

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (C) No.96 of 2022

An application under Section –24 of the Code of Civil Procedure.

Smitarani Singh

....

Petitioner

Versus

Siddhartha Swain

...

Opposite Party

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. S.K.Dash, Advocate

For Opposite Party : Mr.S.K.Mishra, Advocate

CORAM:

JUSTICE SAVITRI RATHO

.....
Date of Judgment:21.10.2022
.....

Savitri Ratho, J. This TRP (C) has been filed by the petitioner-wife under Section 24 of C.P.C. for transfer of C.P.No.1159 of 2021 filed by the opposite party-husband under Section-13 (1) (ia) of the Hindu Marriage Act, in the Court of the learned Judge, Family Court, Bhubaneswar, to the Court of learned Judge, Jharsuguda .

TRP (C) No. 103 of 2022 under Section 24 of C.P.C. which has been filed by the petitioner – wife for transfer of Guardianship Misc. Case No.18 of 2021 filed by the opposite party-husband under Section-6 of the Hindu Minority and Guardianship Act, 1956 in the Court of the learned District Judge, Puri, to the Court of learned District Judge, Jharsuguda, which had been listed with this case is disposed of today by a separate judgment.

2. The two cases had been sent to the Orissa High Court Mediation Centre for mediation. The report of the Mediation dated 05.08.2022 reveals that the mediation was unsuccessful.

3. Counter affidavit has been filed by the opposite party and the petitioner has filed an additional affidavit. As the pleadings are complete in both the TRP (C)s, the cases were finally heard on the consent of the learned counsels.

4. Perused the transfer application, counter affidavit as well as the additional affidavit filed by the petitioner and heard Mr. S.K.Dash, learned counsel for the petitioner and Mr.S.K.Mishra, learned counsel for the opposite party.

5. Mr.Dash, learned counsel for the petitioner submits that the marriage of the parties had been solemnized in 26.06.2009 and they

have been blessed with a daughter on 25.12.2011. Soon after her birth, the opposite party and his family members started torturing the petitioner and started imposing restrictions on her movement. The opposite party who is working as Block Welfare Officer in Astarang Block, forced the petitioner to stay in a separate room without proper amenities while he enjoyed the same and did not provide her money for her daily expenditure. When the situation became unbearable, she left the house and is presently staying with her mother in Brajrajnagar in the District of Jharsuguda. She has lodged FIR against the opposite party and his family members at the Orient Police Station leading to registration of Orient P.S Case no 47 of 2021 under Sections – 498-A, 294, 323, 307, 506/34 I.P.C. She has also filed C.M.C. No.13 of 2022 under Section 125 of Cr.P.C. in the Court of learned Judge, Family Court, Jharsuguda, where the opposite party has entered appearance. He has also filed Quad Misc. Case No.18 of 2021 in the Court of the learned Family Judge, Puri for divorce and for transfer of this case to Jharsuguda, she has filed TRP (C) No.103 of 2022.

6. Mr. Dash, learned counsel further submits that in order to harass her, the opposite party filed the divorce proceeding at Bhubaneswar making false allegations. The petitioner is apprehensive of coming to Bhubaneswar to contest the case as she had been earlier

assaulted by the petitioner and his family members and they are antisocial in nature. The distance between Jharsuguda and Bhubaneswar is more than 300 K.Ms and the petitioner has no independent source of income and is now staying with her widow mother in Jharsuguda as her father died in the year 2021. He further submits that as two cases are already pending in Jharsuguda, it would not be inconvenient for the petitioner if the case is transferred from Puri to Jharsuguda. He also submits that the opposite party and his parents physically assaulted the petitioner and tried to kill her for which she lodged an F.I.R. leading to registration of Orient P.S. Case No.47 of 2021 for commission of offences punishable under Sections 498-A/294/323/307/506/34 of I.P.C.

In the additional affidavit filed by the petitioner, it has been averred that the petitioner passed her Matriculation Examination from O.P.M. Girls High School, Brajarajnagar in 2001, studied +2 and +3 from Brajarajnagar College staying with her parents. After her father passed away in the year 2000, she is now staying with her mother in her parental house at Brajarajnagar. Two of her uncles are staying in Brajarajnagar, separately. As she was brutally assaulted by her in-laws, she left her matrimonial house with her daughter to save her life and lodged the F.I.R. at Orient P.S. on 8.4.2021. The petitioner has filed

the present application apprehending danger in her life as the opposite party is an influential person as he is a government employee and there is every possibility of life threat from the side of the opposite party. The distance between Bhubaneswar and Jharsuguda is more than 300 K.Ms. So, it is neither safe nor convenient for the petitioner to attend the Court at Bhubaneswar.

7. Mr. S.K.Mishra, learned counsel for the opposite party has submitted that the petitioner was staying in the same building with the opposite party in Nimapara till 4.4.2021 and the daughter of the parties is still a student of Standard-V of DAV Public School, Nimapara. The opposite party has been bearing the expenditure of the education of their daughter and also day to day expenses of the petitioner and their daughter while they were staying in Nimapara. But taking advantage of the virtual classes of the child during the COVID pandemic, the petitioner had temporarily shifted to Jharsuguda, where her mother was serving. Her parental house is at Khordha, but she has deliberately moved to Jharsuguda for staying with her mother in a house constructed by her mother over a government land, only to harass the opposite party. The divorce case was filed in Bhubaneswar as the cause of action has arisen there, as their marriage having been solemnized in Bhubaneswar. The opposite

party being a government servant working in Astarang Block which is in Puri District, he would be seriously inconvenienced if the case would be transferred to Jharsuguda as he would not be able to get repeated leave to attend the numerous court proceedings at Jharsuguda. He is ready and willing to bear the expenses of the petitioner to attend the case at Bhubaneswar. The petitioner having left Nimapara without any justification and she being a native of Khordha, there is no justification on her part to claim for transfer of the case. The petitioner was not allowing him to meet their daughter, for which on his prayer vide order dated 12.04.2022 passed in TRP (C) No.103 of 2022, this Court has issued direction permitting his interaction with her at the DLSA Office and he was able to meet her.

8. Considering the submissions made by the parties and especially the submission that two cases are pending in Jharsuguda and the petitioner and her daughter is residing with the mother of the petitioner in Brajrajnagar, District- Jharsuguda, I feel it would be expedient in the interest of justice if C.P.No.1159 of 2021 is transferred from the Court of the learned District Judge, Bhubaneswar, to the Court of learned Judge, Family Court, Jharsuguda.

9. While allowing the prayer of the petitioner – wife for transfer, this Court cannot turn a blind eye to the consequent inconvenience which will be faced by the opposite party – husband. It is therefore directed that the learned Judge, Family Court, Jharsuguda shall ensure that for convenience of the parties, successive date (s) of hearing and/or for recording of evidence in the cases pending before it or transferred to it are fixed on the same dates, to suit the convenience of the parties, especially the opposite party-husband who has to travel from Nimapara, District Puri, after availing leave, to attend the proceedings. In order to further mitigate the inconvenience which will be caused to the opposite party and at the same time ensure expeditious disposal of the proceedings, the learned Court shall not insist on the personal appearance of the opposite party – husband on any date unless absolutely necessary and shall also consider any prayer made by him for adducing evidence by video conferencing, in accordance with law. The transferee Court is requested to decide the case so transferred to it, as expeditiously as possible and preferably within six months from the date of receipt of the record .

10. The learned Judge, Family Court, Bhubaneswar is directed to transfer the records of C.P.No.1159 of 2021 (*Siddhartha Swain*

vs Smitarani Singh) to the Court of the learned Judge, Family Court, Jharsuguda by 14.11.2022. The parties undertake to appear in the Court of the learned Judge, Family Court, Jharsuguda on 21.11.2022.

11. The TRP (C) is accordingly allowed with the aforesaid observations.

12. Urgent certified copy of this order be granted on proper application.

13. Registry is directed to send a copy of this order to the Courts of the Family Judge at Bhubaneswar and Jharsuguda for compliance.

.....
(*Savitri Ratho*)
Judge

Orissa High Court, Cuttack
Dated 21st October, 2022/Bichi