

MCC-2779-2016

(SMT. VEENA WANKHEDE Vs SUBHASH RAO WANKHEDE)

27-01-2017

Shri Niranjan Pathak, learned counsel for the applicant.

Shri Anurag Sahu, learned counsel for the respondent.

With the consent of parties, the matter is heard finally.

This is a petition filed under Section 24 of the Code of Civil Procedure, 1908 (hereinafter shall be referred as 'the Code' for brevity) for transfer of matrimonial matter registered as regular civil suit no. 968-A/2016 pending in the Court of Second Additional Principal Judge Family Court, Bhopal to the Family Court, Jabalpur.

The case of the applicant is that she is the wife and has been impleaded as defendant in the matrimonial matter filed u/s 9 of the Hindu Marriage Act, 1955 registered as regular civil suit no. 968-A/2016 filed by the respondent seeking a decree for restitution of conjugal rights against the present applicant. The applicant has contended that she was married with respondent according to Hindu rites and customs on 1/12/2011 at Jabalpur. The respondent and the defendant have been blessed with a girl child namely Ku. Shruti Wankhede aged about four years. It is further contended that the respondent made allegation against the applicant that she resided with him for two months only and thereafter, started pressurizing him to reside separately at Bhopal with her leaving his parents at Bina. The other allegations have also been made against the present applicant in the said petition.

The aforesaid allegations have been denied by the present applicant before the learned Family Court, Bhopal and the counter allegations have been made against the respondent/plaintiff and his family members that they are harassing the applicant and demanding

dowry of Rs. 1 lac.

It is submitted by learned counsel appearing on behalf of the applicant that the criminal cases against respondent are being tried in the jurisdiction of the competent Court at Jabalpur. It is submitted that the several complaints have been made before the police authorities for registering the offences of dowry demand, domestic violence etc. against them at Jabalpur. When no action was taken by the police, she filed an application u/s 156 of the Cr.P.C for taking cognizance and registering the FIR against the respondent/plaintiff and his family members. Copy of the complaints have been filed alongwith the present application as Annexure P/3 and P/4. The application u/s 125 of Cr.P.C claiming the maintenance has also been filed before the learned Family Court, Jabalpur and a complaint under the Prevention of the Women from Domestic Violence Act, 2005 is also pending before the competent court at Jabalpur. The relevant documents have been filed alongwith this application as Annexures P/5, P/6.

Counsel for the applicant has further submitted that she is residing at Jabalpur and the distance of Jabalpur from Bhopal where the present case is being tried by the Family court is more than 300 kms i.e. Jabalpur. The applicant is dependent on her old aged mother who is suffering from paralysis and his brother is in a private job who also can not accompany her on each and every date of hearing of the matter before the Family Court at Bhopal. It is submitted that the applicant being a lady having a female child aged about four years faces a lot of inconvenience to travel alone for attending the case on every date of hearing at Bhopal. On these grounds, the prayer is made that the matrimonial case pending before the Family Court, Bhopal be transferred to the Family Court, Jabalpur.

Per contra, learned counsel for the respondent submits that he is

ready to bear the expenses of travelling of the applicant from Jabalpur to Bhopal. He relies on the order passed by this Court on 2/09/2015 in M.C.C. No. 1074/2013 and also on the judgment passed in the case of **Anindita Das Vs. Srijit Das, 2006 (9) SCC 197** and contends that no leniency should be shown by the Court for convenience of the applicant.

After having considered the rival submissions of both the parties, I am of the view that applicant is wife having a girl child aged about four years staying at Jabalpur and the fact that there is no male member to accompany her on each and every date of hearing of the case at Bhopal from Jabalpur has made out a case for transfer from Bhopal to Jabalpur. The other criminal cases against the respondent are filed at Jabalpur. It is not denied by the respondent that he is not participating in these criminal cases at Jabalpur. The specific averments have been made in para 7 of the application which have not been denied by the respondent. The mere offer of travel expenses to the applicant would not meet out the other grounds mentioned by the applicant that she is a lady having a female child of four years no source of income, no other adult male member to accompany her etc. Considering the overall facts and grounds, the balance of convenience is in favour of the applicant/wife and if the matrimonial case is not transferred from Bhopal to Jabalpur then she has to face more inconvenience in defending the case at Bhopal therefore, I am of the view that matrimonial matter registered as regular civil suit no. 968-A/2016 be transferred from the Court of Second Additional Principal Judge, Family court, Bhopal to Family Court, Jabalpur. The convenience of a party in a matrimonial matter is one of the relevant factor for consideration of a transfer petition specially when the application is filed by wife. This view finds support from the

judgments passed in the cases of **Jyoti Bangde Vs. Sanjay Bangde, 2010 (4) MPLJ 391, Rajkumar s/o Gopilal Vs. Saroj w/o Rajkumar, 2010 (2) MPLJ 256** and the judgment passed by the Apex Court in the case of **Kulwinder Kaur Vs. Kandi Friends Education Trust, 2008 (3) SCC 659**. Further, this view is fortified by the recent judgment of the Apex Court in the case of **Tejalben Vs. Mihirbhai Bharatbhai Kothari, AIR 2016 SC 718** where the Apex Court transferred the matrimonial matter from Rajkot to Jamnagar on the ground that the parties were participating the other proceedings at Jamnagar.

Accordingly, the application is allowed. The matrimonial matter registered as regular civil suit no. 968-A/2016 is hereby ordered to be transferred from the Court of Second Additional Principal Judge, Family court, Bhopal to Family Court, Jabalpur. The record be sent from such Court to Family Court, Jabalpur. The parties appearing before the Family Court, Bhopal shall appear before the Family Court, Jabalpur for further proceedings on **2nd of March, 2017**.

C.C as per rules.

(VIJAY KUMAR SHUKLA)
JUDGE

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