki (Meshram) Yadav, aged about 32 years, wife of Brijbhushan Yadav, resident of Magarpara Chowk, Bilaspur, P.S. Civil Line, Tahsil and District Bilaspur (C.G.)

---- Petitioner**Versus**

- Brijbhushan Yadav, son of Ghanshyam Yadav, aged about 32 years, resident of Abhishek Vihar, Phase-2, House No.30 (Mangla Bilaspur) Tahsil and District Bilaspur (C.G.)

---- Respondent

For Petitioner	:	Shri K.P.S. Gandhi, Advocate.
For Respondent	:	Smt. Hamida Siddiqui, Advocate.

Hon'ble Smt Justice Rajani Dubey**Order on Board****11/02/2021**

1. The petitioner-wife has filed this transfer petition under Section 24 of the Code of Civil Procedure, 1908 (in short 'CPC) being aggrieved by the proceeding of learned Principal Judge, Family Court, Bilaspur (Court of presiding officer Smt. Dhaneshwari Sidar), District Bilaspur (C.G.) in C.S. No.366-A/2018 (Brijbhushan Yadav Upadhyay Vs. Smt. Shinki (Meshram) Yadav).
2. Brief facts of the case are that the marriage of Smt. Shinki (Meshram) Yadav applicant herein was solemnized with the non-applicant Brijbhushan Yadav on 26.01.2016 in Arya Samaj Mandir, Godpara according to Hindu custom. After sometime of marriage, the respondent-

husband started harassing the applicant-wife for bringing less dowry, which lead to filing of an application under Section 125 of Cr.P.C. before the learned Family Court, Bilaspur seeking maintenance and the same was allowed granting maintenance of Rs.3,000/- per month to the petitioner-wife. Thereafter, on 21.06.2018, the respondent-husband filed an application under Section 13 (i) (a) of Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce before the learned Principal Judge, Family Court, Bilaspur, District Bilaspur (C.G.) which is pending before it.

3. Shri K.P.S. Gandhi, learned counsel for the applicant would submit that during the pendency of C.S.No.366A/2018, on 07.02.2020 the respondent-husband was examined as witness before the learned Principal Judge, Family Court, Bilaspur, and on the same day an affidavit of petitioner-wife for her evidence was executed, and on 13.02.2020, she was examined as witness before the learned Principal Judge. Thereafter, the petitioner-wife prayed for evidence of one witness but the Court below dismissed the prayer saying that witness cannot be produced without issuing summon. Thereafter, the applicant-wife moved an application for issuing summon to witness, upon which, the presiding officer misbehaved and insulted the petitioner-wife. Learned counsel for the petitioner would also argue that the petitioner-wife made a complaint (**Annexure P/3**) before the Registrar General, wherein she has raised serious allegation against the Presiding Officer that the respondent-husband has influenced the Presiding Officer and there is apprehension that there would be miscarriage of justice. In support of submission, learned counsel for the petitioner-wife placed reliance on the decision of Hon'ble Supreme Court in the matter of

Pushpa Devi Saraf and another Vs. Jai Narain Parasrampuria and Others¹ and decision of Allahabad High Court in the matter of **Smt. Geeta Shrivastava Vs. A.K. Saxena, Judge Family Court and Others²**.

4. On the other hand, learned counsel for respondent-husband would argue that there is no such threat or impartiality in the case, rather it is the petitioner-wife who is lingering on the matter. Learned counsel would also argue that during pendency of the case, the petitioner-wife has moved an application before the trial Court for extending the date of appearance, which was supported by her affidavit stating *inter-alia* that the transfer petition is pending before the High Court and fixed for hearing on 28.01.2021, but the fact remains that the case was never listed on 28.01.2021. This conduct of the petitioner-wife is serious in nature and is sufficient to initiate proceeding of contempt of court. Learned counsel referring the decision of Hon'ble Supreme Court in the matter of **Usmangani Adambhai Vahora Vs. State of Gujarat and another³** would submit that order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of trial. There has to be a real apprehension that there would be miscarriage of justice, which is completely missing in the instant case.
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. In the instant transfer petition, there is a complaint (Annexure P/3) addressed to Registrar General by the petitioner-wife, which has been made the basis for

1 (1992) 2 SCC 676

2 (2007) 1 ARC 164

3 (2016) 3 SCC 370

seeking transfer of case. Hon'ble the Supreme court, while dealing with the issue in the matter of **Usmangani (supra)** has held in para 12, which reads thus:-

“... It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive.”

7. Having heard learned counsel for the parties and having considered the principles laid down in the matter of **Usmangani (supra)**, this Court is of the opinion that the allegation in the transfer petition and Annexure P/3 are not sufficient and do not warrant an order of transfer. This Court also express no opinion on the application (Annexure R-4) filed before the Court below do amount to contempt of court or not.
8. In the result, the transfer petition is dismissed. However, liberty is reserved with the petitioner to approach before the Principal Judge, Family Court, Bilaspur for transfer of the case to some other Presiding Officer. It is made clear that this Court has not expressed anything on merit of the petition and the Principal Judge, Family Court, Bilaspur is at liberty to decide the application, if filed, on its own merit and in accordance with law. No order asto cost.
9. The trial Court shall follow the order dated 07.01.2020 passed in FA(MAT) No.92/2019 by this Court and

conclude the trial as expeditiously as possible.

Certified copy as per rules.

Sd/-

(Rajani Dubey)

Judge

Pekde