

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 24th OF APRIL, 2023

MISC. CIVIL CASE No. 2653 of 2019

BETWEEN:-

SUNAINA VISHWAKARMA W/O SHRI VIJAY
VISHWAKARMA, AGED ABOUT 27 YEARS,
OCCUPATION: HOUSE WIFE, RAJNAGAR, P.S.
RAMNAGAR TAHSIL, KOTMA DISTT. ANUPPUR,
PRESENTLY RESIDING AT H.NO.1339, DWARIKA NAGAR
,LALMATI KACHHIYANA P.S. GHAMAUR, JABALPUR
(MADHYA PRADESH).

.....APPLICANT

(BY MS. SUNANDA KESHARWANI - ADVOCATE)

AND

VIJAY KUMAR VISHWAKARMA S/O SHRI JAWAHAR
LAL VISHWAKARMA, AGED ABOUT 32 YEARS,
RAJNAGAR, P.S. RAMNAGAR TAHSIL, KOTMA DISTT.
ANUPPUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI DHEERAJ KUMAR TIWARI - ADVOCATE)

*This application coming on for admission, this day, the court passed
the following:*

ORDER

This is a petition by the petitioner/wife seeking transfer of Case
No.RCSHM40/19, pending before the Court of First ADJ, Kotma, Anuppur to
District Jabalpur.

Learned counsel for the petitioner contend that the respondent/husband
has filed a petition under Section 13 of the Hindu Marriage Act which is
registered as RCSHM No.40/19 and pending consideration before the First

Additional District Judge, Kotma, Anuppur District.

Learned counsel contend that the respondent is an employee of Railways working as Assistant Loco Pilot and is posted in Sambalpur District, Orissa who entered into wedlock with the present petitioner on 28.04.2017. Thereafter, on account of certain disputes which crept up between the parties, the same gave birth to various matrimonial disputes. The present petitioner has filed an application against the Respondent under Section 125 of the Cr.P.C. in the Family Court, Jabalpur, which is pending consideration. The Respondent has also filed a petition under Section 9 of the Hindu Marriage Act, which is also pending consideration before the Family Court.

Learned Counsel contend that the appearance of the petitioner at Kotma, District Anuppur would cause inconvenience to the petitioner as the distance between Jabalpur and Kotma is approximately 320 kms.

It is further contended by the learned counsel that the father of the petitioner is not keeping well which is evident from the document pertaining to treatment which has been brought on record as Annexure A-4. The learned counsel further contends that there is no male member of the family to accompany the petitioner to Kotma, Anuppur on scheduled dates of hearing. The learned counsel for the petitioner has placed reliance on the decision of the Apex Court in N.C.V. Aishwarya Vs. Saravana Kartik (Civil Appeal No(S).4894 of 2022) and also decision of this Court in Smt. Neha Vaishya Vs Shri Mukesh Vaishya (M.C.C.No.2735/2018).

Learned counsel for respondent submits that the present application filed under Section 24 of CPC is grossly misconceived inasmuch as, the respondent/husband first moved a petition under Section 13 of Hindu Marriage Act and an offshoot thereof, the petitioner's wife lodged an FIR under Section

498A read with Section 34 of I.P.C. The learned counsel while taking this Court to the statement of the present petitioner recorded by the Judicial Magistrate First Class in the trial of case registered under Section 498A read with Section 34 of I.P.C. submits that paragraph 10 of the statement makes it abundantly clear that in order to settle a score, the present petitioner lodged a report under Section 498A against the respondent and therefore, submits that the case is not required to be transferred. It is further contended by the counsel that a perusal of Annexure R/2 reflect that on 11.04.2023 itself, the present petitioner appeared before the Judicial Magistrate First Class, Kotma District Anuppur for recording of her statement. Thus, as the petitioner is entering appearance before the trial Court without any demur or protest. Therefore, no interference is warranted.

The counsel has further submitted that the respondent is working as Assistant Loco Pilot and is posted at Sambalpur, Orissa. Therefore, appearance on scheduled dates of hearing at Jabalpur would cause immense hardship as well as inconvenience to the respondent. It is further contended by the counsel that the inconvenience of husband is also a factor which is required to be taken into consideration while dealing with the petition under Section 24 of CPC. The counsel also submits that the tendency of the filing of transfer petition has been deprecated by the Apex Court in a recent decision and, therefore, submits that no interference in the present petition is warranted.

The counsel has placed reliance on the decision of the Apex Court in the case of **Indian Overseas Bank, Madras Vs. Chemical Construction Company & Ors. Reported in (1979) 4 SCC 358, Usha George Vs. Koshy George reported in (2000) 10 SCC 95 and Preeti Sharma Vs.**

Manjit Sharma reported in (2005) 11 SCC 535.

Heard the rival submissions and perused the record.

A perusal of the record reflects that the petitioner is seeking a transfer of petition which has been filed by the respondent-husband under Section 13 of the Hindu Marriage Act. It is undisputed from the perusal of paragraph 11 of the statement of the petitioner that after filing of petition under Section 13 of the Hindu Marriage Act, a report under Section 498A of I.P.C. was lodged against the present petitioner. The petitioner/wife has filed an application under Section 125 of Cr.P.C which is pending consideration before the Family Court, Ramnagar and also filed a petition under Section 9 of Hindu Marriage Act before the Family Court, Ramnagar which is also pending consideration.

A perusal of the statement of the petitioner recorded recently on 11.04.2023 which is contained in Annexure R/2 reflect that the present petitioner entered appearance and her statement has been recorded in RCT No.440/2021 pending in connection with offence registered against the respondent/husband under Section 498A, 34 of IPC read with Section 3 and 4 of Dowry Prohibition Act.

It is undisputed by the parties that the petition filed under Section 13 of Hindu Marriage Act is pending consideration before the First ADJ, Kotma, Anuppur District since 2019. It is also undisputed that the respondent/husband is working as Assistant Loco Pilot and therefore, is required to be deputed on night duty as well during the course of employment. The Apex Court has considered the tendency of the filing of transfer application and has held in paragraph 3 of the decision in the case of Anindita Das Vs. Srijit Das reported in (2006) 9 SCC 197 as under :

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 shown 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.

The said decision in Anindita Das Vs. Srijit Das was taken note of by this Court in almost an identical case registered vide MCC No.3142/2022 and this Court, while taking into consideration the fact that the respondent therein was also working against the post of Senior Assistant Loco Pilot, considered the nature of employment and also considered the aspect that the respondent/husband therein was willing to bear the expenses required for ensuring appearance of the petitioner therein in a case instituted by the respondent/husband and accordingly, this Court declined to entertain the transfer petition filed by the wife. This Court in the case of Surabhi Shrivastava (supra) held in operative paragraphs as under :-

"11. The Petitioner does not dispute that the respondent is working as Senior Loco Pilot with Railways and there is already an order by which the maintenance has been granted to the present petitioner in the proceedings instituted by the petitioner/wife under section 125 of Cr.P.C. The respondent has already expressed that he is willing to bear the expenses which are required securing appearance of the petitioner in RCS HM No.1277/2022 pending in the Family Court, Bhopal. The respondent/husband has stated that the petitioner/wife on her own volition left the matrimonial house on 13/06/2021. The statement of the petitioner has been brought on record alongwith the return which has not been controverted by the petitioner.

12. In view of the matter, this Court is not inclined to transfer case no.RCS HM No.1277/2022 from Family Court, Bhopal to Family Court, Vidisha and accordingly, the present petition stands dismissed. However, the

Family Court, Bhopal is directed to ascertain and order payment of the expenses which are required to be paid by the respondent/husband to the petitioner/wife for securing her presence on the scheduled date of hearing."

A perusal of the aforesaid reflect that in the present case, the petitioner has failed to make out a case of inconvenience or hardship inasmuch as, recently the petitioner herself is appearing in the Court at Anuppur in the other cases and recently on 11.04.2023, the petitioner has appeared in a case which is registered against the respondent under Section 498A of I.P.C. The counsel for respondent in the present case has also expressed that he is willing to bear the expenses which are required for appearance of the petitioner in the petition filed under Section 13 of Hindu Marriage Act by the respondent/husband.

Accordingly, in view of the aforesaid, this Court is not inclined to transfer the case No.RCS HM No.40/19 from the Court of First Additional District Judge, Kotma, Anuppur District to District Jabalpur and accordingly, the present petition stands dismissed. However, the Court of First Additional District Judge, Kotma, Anuppur District is directed to ascertain and order payment of the expenses which are required to be paid by the respondent/husband to the petitioner/wife for securing her presence on the scheduled date of hearing.

(MANINDER S. BHATTI)
JUDGE