

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1724 of 2022

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Ritu Kumari Wife of Sanjay Kumar Bhagat, Daughter of Late Sushil Kumar Choudhary, Resident of Mohalla- Nandgola, Patna City, P.S.- Malsalami, District - Patna.

... .. Petitioner/s

Versus

SANJAY KUMAR BHAGAT KISHORI LAL BHAGAT RO VILL TILAS
PO RAGHELI PS DANDKHORA DISTT KATI HAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjai Kumar Singh, Advocate
For the Opposite Party/s : Mrs. Smriti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 27-06-2023

Heard Mr. Dhananjai Kumar Singh, learned

Counsel appearing for the petitioner and Mrs. Smriti Singh who represent the opposite party.

2. The present application has been preferred by the petitioner for the transfer of the Matrimonial (Divorce) Case No. 197 of 2022 from the Court of learned Additional Principal Judge, Family Court, Katihar to the Court of learned Principal Judge, Family Court, Patna.

3. The matrix of facts giving rise to the present petition is/are as follows:

4. The marriage of the petitioner alongwith the opposite party took place on 06.02.2011 at Patna and out of the said wedlock, a female child was born on 02.03.2012 at



Patna City, Patna.

5. Later, the relationship between the couple soured and the petitioner was forced to return to her parent's home in 2016 at Patna and started residing there alongwith her minor daughter.

6. As per the petition, the opposite party thereafter stopped paying her any amount forcing her to file Maintenance Case No. 179(M)/2016 before the Family Court, Patna.

7. Upon information, the opposite party also preferred Matrimonial Case No. 236/2017/CIS No. 236/17 under section 9 of the Hindu Marriage Act, 1955 (henceforth for short 'the Act') before the Family Court, Katihar.

8. The maintenance case thereafter was taken up by the learned Principal Judge, Family Court, Patna and vide an order dated 11.05.2018, the direction was given to the opposite party to pay Rs. 7,000/- per month to the petitioner and Rs. 3,000/- to the minor daughter from the date of the filing of the petition.

9. However, the contention of the learned Counsel for the petitioner is that the same was never complied with inasmuch as out of Rs. Six lakhs that became due against



the opposite party, only Rs. 50,000/- was paid as lumpsum amount.

10. Further, when the petitioner appeared in the Matrimonial case pending before the Family Court, Katihar and as her petition for setting aside the ex-parte order was allowed on 25.04.2019, the opposite party herein was infuriated and threatened her of dire consequences if she ever steps in Katihar again.

11. Fearing danger to her life, the petitioner thereafter preferred MJC No. 1914 of 2019 before the Patna High Court for transfer of the said petition and during the pendency of the same, the Family Court, Katihar passed order against her which led to filing of M.A. No. 333 of 2021 before the Patna High Court which is presently pending.

12. Further, the case of the petitioner is that although the opposite party is posted as Office Clerk in the Army at Missamari Army Cantt., Sonitpur district in Assam while she is residing with her parents in Patna where her minor daughter is pursuing study as a student of Class-VI in St. Joseph's Convent High School, Jethuli, Banka Ghat, Patna; deliberately and with the sole purpose to harass her not only mentally and physically but also economically, the aforesaid



divorce petition was preferred before the Family Court, Katihar.

13. The petitioner who was at the mercy of her parents was unable to move to Katihar when the petition was preferred as she was not economically sound and was could not bear the expenses of her journey to and fro Patna as also further expenses for staying at Katihar.

14. However, the God was kind enough to her and finally in July, 2022, she got a job as a Teacher at Begusarai which is around 100 kms from Patna. While her daughter is pursuing her study at Patna, she remains with her every weekend at Patna at her parent's home while doing her duty during weekdays at Begusarai.

15. By way of I.A. 01 of 2023, the petitioner further brought on record the fact that after she got a job and had some money in her hand, she visited the Family Court, Katihar on 21.09.2022 and informed the Court about the present filing of the case with further prayer to adjourn the matter. However, the same was not considered and she was debarred from filing the written statement vide an order dated 01.12.2022.

16. As such, the prayer has been made that as she is staying at her parent's home where the marriage was



solemnized and further she is working at Begusarai which is nearer to Patna, the Matrimonial Case No. 236 of 2017 be transferred from Katihar (more than 300 Kms) to Patna.

17. From the order sheet attached in the said I.A., it seems that the mediation failed and on 09.11.2022, the petitioner herein was directed to file written statement as a last chance and on 01.12.2022 although time petitions were preferred by both the sides, the learned Court passed an order debarring the petitioner from filing written statement.

18. Per contra, learned Counsel for the opposite party, Mrs. Smriti Singh, the petitioner in her petition concealed the fact that she has finally got a Government job in Begusarai and thus it cannot be said that she is presently residing in Patna. Further, although admittedly the opposite party is working in Assam, his widow mother stays at Katihar and as such, the petition was preferred at Katihar so that while appearing before the Court, he can also see to his mother. So far as the non payment of maintenance amount is concerned, it was submitted by the learned Counsel for the opposite party that despite being in job, in view of the other expenses including taking care of his mother, he could not pay the amount.

19. The further contention of the learned



Counsel for the opposite party is that if this court indeed considers transferring the case, the same be transferred to Begusarai where the petitioner is presently working and not at Patna where the opposite party apprehends danger to his life by the family members of the petitioner.

20. During the argument, the learned counsel Mrs. Smriti Singh informed that the opposite party is present in the Court. It was surprising for the Court to know that the opposite party working in Assam is present in the Court to merely watch the proceedings when neither he was summoned nor required and despite the argument put forward on his behalf that he apprehends danger to his life in Patna.

21. It is the further contention of the learned counsel that the petitioner being a Teacher can now fulfill her need and easily go to Katihar to attend the dates. On payment, it was submitted that the opposite party no. 2 is ready to pay Rs. 5,000/- per month against the order of payment of Rs. 10,000/- to the petitioner and her daughter as also the fact that against the payment order, he has already preferred appeal which is pending before the Patna High Court.

22. In support of the case, learned counsel for the opposite party took this Court to the recent judgment of



Delma Lubna Coelho Vs. Edmond Clint Fernandes reported in **2023 SCC Online SC 440** in which the Hon'ble Supreme Court held in paragraph nos. 19 and 20 and the same reads as follows :-

19. In the facts of this case in hand, the petitioner is a permanent resident of Canada. She had shifted there in the year 2014 and was working there on a well-paid job, however, came to India for the matrimonial alliance. She is presently based at Mumbai, Maharashtra with her parents and stated to be working in ICICI Bank. There is no child born out of the wedlock. The relation started after the parties met on Facebook. As far as the respondent is concerned, he is a doctor by profession and is living at Mangaluru, Karnataka. Divorce Petition has been filed by the husband at Mangaluru where he resides with his aged parents. Thereafter, the wife filed a petition for restitution of conjugal rights at Mumbai, Maharashtra.

20. Considering the status of the parties and the fact that it is petition filed by the wife seeking transfer of



case filed by the husband from Mangaluru, Karnataka to Mumbai, Maharashtra, in our view case is made out for transfer of the petition from Mangaluru, Karnata to Mumbai, Maharashtra. The wife is a permanent resident of Cana She must be travelling abroad regularly. As is evident from observations in the Mediation Report dated 08.02.2023 submitted Justice S.J. Vazifdar, the petitioner was in Canada throughout the mediation process and attended the proceedings online. There is no child born out of wedlock to be taken care of. Both the parties are well educated and engaged in their own jobs and professions. She can travel to Mangaluru to attend the hearing of the case and can also seek exemption from appearance whenever required. Though, at present, considering the financial condition of the parties on the basis of material which has come on record, we do not find that any ground is made out for issuing direction to the respondent to pay the expenses to the petitioner for travelling to Mangaluru. However, still in case she feels like seeking



reimbursement of expenses, she shall be at liberty to file application before the court concerned, which may be examined on its own merits.

23. This Court has gone through the facts of the case as put forward by the respective counsels. The admitted fact is that the marriage was solemnized in 2011 at Patna City and the birth of the female child too took place in Patna in 2012. The girl is now 11 years old and pursuing her studies in Class – VI in St. Josephs Convent Jethuli, Patna. Further, the lady and her daughter are/were residing in Patna with the petitioner's parents since 2016. Further, till she got a job six years later in July, 2022, she was at the mercy of her parents so far as economical part is concerned. The opposite party on the other hand, despite the direction of the Court to pay Rs. 10,000/- as maintenance to the lady and her minor daughter chose to look the other way.

24. It is the case of the petitioner that earlier when she visited Katihar in 2019 and an order dated 25.04.2019 was passed in her favour in Matrimonial Case No. 236/2017/CIS No. 236/2017, she was threatened of dire consequences by the opposite party if she ever visited Katihar.

25. In the the counter affidavit filed by the



opposite party, he has not replied to the said allegation made by the petitioner.

26. A perusal of Section 19 of the Act reads as follows :-

“19. Court to which petition shall be presented. - Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:-

*(i) the marriage was solemnized, or
(ii) the respondent, at the time of the presentation of the petition, resides or
(iii) the parties to the marriage last resided together, or
(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]*

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would



*naturally have heard of him if he were
alive.]”*

27. It is an admitted fact that the opposite party is presently working in Assam and not in Katiher whereas the petitioner is working in Begusarai which is nearer to Patna where she stays every weekend with her child at her parent's home. The opposite party in any case will have to attend the said case by leaving his work place (Assam), the way he visited Patna to witness the present hearing.

28. Further, as stated above, from 2016, the lady is residing in Patna with her parents and till July, 2022 she had no economic support and was completely dependent on her parents as the opposite party did not pay the amount ordered. Even now she is working in Begusarai which is nearer to Patna where her daughter, a growing up child is pursuing her study in Class – VI.

29. Further, if the maintenance case continues in Katihar, the petitioner will have to travel to Katihar which is more than 300 kms from Patna (an overnight train journey) to attend the Court, will have to stay there followed by return journey to Patna which definitely will entail expenses to her. Further, a person who deprived the lady and her minor children of legitimate amount as ordered by the Court cannot be



expected to fulfil his readiness of paying for her travelling expenses.

30. Further, the case of **Delma Lubna Coelho** (supra) cited by the learned counsel for the opposite party relates to a case where the lady was permanent resident of Canada, shifted to India in 2014, based herself in Mumbai, Maharashtra with her parents, was working in ICICI Bank having no child while her husband was living in Mangaluru where he was a practicing doctor. In the said background, the Hon'ble Supreme Court held that the lady who is permanent resident of Canada and travels abroad regularly can also travel to Mangaluru and as such, her transfer petition was dismissed.

31. On the other hand, it is an admitted fact that the opposite party is neither residing nor working at Katihar and is presently away from the said place in Assam. In that background, when neither the petitioner nor the opposite party is residing and/or working in Katihar, the natural corollary will be to shift the case to a place where one of the two is/are residing/working and in this particular case, the same is the City of Patna.

32. Further in the case of **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha** reported in 2022



SCC Online SC 1199, the Hon'ble Apex Court took into account the consideration of the economic soundness of the parties and the social status of the spouses amongst other and held that when the lady is staying with her aged parents and it is difficult for her to travel from Chennai to Bangalore to attend court proceedings, it would be proper that the case is transferred to the Family Court Chennai from Family Court Vellore.

33. It is important to incorporate paragraph 9 to 14 of the said judgement passed in **N.C.V. Aishwarya (supra)** which read 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 socio-economic 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.

11. As noticed above, the appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case fled by the respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore,



the High Court was not justified in rejecting transfer petition bearing TR.C.M.P.No. 473 of 2020, fled by the appellant herein. 12. Resultantly, the appeal succeeds and is accordingly allowed. The Order dated 19.11.2020 passed by the High Court in TR.C.M.P. NO.473 of 2020 is set aside. We direct transfer of F.C.O.P. No.125 of 2020 pending consideration before the Family Court, Vellore to the jurisdictional Family Court at Chennai. We also direct the clubbing of the aforementioned three cases so that a common order may be passed by the concerned Family Court at Chennai.

13. We direct the parties to bear their respective costs.

14. Pending application, if any, also stands disposed of.”

34. Taking into account all the factors relating to present case, the Court is convinced that this is the fit case where the Matrimonial (Divorce) Case No. 197 of 2022 is transferred from the Court of the Additional Principal Judge, Family Court, Katihar to the Court of learned Principal Judge, Family Court, Patna.



35. It is accordingly ordered. This Court directs transfer of aforesaid Matrimonial (Divorce) Case No. 197 of 2022 from the Court of Additional Principal Judge, Family Court, Katihar to the Court of learned Principal Judge, Family Court, Patna.

36. The M.J.C. No. 1724 of 2022 is allowed.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	AFR
CAV DATE	19.06.2023
Uploading Date	28.06.2023
Transmission Date	

