

Ct. 16.8
No. 2022
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akb

C.O. 1304 of 2021

Debjani Dasgupta (Miah)

-Versus-

Syed Krishna Miah

Mr. Tushar Kanti Mukherjee

...For the Petitioner

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of a matrimonial suit from the Court of the learned District Judge, Jhargram to the Court of the learned Additional District Judge, Baruipur, South 24-Parganas.

It is stated by the petitioner that her marriage with the opposite party was solemnized on 16th March 2011 and the marriage between them was registered under the provisions of the Special Marriage Act, 1954. The marriage between them was duly consummated, but no child was born out of their wedlock.

The Petitioner complains that on the demand a sum of rupees one lakh, the opposite party subjected her to cruelty. Ultimately, the opposite party turned her out of his house. Getting no other alternative, she took shelter at her parental home and started residing there.

On the allegations of torture meted out to her, the petitioner lodged an FIR at the Baruipur Police Station and the FIR was registered as Baruipur Police Station Case No. 187 dated 7th March 2012 under Sections 498A/406/34 of the Indian Penal Code. After completion of investigation, the Investigating Officer submitted charge sheet against the opposite party.

The petitioner came to know that the opposite party brought a matrimonial suit, being No. 11 of 2020 under

Section 27 of the Special Marriage Act against her in the Court of the learned District Judge, Jhargram, seeking dissolution of their marriage. The petitioner submits that it will be hardship for her to travel the long distance to appear before the Court at Jhargram to participate in the matrimonial proceeding. The petitioner submits that she has no source of income. Under such circumstances, the petitioner seeks transfer of the matrimonial suit.

Learned Lawyer appearing for the petitioner submits that the distance between the parental home of the petitioner and the Court at Jhargram is more than 150 kms. He further submits that since a criminal case launched by his client is pending in the Court of a learned Judicial Magistrate at Baruipur, the opposite party has to appear before the Court at Baruipur. On such score learned Lawyer submits that the petitioner has made out a good case to get relief as sought for.

Since, the opposite party has chosen not to contest the revisional application, the averments/allegations as made in the revisional application shall be deemed to have been uncontroverted.

As it appears from the uncontroverted averments made in the revisional application, the petitioner under compelling circumstances had to leave her matrimonial house and started residing at her parental home at Village – Subuddhipur, Post Office – Thaipara, Police Station – Baruipur, District – South 24-Parganas. As it appears, on the FIR lodged by the petitioner, one Baruipur Police Station Case No. 187 dated 7th March 2012 under Section 498A/406/34 of the Indian Penal Code has been registered

against the opposite party and this case is pending before the Court of a learned Judicial Magistrate at Baruipur. Such being the factual aspects, the opposite party has to appear before the concerned Court at Baruipur to participate in the hearing of the aforesaid criminal case.

This Court can take judicial notice that the distance between Baruipur and Jhargram is nearly 150 kms. It is trite to say, that the Hon'ble Apex Court in a plethora of decisions has held that inconvenience of wife shall be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure.

Having heard the learned Lawyer appearing for the petitioner and considering the circumstances as demonstrated by the petition in her revisional application I think that it will be wise to withdraw the aforesaid matrimonial suit from the Court of the learned District Judge, Jhargram and transfer the suit to the Court of the learned Additional District Judge, Baruipur, South 24-Parganas.

Therefore, the revisional application is allowed.

Let the Matrimonial Suit, being No. 11 of 2020 be withdrawn from the Court of the learned District Judge, Jhargram and the suit be transferred to the Court of the learned Additional District Judge, Baruipur, District – South 24-Parganas for disposal.

The learned District Judge, Jhargram, is directed to transmit the case record of the matrimonial suit to the transferee Court immediately after receipt of a copy of the order.

With the aforesaid direction, C.O. 1304 of 2021 stands disposed of.

There will, however, be no order as to costs.

Let a copy of this order be communicated to both the Courts below for information and compliance.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis upon compliance of all formalities.

(Rabindranath Samanta, J.)