

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 13.01.2021****Order delivered on 03.02.2021****Transfer Petition (Cr.) No. 04/2019**

1. Sunita Makhija W/o Rajesh Makhija Aged About 50 Years R/o Near Torwa Santoshi Mandir Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
2. Nirmala Makhija W/o Shital Das Makhija Aged About 70 Years R/o Near Torwa Santoshi Mandir Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Akash Makhija S/o Rajesh Makhija Aged About 27 Years R/o Near Torwa Santoshi Mandir Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
4. Dilip Nebhani S/o Jassumal Nebhani R/o Tikrapara, Near Jalaram Mandir, Bilaspur Chhattisgarh

---- Petitioners**Versus**

- Kashish Makhija W/o Akash Makhija Aged About 29 Years R/o E. W. S. -585, Vaishali Nagar, Supela Bhiali, Tehsil And District Durg Presently R/o 6th Floor Shri Ram Towers, Vyapar Vihar, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondent

For Petitioners	:	Shri Shikhar Bakhtiyar, Advocate
For Respondent	:	Ms. Pragya Pandey, Advocate

Hon'ble Smt. Justice Rajani Dubey
C A V Order

1. Heard on admission.
2. Admit.
3. This is a petition under Section 407 of the Cr.P.C. for transfer of MJC

No.377/2018, pending before the Judicial Magistrate First Class, Durg, District Durg(CG) to the Court of Judicial Magistrate First Class, Bilaspur. The criminal case which is sought to be transferred is in application filed by the respondent(wife) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the DV Act").

4. Learned counsel for the petitioners(husband and his relatives) submitted that an application under Section 12 of the DV Act has been filed by the respondent(wife) before the J.M.F.C. Durg, but both the parties are resident of Bilaspur. Applicant No.1 and applicant No.2 are aged about 50 years and 70 years, respectively and both are suffering from various ailments, therefore, it is not possible for them to appear before the Court at Durg. He further submitted that the respondent/wife has shifted to Bilaspur and presently she is residing at 6th Floor, Shri Ram Towers, Vyapar Vihar, Bilaspur (CG) and she has admitted her son in Brilliant Public School, Bilaspur, from which, an inference can be drawn that she has permanently shifted to Bilaspur. He submitted that father of the respondent is a powerful and influential person and applicant No.3, who is husband of the respondent, had received threats to withdraw the application for declaring the marriage null and void, therefore, the applicants are apprehension that they may be caused harm if the trial will be initiated at Durg.
5. Learned counsel for the respondent/wife has argued that the respondent was temporarily residing in Bilaspur and now she is

residing at Durg with her parents. She further submitted that the witnesses are also from Durg, therefore, the application deserves to be rejected. She further submitted that it is well settled that in matrimonial disputes, while considering the transfer petitions, the convenience of the wife has to be preferred over the convenience of the husband. She placed reliance on **Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi (2005) 12 SCC 237**.

6. I have considered the submissions so advanced and perused the documents annexed to the petition.
7. General convenience of the parties is one of the factor which needs to be addressed while deciding the motion for transfer of a case. In the case in hand, undisputedly, applicant No.2- Nirmala Makhija is aged about 70 years and applicant No.1-Sunita Makhija is aged about 50 years and it is also clear from the documents that son of the respondent is studying in Brilliant Public School at Bilaspur.
8. In present case, the respondent has filed a complaint case under Section 12 of the DV Act, not only against her husband but other relatives of the husband also and petitioner Nos. 1 and 2 are aged about 50 years and 70 years, respectively, and it is evident from the documents that son of the respondent/wife is studying at Bilaspur, so, general convenience of both the parties requires that this case should be transferred to the Court at Bilaspur, therefore, the petition is allowed.
9. Proceeding of MJC No.377/ 2018 before the Judicial Magistrate

First Class, Durg under Section 12 of the DV Act is transferred to the Court of Judicial Magistrate First Class, Bilaspur.

10. Parties are directed to appear before the Chief Judicial Magistrate, Bilaspur on **8th February, 2021** and abide by further directions of the learned trial Court at Bilaspur. The Chief Judicial Magistrate Bilaspur is directed that he may assign those proceedings to the concerned court.

11. The petition is accordingly disposed of.

Sd/

(Rajani Dubey)
JUDGE