

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No. 226 of 2022

Sanjogita Mishra

.....

Petitioner

Mr. S. Mohapatra, Adv.

Vs.

Chittaranjan Khamari

.....

Opposite Party

Mr. Anupam Dash, Adv.

CORAM:

JUSTICE SAVITRI RATHO

ORDER

22.09.2022

Order No.

03.

(Through hybrid mode)

1. Heard Mr. S. Mohapatra, learned counsel for the petitioner-wife and Mr. Anupam Dash, learned counsel for the opp. party-husband.

2. In this application under Section 24 of the C.P.C. read with Section 10 of the Family Court's Act, 1984 the petitioner-wife has prayed for transfer of Civil Proceeding Case No.38 of 2022 filed by the opposite party-husband under Section 13 of the Hindu Marriage Act, in the Court of the learned Judge, Family Court, Balangir, to the Court of the learned Judge, Family Court, Boudh.

3. Mr. S. Mohapatra, learned counsel for the petitioner submits that the marriage between the parties has been solemnized in the year, 2019 and a minor daughter was born in the year, 2020, who is staying with the petitioner in the house of her parents at Boudh and the petitioner has filed C.P. No.19 of 2022 under Section 9 of the Hindu Marriage Act in the Court of learned Judge, Family Court, Boudh where notice has been issued to the opp. party-husband and a case registered for commission of offences under Sections 498-A of I.P.C. along with other offences

vide Balangir Town P.S. Case No.451 of 2020 is pending against the opp. party-husband in Balangir. He further submits that the distance between Boudh and Balangir is about 100 K.Ms for which it would be inconvenient for the petitioner to attend the Court at Balangir on each date the case is posted to as the petitioner has no source of income and is dependent on her parents and has to look after her small child. He also submits that the C.P. case was fixed for appearance on 22.06.2022, but she was unable to appear on the said date.

4. Mr. Anupam Dash, learned counsel for the opp. party has filed an objection to the transfer application and submits that the opp. party is apprehensive of going to Boudh. He further submits that the present opp. party is a government servant and is serving as a Forester at Mohakhand under Bangomunda Range in the district of Balangir which is around 130 kms. from Balangir Town. The distance between Balangir Town and Boudh is around 100 kms. and if the present transfer application is allowed then the opp. party will have to travel 230 kms. on each date of posting of the case at Boudh and he will have to take leave for 2 working days which will have an adverse impact on his official work due to the peculiarity of the job and submits that he is agreeable to pay the travelling as well as accommodation expenses of the petitioner when she comes to Balangir to attend the case. He relies on the decisions of the Supreme Court in the case of :

i) ***Kamaljit Kaur vs Prince Singh Chhabradd*** reported in ***AIR 2005 Online SC 69*** ; and

ii) ***Y.A. Ajit vs Sofana Ajit*** reported in ***AIR 2007 SC 3151***.

5. Since the pleadings are complete, the TRP(C) is taken up for final disposal on the consent of the counsels.

6. While deciding an application for transfer of a matrimonial case, the inconvenience which is likely to be faced by the wife is considered while turning a deaf ear and blind eye to the difficulties faced by the husband in view of the law that in matrimonial cases, the convenience of the wife is of paramount consideration. In the case of *Anuva Choudhury vs. Biswajit Mishra (TRP(C) No. 324 of 2017)* decided on 05.09.2022, after discussing the difficulties likely to be faced by both the parties. I have held that in the present situation, an application for transfer of a matrimonial case has to be considered on its own facts instead of allowing the application because its filed by the wife. A balance has to be struck, so that each party is able to fight/defend his/her case in the trial court. The Supreme Court has refused the wife's application for transfer in the following cases :

(i) *Kalpna Devi Prakash Thakur vs. Dr. Devi Prakash Thakur* reported in (1996) 11 SCC 96 :

(ii) *Kanagalakshmi vs. A. Venkatesan* reported in (2004) 13 SCC 405 :

(iii) *Gargi Konar vs. Jagjeet Singh* reported in (2005) 11 SCC 446 :

(iv) *Preeti Sharma vs. Manjit Sharma* reported in 2005 (II) OLR 535 :

(v) *Kamaljit Kaur vs. Prince Singh Chhabra* reported in 2006 (1) OLR SC 456:

(vi) *Y.A. Ajit vs. Sofana Ajit* reported in *AIR 2007 SC 3151*.

7. In the case of *Kalpna Devi Prakash* (supra), the Supreme refused the prayer of the wife for transfer of the matrimonial proceedings from Mumbai to Palanpur, Gujarat taking into account the submission of the husband that he was a medical practitioner and his absence from Mumbai would cause inconvenience to his patients, his old and ailing mother who lived with him needed constant care and regular medical check up and the husband was ready to bear the travelling expenses of the wife and an escort.

In the case of *Kanagalakshmi* (supra) as the husband was willing to bear the expenses of travel and stay of the wife and an accompanying person to and in Mumbai, the prayer of the wife for transfer of the matrimonial dispute from Mumbai to Tirunelivelli in Tamil Nadu was disallowed by the Supreme Court.

In the case of *Gargi Konar* (supra) the prayer of the wife for transfer of the matrimonial case from Bhatinda to Burdwan or Durgapur on the ground that the wife was a helpless woman totally dependent on her father, was disallowed holding that the husband can be directed to pay the to-and-fro expenses and stay of the wife and her companions.

In the case of *Preeti Sharma* (supra), the prayer of the wife for transfer of the divorce case from Muzzafar Nagar, U.P. to Delhi on the ground that the wife was an unemployed lady and totally dependent on her uncle was rejected, but the husband was directed to pay the expenses for travel and stay of the wife and a

companion at Muzzafar Nagar for each date.

In the case of *Kamaljit Kaur* (supra), the prayer of the wife for transfer of the matrimonial case from Rourkela to Dhanbad was turned down, but the husband was directed to pay in advance (by sending demand drafts) all expenses for travel in reserved second class and stay in a 3 star hotel, of the wife and a companion.

In the case of *Y.A. Ajit* (supra) the High Court had allowed the wife's application under Section 24 of the C.P.C. and transferred the matrimonial proceeding from Kanyakumari at Nagercoil to the Court of Family Judge, Chennai. Referring to its earlier decision reported in *2004 (8) SCC 100*, where the husband's prayer for quashing the criminal proceedings had been allowed on the ground of lack of territorial jurisdiction of the learned Court below, the Supreme Court remanded the case to the High Court to reconsider the matter.

8. After considering the above submissions and decisions and in view of the nature of work the Opp. Party is entrusted with and when he is ready and willing to bear the expenses of travel of the petitioner alongwith a companion from Boudh and their accommodation in Boudh, I am convinced that instead of transferring the civil proceeding from Balangir to Boudh, the interest of justice would be served if the Opp. Party is directed to deposit an amount of Rs.6000/- (Rupees Six Thousand only) in advance towards travelling and accommodation expenses of the petitioner before each date, so that the same can be sent or paid to her when she appears in the before the learned Judge, Family Court, Balangir. The latter shall ensure that the said amount is paid to the petitioner if not in advance then on her appearance on

each date positively. It is made clear that if the physical presence of the petitioner-wife is not necessary on any date, the learned Judge Family Court Balangir shall not insist on her personal appearance and that he shall take steps for expeditious disposal of the Civil Proceeding, preferably within a period of six months so that minimum inconvenience is caused to the wife who has a small child and has to travel 100 kms. to attend the case.

9. The TRP(C) is accordingly disposed of.
Interim order passed earlier stand vacated.
10. Issue urgent certified copy as per rules.

.....
SAVITRI RATHO
JUDGE



Sukanta