

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TPCR No. 21 of 2019**

- Shri K. Bhisma Rao, son of late K. Krishna Rao, aged about 32 years, resident of Kashiram Nagar, Telhibandha, Raipur, Through Branch manager H.D.B. Finance Company, in front of L.I.C. Office, Pandri, Raipur (C.G.)

---- Petitioner**Versus**

- Smt. K. Komal Rao, wife of Shri K. Bhisma Rao, aged about 26 years, presently resident of behind Christ College, Dalpat Sagar Ward, Jagdalpur, District (C.G.)

---- Respondent

For Petitioner	:	Shri Ankur Agrawal, Advocate.
For Respondent	:	Shri Ishan Verma, Advocate.

Hon'ble Smt Justice Rajani Dubey**Order on Board****10/03/2021**

Heard.

1. The petitioner-husband has filed this transfer petition under Section 407 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C) seeking transfer of M.J.C. No.71/2017 (Smt. K. Komal Rao V. Shri K. Bhisma Rao) filed by respondent-wife herein, pending before Family Court, Jagdalpur to the Family Court Raipur, District Raipur.
2. Brief facts of the case are that the petitioner and respondent are husband and wife, their marriage was solemnized on 20.01.2016 according to Hindu custom and out of their wedlock one daughter was born on

09.1.2016. After sometime of marriage, it is alleged that petitioner-husband started extra marital affair and started harassing the respondent-wife and also forced her to leave matrimonial house, which lead to filing of an application under Section 125 of Cr.P.C. before the learned Family Court, Jagdalpur seeking maintenance which is still pending consideration.

3. Shri Ankur Agrawal, learned counsel for the petitioner would submit that during pendency of the case before the learned Family Court, the petitioner suffered paralysis attack on 19.05.2019 and he was admitted in NHMMI Narayan Hospital. He further submits that the physical condition of the petitioner is not good enough and he is facing difficulties in his routine activities. He also submits that at present the petitioner is not having any job, the treatment of the petitioner is still going on in NHMMI Narayan Hospital at Raipur and respondent-wife has filed maintenance case at Family Court, Jagdapur, therefore, looking to the financial and physical condition of the petitioner, the case pending before the Family Court, Jagdalpur may be transferred to Family Court, Raipur. In support of submission, learned counsel for the petitioner-husband placed reliance on the decision of this High Court in the matter of **Vinay Alias Abhishek & Others Vs. State of C.G.**¹.
4. On the other hand, learned counsel for respondent-wife would argue that the case for maintenance has been filed in the year 2017 and even after the span of three years neither the child nor respondent has got any maintenance from her husband. He also submits that father of respondent-wife died on 05.09.2019 and after the death of her father she is running pillar to post for arranging livelihood for daughter and herself as she was

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only dependent on her father's income. He also submits that at present the petitioner-husband has resumed his duty and he is not suffering any difficulties in performing his day-to-day work. It is next submitted that the distance between Jagdalpur to Raipur is about 300 kilometers and it would not be possible for respondent-wife to perform 600 kilometers journey (to and fro) along with minor daughter with no source of income and no maintenance.

5. I have heard learned counsel for the parties and perused the material available on record.
6. Admittedly, the respondent-wife is residing at Jagdalpur where the case has been filed and the distance between Jagdalpur, District Bastar to the Family Court, Raipur is about 300 kms. Being a lady it would be highly inconvenient for the respondent-wife to travel along with minor daughter from Jagdalpur to Raipur and vice versa especially when she has no source of income and without maintenance. Furthermore, the petitioner-husband has not filed any recent medical document showing his poor health condition. The medical documents so filed in the case is of the year 2019, thus, it would be difficult for this Court to arrive at conclusion that his physical condition of the petitioner-husband is not good.
7. That apart, 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.
8. Thus, having ascertained the legal position, as aforestated and keeping in view the law laid down in aforesaid case, and particularly, keeping in view the fact

that distance between Jagdalpur, District Bastar to Family Court, Raipur is about 300 kms. and the respondent-wife has no source of income, the instant transfer petition deserves to be and is hereby dismissed at the admission stage itself.

9. Interlocutory applications, if any, stands disposed of.

Sd/-

(Rajani Dubey)
Judge

Pekde