

(2019) 07 JH CK 0197

In the Jharkhand High Court

Case No : Transfer Petition (Crl.) No. 18 Of 2017

Manish Mishra And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Minority And Guardianship Act, 1956 — Section 6(A)
Hindu Marriage Act, 1955 — Section 13(1)(1a)
Code Of Criminal Procedure, 1973 — Section 407
Code Of Civil Procedure, 1908 — Order 9, Rule 13

Citation : (2019) 07 JH CK 0197

Hon'ble Judges : Anant Bijay Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha, Asadul Haque

Final Decision : Dismissed

Judgement

C.A.V on : 05/07/2019

1. The instant transfer petition has been filed on behalf of the petitioners for transfer of Pakur (Mahila) P.S. Case No. 09 of 2017, corresponding to G.R. No. 208 of 2017 filed by the opposite party no. 2 which is pending in the Court of learned Chief Judicial Magistrate, Pakur, to the Court of competent jurisdiction either at Dhanbad or Bokaro, ie. to the Court of learned Chief Judicial Magistrate Dhanbad or learned Chief Judicial Magistrate, Bokaro.

2. This transfer petition has been filed on 20.09.2017 thereafter this matter was assigned to this Court. Under order dated 05.01.2018, notice was directed to be issued upon O.P. NO. 2 and further proceeding in connection with Pakur (Mahila) P.S. Case No. 9 of 2017, G.R. No. 208 of 2017 was stayed.

3. The matter was adjourned for 09.03.2018. On that date both the parties were physically present before the court and possibility of reconciliation was made.

4. During course of reconciliation, it was disclosed that petitioner no. 1-Manish Mishra has filed M.T.S. No. 224 of 2017 before the Principal Judge, Family Court, Ranchi in which O.P. No. 2 did not appear and the same was decided ex-parte under order dated 22.06.2017.

5. Further, with the consent of the parties, the matter was referred to the Member Secretary, JHALSA for reconciliation. The matter was adjourned for 11.05.2018, the mediation report dated 07.05.2018 revealed that the mediation has failed.

6. The matter was listed on 22.06.2018 on that date it was submitted by the counsel for the petitioners that a written complaint was given about the incidence of threat given by O.P. No. 2 to the petitioner no. 2 to the Sukhdeonagar Police Station on 25.07.2017, which was duly forwarded by the Incharge, Sukhdeonagar P.S to the Pakur Nagar Police Station, Pakur.

7. Thereafter report was called from the Superintendent of Police, Pakur through trial court as to whether such incidence had happened with the petitioner or not?

8. The matter was adjourned for 24.08.2018, 14.09.2018, 26.10.2018 and 02.11.2018 and on 02.11.2018 I.A. No. 10019 of 2018 filed on behalf of O.P. No. 2 for vacating the stay along with main application was directed to be heard on merit on the next date.

9. The matter was adjourned for 04.01.2019 , on that date this court took note that the report submitted by the Superintendent of Police, Pakur revealed that these petitioners are on bail and on 07.08.2017 and 27.11.2017 the petitioners were brought before the court below at Pakur under police protection for attending the case where 5-6 persons related to O.P. No. 2 were physically present and on seeing each other , some quarrel took place between he parties, but both the parties were pacified by the Security Officer, ASI, Amajeet Kumar with the help of police force.

10. Thereafter, these petitioners were taken out from the premises of the Pakur Civil Court for going to Ranchi by the police under police protection.

11. It was further stated in the report that the petitioners have apprehension of fear, although the O.P. No. 2 denied the said fact. The matter was listed on 11.01.2019, 15.02.2019, 08.03.2019.

12. Further, on 26.04.2019 after having heard the learned counsel for the parties the matter was reserved but when the order was being dictated it was found that petitioner no. 1 had lodged a petition for divorce on 15.04.2017 being M.T.S. No. 224 of 2017 before the Principal Judge, Family Court, Ranchi and the divorce has been granted between the petitioner no. 1 and O.P. No. 2 vide order dated 22.06.2017 by learned Principal Judge, Family Court, Ranchi thereafter counsel for the petitioners was directed to file copy of judgment dated 22.06.2017 passed in M.T.S. No. 224 of 2017 by the Principal Judge, Family Court, Ranchi by way of supplementary affidavit.

13. Pursuant to order dated 02.05.2019 and 14.06.2019, supplementary affidavit has been filed on behalf of the petitioner bringing on record the judgment dated 22.06.2017 passed in M.T.S. No. 224 of 2017 by the Principal Judge, Family Court, Ranchi.

14. In the petition, petitioner no. 1 has admitted the marriage of the O.P. No. 2 with him. Petitioner no. 1 has admitted that O.P. No. 2 has lodged Pakur (Mahila) P.S. Case No. 09 of 2017 under section 498A I.P.C and under section 3/4D.P. Act in which the petitioners were on bail in A.B.A. No. 3452 of 2017 and A.B.A. No. 3402 of 2017 under order dated 18.07.2017.

15. In the petition it is mentioned that petitioner no. 1 filed M.T.S. No. 224 of 2017 before the Principal Judge, Family Court, Ranchi. It is further stated there is immense threat on the life of petitioners for further pursuing the case before the learned C.J.M, Pakur. On 24.07.2017 when the petitioners went to the court of Chief Judicial Magistrate, Pakur for surrendering for grant of privilege of anticipatory bail, the petitioners received a warning of life threat from the O.P. No. 2 and her associates. The petitioner no. 2 had given a written complaint about the incidence happened at the Lower Court, Pakur to Sukhdeonagar P.S which was duly forwarded to the Incharge, Sukhdeongar P.S to Pakur Nagar P.S, Pakur. Again on 07.08.2017, when the petitioners went to the Lower Court, Pakur for further proceedings again the brother of the O.P. No. 2 along with associates were present and with the help of police the petitioners left the Court premises.

16. It has been stated that as per the above reason, it will be difficult to the petitioners to make a pairvi before the learned C.J.M, Pakur. Hence, prayer has been made to transfer the Pakur (Mahila) P.S. Case No. 9 of 2017 G.R. No. 208 of 2017 pending in the Court of learned Chief Judicial Magistrate, Pakur to the Court of learned Chief Judicial Magistrate, Bokaro or to the Court of learned Chief Judicial Magistrate, Dhanbad.

17. Counter-affidavit has been filed on behalf of the O.P. No. 2 stating herein as under:

18. So considering the aforesaid facts, the transfer petition of the petitioners is liable to be dismissed.

19. Rejoinder on behalf of the petitioners has been filed to the counter-affidavit & I.A. No. 10019/2018 filed on behalf of O.P. No. 2 stating therein as under:

"7. That I say that the instant transfer petition has been filed for fair and proper trial, as there is apprehension of danger to life of the petitioners and they have received threat to their lives at the hands of the opposite party and for that the petitioners made a written complaint before Sukhdeo Nagar Police Station, Ranchi on 25.07.2017 which was duly forwarded to Pakur (Nagar) Police Station, Pakur. The petitioners have also brought the said incident to the notice of the learned court below vide petition dated 16.08.2017.

8. That I say that the petitioners have filed the divorce case and after receiving

the notice in the divorce case, the opposite party no. 2 in order to harass the petitioners have filed the case under Section 498A of I.P.C.

9. That I say that only to harass the petitioners the opposite party no. 2 has mala fide filed another cases in Lower Court, Pakur only after receiving the notice of the instant transfer petition.

10. That, I say that the petitioners have been appearing through their counsel before the learned court below at Pakur, which is evident from the entire order-sheets of Original (Guardianship) Case No. 90 of 2017 and Original Maintenance Case No. 79 of 2017.

11. That I say that the petitioner-Manish Minshra has challenged the award of maintenance before this Hon'ble Court by filing a criminal miscellaneous petition, being Cr.M.P No. 1948 of 2018 in which notice has already been issued to the opposite party no.2 and further direction has been issued to list the case after appearance of the opposite party no. 2.

12. That I further say that the petitioner-Manish Mishra has also preferred a criminal miscellaneous petition, being Cr.M.P No. 3015 of 2017, in which notice was issued to the opposite party no. 2 vide order dated 08.11.2017, staying the operation of the impugned order dated 28.08.2017 passed by the learned Chief Judicial Magistrate, Pakur.

13. That, I say that the opposite party no. 2 was having knowledge of matrimonial title suit, being M.T.S No. 224 of 2017, which was filed by the petitioner for grant of decree of divorce. It is further stated that because of the said fact, the opposite party no. 2 has preferred the Transfer Petition (Civil) Case No. 37 of 2017 and she has neither appeared nor raised any objection to the said divorce petition which was decreed in favour of the petitioner by the Court of learned Principal Judge, Family Court, Ranchi on 22.06.2017. It is further stated that as the decree of divorce was granted in favour of the petitioner, the said Transfer Petition (Civil) No. 37 of 2017 was dismissed as infructuous vide order dated 19.04.2018.

14. That I say that pursuant to the letter dated 27.07.2017 issued by the learned court below, Pakur, the Assistant Sub Inspector of Police, Mahila Police Station, Pakur vide letter dated 09.08.2017 has described the case, stating therein that the child is safe and secure with the petitioners and for that no objection has ever been raised by the opposite party no. 2 regarding custody of the child with the petitioners.

15. That in view of cumulative facts and circumstances of the case, as stated above, the counter-affidavit as well as interlocutory application filed by the opposite party are fit to be rejected and Pakur (Mahila) P.S. Case No. 09 of 2017, corresponding to G.R. No 208 of 2017, lodged by the opposite party no. 2, pending in the court of learned Chief Judicial Magistrate, Pakur, is fit to be transferred to the court having competent jurisdiction either at Dhanbad or at

Bokaro i.e to the court of learned Chief Judicial Magistrate, Dhanbad or to the court of learned Chief Judicial Magistrate, Bokaro in the ends of justice.

20. A supplementary counter-affidavit has been filed on behalf of opposite party no. 2 stating therein as under:

"6. That, it is also relevant to state here, that the petitioners are contesting other two cases apart from the instant case before the Family Court, Pakur being numbered as Cr. Misc. Case No. 79 of 2017 filed for maintenance and other Title Suit No. 90 of 2017 filed under Section 6(A) of the Hindu Minority and Guardianship Act, 1956 for custody of the daughter born from the petitioner and the deponent and both cases are pending before the learned Principal Judge, Family Court, Pakur, but no any complain with regard to disturbances created by the deponent was reported by the petitioner and as such the fact about the apprehension of threatening of life given by the deponent, in the instant case appears to be meaningless."

21. A rejoinder has been filed on behalf of the petitioners to the supplementary counter-affidavit filed by the O.P. No. 2, stating therein as under:

"6. That I say that a decree of divorce has already been granted by the learned court below vide order dated 22.06.2017 passed in M.T.S Case N.224 of 2017.

7. That I say that the instant transfer has been filed for fair and proper trial, as there is apprehension of danger to life of the petitioners and they have received threat to their lives at the hands of the opposite party and for that the petitioners made a written complaint before Sukhdeo Nagar Police Station, Ranchi on 25.07.2017, which was duly forwarded to Pakur (Nagar) Police Station, Pakur. The petitioners have also brought the said incident to the notice of the learned court below vide petition dated 16.08.2017.

8. That I say that the opposite party no. 2 have stated the age as 38 years, which is wrong, whereas in the petition filed by the opposite party no. 2 in lower court is stated as 28 years.

9. That I say that only to harass the petitioners the opposite party no. 2 has mala fide filed another cases in Lower Court, Pakur only after receiving the notice of the instant transfer petition.

10. That I say that the other two cases as filed by the opposite party no. 2 has already been disposed of in lower court, and the statement given by the opposite party no.2 in the supplementary affidavit that two other cases are pending is to mislead the Hon'ble Court.

11. That I say that in Original Maintenance Case No. 79 of 2017, the judgment has been delivered by the Principal Judge, Family Court, Pakur on 15.01.2019."

22. A supplementary affidavit has been filed on behalf of the petitioners bringing on record judgement dated 22.06.2017, passed in M.T.S. Case No. 224 of 2017 by the learned Principal Judge, Family Court, Ranchi, whereas marriage of the

petitioner no. 1 and O.P. No. 2 was dissolved invoking provision of section (13) (1) (1-a) of Hindu Marriage Act. Further, it appears that the said order was challenged by the O.P. No. 2 in First Appeal No. 113 of 2018 which was disposed of by the Hon'ble Division Bench of this Court under order dated 17.12.2018 giving liberty to the O.P. No. 2 to prefer application under Order IX, Rule 13 C.P.C before the trial court. Thereafter, O.P. No. 2 has preferred Civil Misc. Case No. 10 of 2019 before the Principal Judge, Family Court, Ranchi challenging the ex-parte divorce order, in which notice has been issued to the petitioner no. 1 and accordingly, petitioner no. 1 has appeared and filed written statement which is still pending.

23. This transfer petition has been filed under section 407 of Code of Criminal Procedure. Section 407 Cr.P.C reads as under:

"407 Cr. P.C:- Power of High Court to transfer cases and appeals(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under Section 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative;

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same Sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may

direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing or the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose;

Provided that such stay shall not affect the subordinate Court's power to remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been transferred."

24. It appears that only apprehension of danger of life of the petitioners, has been expressed giving reference of two incidents in the premises of Civil Court, Pakur in the instant transfer petition.

25. No where in the transfer petition, it has been averred that they will not get fair and impartial inquiry of trial at Pakur Judgeship.

26. Further, it appears that petitioner no. 1 -Manish Mishra is facing proceeding in two cases apart from the instant case before the Family Court, Pakur being Cr. Misc. Case No. 79 of 2017 filed for maintenance and other Title Suit No. 90 of 2017 filed under Section 6(A) of the Hindu Minority and Guardianship Act, 1956 for custody of the daughter born from the petitioner and the deponent and both cases are pending before the learned Principal Judge, Family Court, Pakur. So, it can be presumed that this transfer petition has been filed only to protest from the trial, so no case is made out to transfer the Pakur (Mahila) P.S. Case No. 9 of 2017, G.R. No. 208 of 2017 pending in the court of learned Chief Judicial magistrate to the Court either at Dhanbad or Bokaro, i.e. to the Court of learned Chief Judicial Magistrate Dhanbad or learned Chief Judicial Magistrate, Bokaro.

27. Accordingly, this transfer (Crl.) petition is hereby dismissed. No order as to

cost. No order is required to be passed in I.A. No. 10019 of 2018. The trial court is directed to give protection to the petitioners herein including police protection on the date of trial on filing of application.