

(2007) 06 OHC CK 0054
In the Orissa High Court

Smt. Suprava Mohanty

APPELLANT

Vs

Sanat Kumar Das

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Constitution of India, 1950 — Article 227
Hindu Marriage Act, 1955 — Section 13

Citation : (2007) 2 OLR 243

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The order dated 4.11.2006 passed by the District Judge, Balasore in Misc. Case No. 31 of 2006 is assailed in this Writ Petition. According to the petitioner she married the opposite party according to caste customs on 7.12.2001. Initially the couple led a blissful married life but later on dissension cropped up. The opposite party-husband filed a petition u/s 13 of the Hindu Marriage Act before the Civil Judge (SD), Balasore praying for dissolution of marriage by way of divorce. The said petition was registered as C.S.(MAT) No. 647 of 20044 which is sub judice.

2. It appears from records that the said suit was posted to 2.3.2006 for reconciliation among the parties but that could not be materialized as the parties declined to live together. On the said date a Memorandum was filed by the petitioner-wife intimating the Court that while she was coming to Court the opposite party-husband threatening to murder her, attempted to kidnap her. Thereafter she filed a petition before the District Judge, Balasore u/s 24 of the Code of Civil Procedure, which was registered as the aforesaid Misc. Case No. 31 of 2006 for transfer of the suit to the Court of the Civil Judge (SD), Bhadrak. The District Judge observing that only to suit the convenience of the defendant the plaintiff who has filed the suit should not be put to inconvenience, rejected the said Misc. Case by the impugned order.

3. Learned Counsel for the petitioner submitted that the petitioner-wife is apprehending danger to her life. She was threatened by the opposite party-husband and his henchmen should she come to the Court at Balasore and as such it is a fit case where the case may be transferred to the appropriate Court at Balasore.

4. The submissions of the learned Counsel for the petitioner-wife were strongly repudiated by the learned Counsel for the opposite party-husband. It was submitted that all the averments of the petitioner-wife are false and have been made with an avowed oblique motive to harass the opposite party-husband. It was further submitted that the petitioner-wife was residing at Balasore as would be evident from the address furnished by her in the Vakalatnama executed by her. Thus there is no reason to transfer the suit to a Court at Bhadrak.

5. This Court heard the learned Counsel for the parties at length and perused the impugned order and other materials available on record. While considering a petition filed u/s 24 CPC, it is the duty of the Court concerned to consider the convenience and inconvenience of the lady. In the case at hand, as would be evident from the Vakalatnama executed by the petitioner herself which was filed before the Court below, she was residing within the jurisdiction of the concerned Court at Balasore. This Court therefore feels that it would rather be more convenient for the petitioner to contest the suit at Balasore Court than her travelling all the way from Balasore to Bhadrak. That apart, the suit is pending since 2004 and near-about three years have passed in the meanwhile. With regard to the allegation that the opposite party hurled out any threat to the petitioner, no specific material has been produced before the Court to substantiate the same, nor any FIR lodged in that regard has been produced. It appears that the Court below has considered all the aspects and the order passed by it does not suffer from any absurdity nor is there any error apparent on the face of the records, calling for interference of this Court exercising Certiorari Jurisdiction under Article 227 of the Constitution of India.

6. This Court while declining to interfere with the order of the District Judge passed on 4.11.2006 in Misc. Case No. 31 of 2006, grants liberty to file FIR at the local police station if she apprehends any danger to her person while appearing before the Court below in connection with the aforesaid suit. In the event any such FIR is filed, the OIC of the said police station shall provide adequate security to her, if necessary.

The W.P.(O) is thus disposed of.