

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (CRL) No.82 of 2021

An application under Section – 407 of the Code of Criminal Procedure.

Pradeep Kumar Das

....

Petitioner

Versus

Deeptimayee Das @ Puthal

...

Opposite Party

Advocates appeared in this case through hybrid Mode :

For Petitioner

: Mr. Samir Kumar Mishra,
Advocate

For Opposite Party

: Mr. Smruti Ranjan Mohapatra,
Advocate

CORAM:

JUSTICE SAVITRI RATHO

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Date of Judgment : 26.10.2022
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Savitri Ratho, J.

This transfer application under Section 407 of the Code of Criminal Procedure (in short “ the Cr.P.C”) has been filed by the petitioner - husband-Pradeep Kumar Das for transfer of D.V. Misc. Case No.130 of 2020 filed by the opposite party (in short “opp.party”) - wife Deeptimayee Das @ Puthal, under Section 12 (2) read with

Section 17 (1), Section 18 , Section 19(1) , Section 20 & Section 22 of the Protection of Women from Domestic Violence Act, 2005 (in short “the DV Act”) in the Court of learned S.D.J.M., Balasore, to the Court of learned S.D.J.M., Bhubaneswar.

2. I have heard Mr Samir Kumar Mishra learned counsel for the petitioner- husband and Mr S.R. Mohapatra learned counsel for the Opposite Party – wife.

3. Learned counsel for the petitioner submitted that the petitioner is presently posted in Rayagada District working as Deputy Manager of Technical Department in Utkal Alumina International Ltd, a unit of Aditya Birla Group at Kuchia Padar, Nuapada Township, Kasipur, District Rayagada which is about 400 Kms from Bhubaneswar . It would take about 12 to 14 hours for the petitioner to reach from Kasipur Bhubaneswar and 5 to 6 more hours to go to Balasore from Bhubaneswar .The petitioner has further submitted that the opposite party is presently working in Puri as Project Manager in Mecon India Pvt. Ltd . As Puri is only 62 KM away from Bhubaneswar, it will not be inconvenient for the Opp. Party to attend the proceeding at Bhubaneswar whereas the comparative inconvenience faced by the petitioner- husband is more if he is compelled to attend the case at

Balasore . He has also submitted that C.P.No. 495 of 2020 and C.P.No. 310 of 2020 (involving the parties) have been transferred to the Court of the learned Judge , Family Court Bhadrak pursuant to orders passed in TRP (C) No. 210 of 2020 and TRP(C) No. 138 of 2021, respectively . In support of his submission that women are misusing the leniency being shown to them in matters of transfer and each petition has to be considered on its own merit and inconvenience caused to the husband should also be considered , he has relied on the decision of the Supreme Court in the case of *Anindita Das vs Srijit Das* reported in **(2006) 9 SCC 197**.

4. Instead of filing an objection or a counter affidavit , a date chart / short note of argument accompanied by an affidavit dated 29.08.2022 has been filed on behalf of the opp. party- wife on 29.08.2022, where it has been stated that C.P. No. 495 of 2020 filed by the petitioner – husband for divorce in the Court of the learned Judge, Family Court Bhubaneswar and C.P.No. 310 of 2020 filed by the respondent – wife for restitution of conjugal rights in the Court of the learned Judge , Family Court , Balasore , have both been transferred pursuant to the orders passed by this Court , to the Court of the learned Judge , Family Court Bhadrak vide order dated 17.02.2021

passed in TRP(C) No. 210 of 2020 and order dated 12.04.2022 passed in TRP(C)No. 310 of 2020 respectively. It has also been averred that CRLMC No 1211 of 2022 filed by the petitioner-husband in order to quash the order of cognizance passed by the learned SDJM Nilgiri in C.T. No. 466 of 2020, arising out of Berhampur P.S. Case No 65 of 2020, is still pending in this Court . CRLMC 1211 of 2022 filed by the petitioner- husband challenging the criminal proceeding in C.T. No. 466 of 2020, arising out Berhampur P.S. Case No 65 of 2020 has been dismissed as withdrawn by the order dated 12.07.2022 . It is also stated in the written note that the petitioner – husband is working as Deputy Manager at Kashipur, Rayagada and staying there and the opp. party - wife is at present staying at Bhalukaposi in Nilagiri, in Baleswar District and she is presently unemployed. She will face inconvenience, if the DV Misc case is transferred to the Court of the SDJM, Bhubaneswar and its not safe for her to visit Bhubaneswar which is at a long distance from her residence.

It is not known why the opp. party – wife has not filed a objection or counter affidavit .That apart the averments made by the petitioner in the transfer application regarding employment of the

petitioner in MECON and posting at Puri, has not been specifically denied but a bald statement has been made stating that the petitioner is presently unemployed and staying in Bhalukaposi . In the affidavit attached to the date chart / note of argument, specific reference has not been made to date chart / written note.

5. In the affidavit dated 18.09.2022 filed on 24.09.2022 on behalf of the petitioner, copies of the information sheets provided under the RTI Act , postal receipts and tracking report have been brought on record as Annexure 1 Series and copies of the written statement filed by the opp. party - wife in C.P.No. 83 of 2021 and petition in D.V.Misc Case No, 130 of 2020 as Annexure 2 Series. Referring to letter dated 20.05.2021 of GM I/C (HR) & CPIO (Annexure 1 Series), learned counsel for the petitioner has submitted that the opp. Party – wife had drawn Rs 56,100/- in the month of March, 2021. Further, referring to Registration receipt in respect of RO 033783950IN addressed to the Opp. party at Puri and the track consignment report , it has been contended that the notice sent to the Opp party at her office address in Puri has been delivered to her . Referring to paragraph 17 of the petition in D.V. Misc. Case No. 130 of 2020, the learned counsel for the petitioner has stated that the opp. Party – wife is

working in MECON India, at Bhubaneswar and continued the job after her marriage.

6. From a perusal of the averments in D.V. Misc. Case No. 130 of 2020, it appears that the opp party - wife was serving at Bhubaneswar in an office named and styled as 'MECON LIMITED' as Asst. Project Engineer on a contractual basis, prior to her marriage. It has also been stated therein that after marrying the petitioner, she continued in her job as her in-laws permitted her to do so.

7. Perusal of the order dated 12.04.2022 passed in TRP(C) No. 138 of 2021 filed by the present petitioner for transfer of C.P.No. 310 of 2020 filed by the opp.party –wife for restitution of conjugal rights , reveals that the contention of the learned counsel for the petitioner had been that the opp.party –wife was staying in Puri for which no prejudice would be caused to her if C.P. No. 310 of 2020 was transferred to Puri. It was also noted that the learned counsel for the opp. party – wife did not dispute that she was staying and working in Puri . But direction was passed for transfer of C.P.No. 310 of 2020 to Bhadrak as C.P.No. 495 of 2020 filed by the petitioner for a decree of divorce had already been transferred to Bhadrak pursuant to order dated 17.02.2021 passed in TRP(C) No. 210 of 2020.

8. After hearing the learned counsels and after perusal of the averments in the transfer application, the affidavit dated 18.09.2022 filed on behalf of the petitioner-husband, the date chart alongwith the affidavit filed on behalf of the opp party - wife and on appreciating the submissions of the learned counsels, it is apparent that :

(a) A proceeding for divorce and a proceeding for restitution of conjugal rights are pending in Bhadrak, pursuant to orders passed by this Court in two transfer applications.

(b) the petitioner is working in Kashipur in the District of Rayagada, which is more than 500 Kms from Balasore.

(c) The opp party- wife was admittedly working in MECON India and was posted at Puri.

(d) In August 2022, the opp.party – wife claims to be unemployed without giving any details about when she left her job or the reasons for doing so.

9. In the case of **Anindita Das** (supra) the Supreme court has held as follows :

...“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency taken by this

Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.

4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child , in this case , is six years old and there are grand parents available to look after the child. The Respondent is willing to pay all expenses for travel and stay for the Petitioner and her companion for every visit when the Petitioner is required to attend the Court at Delhi. Thus, the ground that the Petitioner has no source of income is adequately met.

5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the Court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out.

6. Accordingly, we dismiss the Transfer Petition. We, however, direct that the Respondent shall pay all travel and stay expenses of the Petitioner and her companion for each and every occasion when she is required to attend the Court at Delhi”

In the case of *N.C.V Aishwarya vs A.S. Saravana Karthik Sha*

Civil Appeal No. (s) . 4894 of 2022 (Arising out of S.L.P.(C) No (s).16465 of 2021) decided on 18.07.2022 : **2022 SCC Online SC 1199**, the Supreme Court has held as follows :

.....“9. *The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.*

10. *Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.*”

This Court in the case of **Anuva Choudhury vs Biswajit Mishra (TRP(C) No. 324 of 2017)** decided on 05.09.2022

alongwith **Biswajit Mishra vs Anuva Choudhury** TRP (CRL) No. 98 of 2021 , after referring to a number of decisions of the Supreme Court and this High Court has held as follows:

“....8. While deciding an application for transfer of a matrimonial case, it has been the usual practice to consider the inconvenience which is likely to be faced by the wife while turning a deaf ear and blind eye to the difficulties faced by the husband, on account of the accepted position of law that convenience of the wife is of paramount consideration in matrimonial cases. This is because women were considered to belong to the weaker sex and dependent on a male for their survival and security, be it the father, brother, husband or son. But now, after 75 years of independence, the situation has changed and the emancipation of women is clearly visible. Women are being given equal opportunity and representation in all spheres. They have become self dependent and many are no longer dependent on their husband/parents/brothers or sons for their survival and security. They have become the sole breadwinners in some families. They are able to bring up a child on their own. Some are part of the law making and law enforcing agencies. They are able to travel alone in connection with their work and recreation. Unfortunately, there are still many exceptions, as many women are still dependent on their family members for their survival on account of lack of education, lack of support and as some men still have not learnt to respect women for which women are

still victims of eve teasing and sexual harassment in educational institutions, public transport and even in their work place. Travelling alone for long distances by road or train for a woman is often fraught with risk. Likewise, due to a variety of reasons, the role and responsibilities of men have undergone a sea change. Many men have to single handedly take care of aged and ailing parents and young children, for which there are sometimes constraints on their time and movement. Their job requirements may also be a stumbling block. So in the present situation, an application for transfer of a matrimonial case has to be considered on its own facts without mechanically or blindly allowing the application of the wife. For the same reasons, the earlier decisions have also to be viewed in the same light. A balance has to be struck, so that each party is able to fight/defend his/her case in the trial court. Many Courts have been provided with video conferencing facilities, which can also be utilised by all the parties for their convenience.”.....

.....“10. From the aforesaid cases, it is apparent that although the Supreme Court has held that the convenience of the wife is of paramount consideration, but prayers for transfer have been considered taking into account the facts of the particular case. In other words, the convenience of one party only should not be considered. But a balanced view should be adopted, keeping in mind the convenience of both the parties, but giving more weightage to the convenience of the wife.”...

10. The D.V.Act was enacted as Act 43 of 2005 and came into force on 26.10.2006 .It has been enacted with the following objective : -

“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto” ...

In the Statement of Objects and Reasons appended to the Act , it has been interalia stated :

“3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

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 .”

11. The decisions referred to above were cases filed under Section – 24 and 25 of the Cr.P.C. , but as they deal with matrimonial cases , the same principles will apply when deciding a case of transfer of a case filed under the provisions of the DV Act as the said Act provides for a remedy under the civil law to protect women from domestic violence.

12. In the present case, the opp party- wife who is the aggrieved person therefore had the option to file the case in Puri where she was working , or in Bhubaneswar where most of the opp. parties in the D.V. Misc case reside and where the domestic violence was allegedly perpetrated. If the opp – party wife had now been working and staying in Puri, considering the provisions of the DV Act and the comparative convenience / inconvenience of the parties, I would have transferred the case to Puri, but in view of the specific averment of the Opp party –wife which is supported by an affidavit, that she is unemployed and is staying in Bhalukaposi in District – Balasore and since two civil proceedings involving the parties have already been transferred to Bhadrak, I feel it would be expedient in the interest of justice, if D.V. Misc. Case No.130 of 2020 is also transferred to the Court of learned S.D.J.M., Bhadrak.

13. The learned S.D.J.M., Balasore is therefore directed to transmit the records of D.V. Misc. Case No.130 of 2020 (**Smt. Deeptimayee Das @ Puthal vrs. Sri Pradeep Kumar Das & Others**) filed by the opposite party-wife under the D.V. Act, to the Court of the learned S.D.J.M., Bhadrak by 09.11.2022. The parties undertake to appear before the Court on 14.11.2022, as it is submitted by Mr. Mishra learned counsel for the petitioner that the C.P. is posted on that date in Bhadrak.

14. Keeping in mind the fact that the petitioner husband has to come all the way from Rayagada to contest the case, in order to mitigate the inconvenience which will be faced by him, the learned SDJM, Bhadrak is directed to post the DV Misc case on the dates to which the two civil proceedings are posted in the Court of the learned Judge, Family Court, Bhadrak if there is no other legal impediment and the learned SDJM shall not insist on the personal appearance of the petitioner – husband, if the same is not absolutely necessary. Liberty is granted to the petitioner – husband to apply to the Court for cross examining the witnesses of the Opp party – wife and adducing his evidence and that of his witnesses through video conferencing

mode. If such an application is filed, the same shall be considered in accordance with law by the learned SDJM, Bhadrak.

15. The TRP (CRL) is disposed of with the aforesaid directions.

16. Copy of this order be sent to the Court of the learned SDJM, Balasore, by the Registry.

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

(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 26th October, 2022 / puspa

