

26.04.2023

Ct. 30
Sd./3

CRR 762 of 2019

Prasenjit Das
Vs.
Moumita Banik

Ms. Manali Biswas,
Mr. Mrinal Saha.
..For the petitioner.

None,
.....For the Opposite Party.

The present revisional application has been preferred praying for transfer of Misc Case No. 70 of 2018, pending before the learned Judicial Magistrate, 2nd Court at Jalpaiguri, to the Court of the learned Judicial Magistrate at Berhampore, District- Murshidabad.

It is the case of the petitioner that the parties were married to each other on December 16, 2015.

The petitioner was diagnosed with a rare disease namely Becker's Muscular Dystrophy, as a result of which, the petitioner was declared to be sixty five percent (65%) disabled. Presently the petitioner is under constant medical supervision and he has been confined to a wheel chair. Further the petitioner is absolutely dependent on others. After diagnosis of the said disease the petitioner was unable to find any employment but on the other hand his family

members have to bear the expense for his constant medical treatment.

The wife/opposite party gradually withdrew herself from the matrimonial bond. But all of a sudden on 13.08.2016 the opposite party whimsically left the matrimonial home. In spite of repeated requests the opposite party had refused to come back to her matrimonial home.

On September 19, 2016 the petitioner was constrained to file an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, being Matrimonial Suit No. 321 of 2016, before the Court of Learned District Judge at Berhampore, Murshidabad.

On 05.05.2018 the opposite party/wife made a frivolous complaint against the husband and initiated a proceeding under Section 498A of the Indian Penal Code.

The petitioner asserts that the wife/opposite party in spite of being aware of the medical condition of the petitioner instituted a proceeding under Section 125 Cr.P.C. being Misc Case No. 70 of 2018 before the learned Judicial Magistrate, 2nd Court at Jalpaiguri, only with the intent to harass the petitioner.

The Supreme Court in ***N.C.V. Aishwarya vs A.S. Saravana Karthik Sha, Civil Appeal No. 4894 of 2022, 18 July, 2022***, held:-

“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."*

But in the present case the husband is 65% disabled. Being a disabled person it is extremely painful/hazardous for the petitioner to appear in the proceedings before the learned Judicial Magistrate, 2nd Court at Jalpaiguri which is almost 400 Kilometers away from the petitioner's residence at Berhampore. That the petitioner is absolutely dependent on his family members and further he cannot move without a wheel chair. It is further stated that he has no relatives and/or alternative accommodation at Jalpaiguri where he can stay overnight. Further due to the advanced age of his parents they are finding it hard to take the petitioner to Jalpaiguri. Therefore it is extremely inconvenient for him to attend proceeding at Jalpaiguri.

Thus if the proceeding under Section 125 of Code of Criminal Procedure is transferred to the Court of learned Judicial Magistrate at Berhampore, District-Murshidabad, the comparative hardship of the opposite

party/wife shall be much lower than that of the petitioner/husband.

In spite of due service there is no representation on behalf of the opposite party/wife.

On perusal of the materials on record and annexure B, which is the Disability Certificate of the petitioner, it is seen that the petitioner is an orthopedically challenged person and his disability is to the extent of 65%. The disease is known as Becker's Muscular Dystrophy.

Several medical papers have been filed in support of the plaintiff's medical problems.

Considering the said medical condition of the petitioner's husband which has totally restricted his movement, this a fit case where the prayer of the petitioner should be considered in the interest of justice.

Accordingly the proceedings being Misc Case No. 70 of 2018 pending before the learned Judicial Magistrate, 2nd Court at Jalpaiguri be transferred to the Court of learned Judicial Magistrate at Berhampore, Murshidabad through the learned District Judge, Jalpaiguri and the learned District Judge, Murshidabad.

CRR 762 of 2019 is allowed.

There will be no order as to costs.

All connected Applications stand disposed of.

Interim order if any stands vacated.

Copy of this order be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)