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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**TRPCRL No. 37 of 2022**

An application under Section – 407 Cr.P.C for transfer of D.V. Case No.38 of 2022 from the Court of the learned S.D.J.M., Talcher, Angul to the Court of learned S.D.J.M., Cuttack.

**Anshuman Pradhan**

....

**Petitioner**

*Versus*

**1. Lulipta Beura**

....

**Opp. Party**

**2. Nilamani Pradhan**

**3. Meerarani Pradhan**

....

**Proforma Opp. Parties**

**Advocates appeared in this case through Hybrid Mode :**

For Petitioner

: Mr. A.P. Bose, Advocate

For Opp. Party No.1

: Mr. S.C. Samal, Advocate

**CORAM:**

**JUSTICE SAVITRI RATHO**

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**Date of Judgment : 04.08.2022**  
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**Savitri Ratho, J.**

I have heard Mr. A.P. Bose, learned counsel for the petitioner and Mr. S.C. Samal, learned counsel for the opp. party no.1.

2. This transfer application under section 407 of Cr.P.C. has been filed by the petitioner-husband Anshuman Pradhan for

transfer of D.V. Case No.38 of 2022 filed by the opp. party No.1 - wife under Section 12 of the Protection of Women from Domestic Violence Act (in short “DV Act”) in the Court of learned S.D.J.M., Talcher, Angul to the Court of learned S.D.J.M., Cuttack.

3. Mr. Bose, learned counsel for the petitioner-husband submits that the petitioner had earlier filed MAT Case No.125 of 2021 in the Court of learned Civil Judge (Senior Division), Talcher for a decree of divorce. After receiving notice in the said case, TRP(C) No.183 of 2021 was filed by the opp. party No.1-wife in this Court for transfer of the MAT case to the Court of learned Judge, Family Court, Cuttack. By order dated 08.06.2021, this Court has allowed the prayer taking note of her submission that she was staying in Chowdwar with her widow mother and brother and is dependent on them and it would be difficult for her to move 150 K.Ms. to Talcher to attend the case. But in fact the petitioner is staying in Talcher by forcibly occupying one room of the house where the petitioner and his parents were staying. He further submits that although she had plans of moving to Talcher, the opp. party No.1 had made false averments and submissions in TRP (C) No.183 of 2021 in order to cause inconvenience and harassment to the petitioner. After transfer, the case has been re-registered and numbered as C.P. No.390 of 2021 in the Court of the learned

Judge, Family Court Cuttack. The case has been listed on a number of occasions, but the opp. party No.1 has remained absent on many dates for which the case is getting adjourned causing difficulty and inconvenience to the petitioner as he has also to appear and contest the DV case before the S.D.J.M., Talcher. As it would be convenient if both the cases are taken up at one place, so the DV Case should be transferred to the Court of the SDJM Cuttack. In the alternative, the Civil Proceeding No. 390 of 2021 should be retransferred to Talcher.

4. Mr. Sarat Chandra Samal, learned counsel and his associate have appeared for the opposite party no.1-wife waiving notice. A counter affidavit has been filed by her and copy of the same has been served on learned counsel for the petitioner. This objection has been sworn before Sri B.K. Nayak, Notary Cuttack Town on 28.06.2022. But instead of filing the certified copy of the order dated 21.07.2022 in C.P. No.390 of 2021 as undertaken on 25.07.2022, the learned counsel for the opp. party No.1 on 28.07.2022 has filed the true copy of the report of the Counselor, Family Court Cuttack alongwith citations. He has submitted that the opp. party No.1 has not made any false averments or submissions in the transfer application filed by her earlier and she not filed the DV case in Talcher to harass the petitioner but because

she is interested for reunification. In the counter affidavit it has been interalia stated that at the time of filing of TRP(C) No. 183 of 2021, she has spent five six months phase wise in Choudwar and she and her daughter were staying there with her widow mother and brother. But after that , she has moved to Talcher and is staying in her in laws house with her daughter, as her mother and brother are now residing in Bangalore where he is working and it would have been cumbersome and hazardous for her to reside in her parental house with her young daughter. It has been further averred that she is residing in her in laws house since 29.12.2021 till date and four sessions of counselling have been done after which the concerned counselor has come to the conclusion that the opp. party is interested for re-unification and one more home visit was necessary and on. 21.07.2022, the conciliation process has been closed basing on the report of the counselor and the case was posted to 03.08.2022 for hearing of the I.A. filed by her. It has also been averred that the petitioner is not co-operating and in order to harass her has locked the other rooms in his house and left the house with other family members. He has also submitted that the petitioner and opp. parties No. 2 and 3 permanently residing within the territorial jurisdiction of the learned S.D.J.M., Talcher and the opp. party no.1

is also residing there for which the case should not be transferred to Cuttack .

5. Perusal of the order dated 08.06.2021 passed in TRP(C) No.183 of 2021 indicates that transfer has been granted on the ground that opp. party No.1-wife is an un-employed lady and is dependant on her parents residing at Tinikonja Bazar, Parida Sahi, P.O./P.S.-Chowdar, District : Cuttack and with a one year girl child and it is difficult on her part to bear the travelling expenses and other related expenditure for attending the proceeding pending in the Court of the learned Civil Judge (Senior Division), Talcher and in view of the financial status of the opp. party No.1-wife, this Court observed that there would be no difficulty, if the case of the petitioner-husband is transferred to the Court of the learned Judge, Family Court, Cuttack.

Perusal of Annexure-A/1 series of the counter affidavit filed on behalf of opp. party No.1 reveals that the opp. party No.1 had not appeared in the case on 02.12.2021 and 22.12.2021 and on 21.4.2022 the case was fixed *“To sort out the dispute as far as reunion is concerned”*. Thereafter the case was posted to 21.07.2022 for counselling. But learned counsel for the opp. party No.1 has not filed the copy of the order.

6. The DV Act is *“An Act to provide for more effective protection of the rights of women guaranteed under the* TRPCRL No. 37 of 2022

*Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto” ...*

**Section 2 (i)** of the DV Act defines “Magistrate” to be

*“ the Judicial Magistrate of the first class or as the case may be the Metropolitan Magistrate exercising under the Code of Criminal Procedure 1973 ( 2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place .”*

The petitioner is a permanent resident of Talcher and the opp. party No.1 claims to be residing in Talcher. The opp. parties No.2 and 3 are also residents of Talcher.

7. After hearing the learned counsels for the parties and keeping in view the object for which the DV Act has been enacted, I do not think this to be fit a case to direct for transfer of the DV Misc Case to the Court of the learned Judge, Family Court, Cuttack at present as the petitioner is a resident of Talcher and the opp. party No.1 claims to be permanently residing in Talcher and she will face inconvenience if she has to come Cuttack to contest the case.

8. But it is apparent that the petitioner is facing inconvenience for having to come to the Court of the learned Family Judge to contest C.P. No. 390 of 2021 which has been transferred to Cuttack

from Talcher at the instance of the opp. party No.1, as the opp. party No.1 has remained absent on many dates and if she and her residing at Talcher, there is no reason why the Civil Proceeding should be tried in Cuttack. Her conduct is not proper as she has come to Cuttack on 28.06.2022 for swearing the counter affidavit, (which has been filed on 29.06.2022), but is not appearing before the Family Court.

In the present application this Court cannot direct for transfer of the Civil Proceeding from Cuttack to the original Court in Talcher. But the petitioner is at liberty to file appropriate application for recall of the order of transfer or file a fresh application for transfer of the Civil Proceeding from Cuttack to Talcher due to the developments which have taken place after the case was transferred to Cuttack.

9. With the aforesaid observations, the TRP (CRL) is dismissed.

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

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

*Orissa High Court, Cuttack*  
*Dated 4<sup>th</sup> August, 2022 / Sukanta*