

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1420 of 2022

Khushbu Kumari @ Khushabu Kumari Wife of Vivek Kumar, D/o Birendra Kumar Singh, Resident of Village - Sikandarpur, P.S. - Muzaffarpur Town, District - Muzaffarpur. At Present Resident of Village - Barkagaon, P.S. Pakaridayal, District - East Champaran.

... .. Petitioner/s

Versus

Vivek Kumar Son of Arun Kumar Mishra, Resident of Village - Lohsari, P.S. - Bochahan, District - Muzaffarpur. At present Resident of Mohalla - Sikandarpur, P.S.- Muzaffarpur Town, District - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Madhurendra Kumar, Adv.

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 26-09-2024 Heard the parties.

2. This is an application for transfer of Matrimonial (Divorce) Case No. 91 of 2022 from the court of learned Principal Judge, Family Court, Muzaffarpur to the court of learned Principal Judge, Family Court, East Champaran at Motihari.

3. Pursuant to the notice, the Opposite Party has appeared.

4. The lady has assigned her reasons in paragraphs 7 to 9 of the petition which read as follows:-

“7. That the Petitioner is residing at her maternal house alongwith her two minor children which come under the Jurisdiction of



Family Court, Motihari, East Champaran.

8. That the Petitioner has no independent source of income and she has been dependent upon her father who is a retired teacher, hence not able to attend Family Court, Muzaffarpur, which is about 130 Kilo Meters far away from her maternal village either economically or physically.

9. That it is also relevant to state it here that three cases are pending before the Civil Court Motihari, i.e. Complaint Case No. 802 of 2017, Pakaridayal P.S. Case No. 48 of 2018 and Maintenance Case No. 193 of 2017 (Disposed of vide order dated 17.03.2020) in which the petitioner appeared and is contesting, hence there is convenient to contest the present at Motihari.”

4. Counter affidavit has been filed on behalf of Opposite Party and learned counsel has taken this Court to paragraphs-25 and 26 which read as follows:-

“25. That the statement made in Para-10 & 11 is matter of record, so no reply is essential. But it is also correct that time to time the Hon'ble High Court and Hon'ble Supreme Court in similar circumstances of Transfer of Divorce Suit, has directed to both the parties,



that if there is no chance of resumption between the parties as the petitioner has deserted to the opposite party from last 5-7 years and there is no physical relation between the petitioner & opposite party in that period, apart from this, the petitioner has tried to send jail to the opposite party, and other relatives including his father and mother and lastly succeeded to send jail to the father of the opposite party, as well as there is no possibility of restitution of conjugal life due to abovementioned hidden, real & genuine facts, in which the opposite party and his family members & relatives have apprehension of danger of life & property if opposite party will continues his conjugal life, which is not possible for him due to real facts discussed above as well as the marital relation of the petitioner and opposite party only as certificate, which does not serve the sanctity of marriage and the same will be clear and evident from the above said required Medical Test i.e. virginal/virginity Test of the petitioner as well as D.N.A. Test of petitioner, opposite party and both the children under the proper guidance of Hon'ble concerned Court.

26. That the false statements and conduct of petitioner going through the back history of all the cases as only false cases has been filed against the opposite party, only due



to her personal gain, with evil intent and bad-will & ill-motive, to get maintenance and property of the opposite party anyhow and to harass them either this way or that way. Hence the Hon'ble Court of law give permission to anyone to do this type of illegal works & malpractice, which is bad in the eyes of social prestige and concerned law also, and can not be considerable by this Hon'ble Court in any corner of concerned laws, but claim of litigations between the parties may kindly be dropped, to save the ends of justice and petitioner may kindly be directed to give consent for Divorce with mutual consent in the instant suit, accordingly one time settlement amounts in this regards will also be paid to the petitioner and for this the opposite party is giving under taking & ready, before this Hon'ble Court after proper & fair said medical Test under the proper guidance of Hon'ble concerned Court below, Muzaffarpur, where the instant suit is pending.”

5. This Court is afraid and cannot go into the DNA test of the petitioner, the Opposite Party as also the children. This case has come only for the transfer of the Matrimonial (Divorce) Case No. 91 of 2022 from the court of learned Principal Judge, Family Court, Muzaffarpur to the court of



learned Principal Judge, Family Court, East Champaran at Motihari.

6. Learned counsel appearing on behalf of Opposite Party has cited a case of Hon'ble Supreme Court in the case of **Priyanka Singh v. Jayant Singh (Transfer Petition(C) No. 400/2009)** reported in **2009(4) PLJR 279** in support of his case in which paragraph-3 reads as follows:-

“3. We have heard learned counsel for the parties and perused the record. Keeping in view the fact that the parties are living separately for last more than 4 years and 6 months and there is no chance of reconciliation between them and also the fact that they have agreed to dissolve their marriage by mutual consent without any coercion or undue influence, we deem it proper to accept the prayer made in the two applications for dissolution of marriage. Accordingly, Divorce Petition No.1118 of 2008 titled Shri Jayant Singh vs. Smt. Priyanka Singh pending in the Court of Civil Judge (Senior Division), Gautam Budh Nagar (U.P.) is transferred to this Court and marriage between the parties is dissolved by granting a decree of divorce by mutual consent in terms of Section 13B of the Act.

7. This case can easily be differentiated from the order passed by the Hon'ble Apex Court in which both the



parties agreed to dissolve their marriage by mutual consent without any coercion or undue influence and in that background Hon'ble Supreme Court of India passed the order. Here, learned counsel for the petitioner has clarified that she does not want any dissolution of the marriage. Thus, the said order of the Hon'ble Apex Court is not applied in the present case.

8. The lady has made out a case. In that background, this Court deems it fit and proper to allow the petition. Accordingly, the present petition (MJC No. 1420 of 2022) stands allowed.

9. As such, let the files of the Matrimonial (Divorce) Case No. 91 of 2022 be transferred from the court of learned Principal Judge, Family Court, Muzaffarpur to the court of learned Principal Judge, Family Court, East Champaran at Motihari.

10. The petition stands disposed of.

(Rajiv Roy, J)

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