

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Tr. Petition (Cr.) No. 12 of 2020

1. Priya Malviya, W/o Avinash Kumar Vajpayee, D/o Birendra Kumar Malviya, aged about 27 years, R/o Qr. No. 1155, Sector-1(B), P.O. & P.S.-Bokaro, District-Bokaro (Jharkhand)-827013.

2. Sri Birendra Kumar Malviya, aged about 62 years, S/o Late Ram Ratan Malviya.

3. Manju Malviya, aged about 49 years, W/o Birendra Kumar Malviya,

R/o Qr. No. 1155, Sector-1(B), P.O. & P.S.-Bokaro, District-Bokaro (Jharkhand)-827013.

4. Amresh Kumar @ Bablu Tiwary (as per the complaint petition), aged about 54 years, S/o Bishwanath Tiwary, R/o D-1, 303 Hyde Park, Ghodbunder Road, Thane West, Thane (Maharashtra)

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. Avinash Kumar Vajpayee, aged about 27 years, S/o Shri Aditya Kumar Vajpayee, R/o Jamalpur (Satbohani), Near Forest Nursery, P.O.-Adityapur Industrial Area, P.S.-Adityapur, District-Seraikella-Kharsawan, Jharkhand.

..... ... Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	:	Mr. Pankaj Kumar, Advocate
For the State	:	Mr. Bishambhar Shastri, A.P.P.
For the O.P. No. 2	:	Mr. Pratiyush Lala, Advocate.

C.A.V. on 03.02.2022

Pronounced on 22.02.2022.

1. Heard Mr. Pankaj Kumar, learned counsel for the petitioners, Mr. Bishambhar Shastri, learned A.P.P. for the State and Mr. Pratiyush Lala, learned counsel appearing for the O.P. No. 2.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. This petition has been filed for transfer of Complaint Case (C.C.) No. 513 of 2019 [filed by the O.P. No. 2 Avinash Kumar Vajpayee in the Court of learned Sub-Divisional Judicial Magistrate,

Seraikella] from the court of learned Sub-Divisional Judicial Magistrate, Seraikella to Judicial Magistrate, 1st Class-cum-Civil Judge (Jr. Divi), Bokaro.

4. Mr. Pankaj Kumar, learned counsel appearing for the petitioners submitted that the petitioner No. 1 is the wife of O.P. No. 2 namely Avinash Kumar Malviya and she is presently residing in the house of her ailing father and mother, who are petitioner Nos. 2 and 3 and there is no other male member in her family. He further submitted that the petitioner No. 1 is having no independent source of income and she is completely dependent upon her father. He also submitted that the petitioner No. 4 is the maternal-uncle of petitioner No. 1, who is posted and working in Mumbai (Maharashtra).

5. Learned counsel appearing for the petitioners submitted that the petitioner No. 1 had made a written report on 05.08.2019 before the Mahila Police Station, Bokaro alleging therein that she was married with Avinash Kumar Vajpayee (O.P. No. 2) on 7.3.19 from Jamshedpur and at the time of marriage her father has paid Rs. 6,45,000/- through cheque and Rs. 1,55,000/- as cash to her father in law as per their demand. Apart from these articles including T.V, Furniture, Utensils worth Rs. 2,75,000/-, duly purchased Ornaments Worth Rs. 3,06,852/- and Ornaments given by the relatives worth Rs. 2,00,000/- were also given. Rs. 3,50,000/- was also spent in the marriage. After staying at her matrimonial home for few days she returned to Bokaro on 19.03.2019. During the said period her husband used to say her that he was not willing to marry her but he has married under the pressure of his parents. After staying 7 days at Bokaro she went back to Jamshedpur along with her husband. On her return the behaviour of her husband and father in law and mother in law has changed towards her. At the time of marriage, the accused persons had provided the Bio Data of her husband showing him as a Civil Engineer but during her stay at her matrimonial home she could learn that they had given fake bio data of her husband for the purpose of marriage. She was married with the opposite party no. 2, looking his bio data, as she has already completed her M. Com and B.Ed. before her marriage. In the meantime, the petitioner no. 1 noticed her husband consuming

some kind of medicine. On being enquired about the said medicine, her husband avoided her. On her repeated asking about the said medicine the accused persons started torturing her both mentally and physically. After marriage she had also appeared in interview in nearby School i.e. St. Xavier School, Gamharia, but her in-laws and her husband did not allow her and told her that she would not be allowed to go out and to meet anyone. After two days of her teaching she was forced to stop going school. On 14.4.19 she called her father on phone and went back to Bokaro. After returning from Gamharia, petitioner continued asking her husband about the medicine then he sent the Medical Prescription of Dr. Harprit Singh, Bistupur, Jamshedpur on her Whats-app but he did not send the test report. Thereafter the petitioner contacted the concerned Doctor then she could know that her husband is impotent and the same is incurable. When she told her husband about the same on phone, he became angry and started abusing her and threatened that if she will disclose about the said fact to her parents, he will commit suicide and he will allege her for it, so she became frightened. It is further alleged that on 23.04.2019 her husband came to Bokaro and took her to Deoghar on the pretext of doing worship and dropped back on 26.04.2019. During the said period her husband was regularly threatening her that if she will disclose about his disease to her parents, she will have to face serious consequence. It is further alleged that at her sasural she was tortured by her in laws to such extent that she was thinking to commit suicide. She further alleged that on repeated requests made by her in-laws to send the petitioner No. 1 to Gamharia for performing Vat Savitri Puja on 03.05.2019, the petitioner No. 1 was taken to Gamharia by her father on 02.05.2019 and stayed in hotel. The parents of the petitioner No. 1 told her in laws that they have married their son by committing fraud and they have spoiled the life of their daughter and now they are mentally torturing her. Upon which they asked them to take back her daughter and they also abused and assaulted her parents. They have not allowed her to take back her cloths and ornaments and on 04.05.2019 they came back to Bokaro. After returning back her parents were under acute pressure. She has also alleged that due to the

disease with which her husband was suffering he did not establish physical relation with her any time.

6. On the basis of the aforesaid written report of the petitioner no. 1, a case was registered at Bokaro, vide Mahila P.S. Case No. 18 of 2019 against her husband Avinash Kumar Vajpayee (O.P. No. 2), her father-in-law Aditya Kumar Vajpayee and her mother-in-law Rita Vajpayee for committing offences under Sections 498-A, 406, 420, 323 and 34 of the Indian Penal Code, pending in the Court of learned Judicial Magistrate, 1st Class, Bokaro awaiting final form.

7. Learned counsel appearing for the petitioners further submitted that the petitioner No. 1 received a notice from the learned Principal Judge, Family Court at Seraikella relating to Original Suit No. 92 of 2019, filed by her husband, under Section 9 of the Hindu Marriage Act, for restitution of conjugal life. The petitioner No. 1 filed Transfer Petition (Civil) No. 66 of 2019 before this Court for transfer of Original Suit No. 92 of 2019 from the Court of learned Principal Judge, Family Court, Seraikella to the Court of learned Principal Judge, Family Court, Bokaro. The said suit was transferred by this Court, vide order dated 12.06.2020. The O.P. No. 2 after lodging of the Mahila P.S. Case No. 18 of 2019 by petitioner No. 1 at Bokaro, filed the present case, wherein cognizance under Section 506 of the Indian Penal Code has been taken against the petitioners. He further submitted that the petitioner no. 1 is a lady and there is no other male member, except her father, who is seriously ill and suffering from serious ailments and he was admitted in ICU at Bokaro, so she will be having much hardship and inconvenience in defending her case at Seraikella. The petitioner No. 3, who is the mother of petitioner No. 1 is also suffering from depression. He further submitted that in one of the case, the O.P. No. 2 is required to appear at Bokaro and in the interest of justice and considering the hardship of the petitioner No. 1, this case is fit to be transferred from the Court of Seraikella to the Court of Bokaro.

8. He relied in the case of *Rupali Devi Versus State of Uttar Pradesh & Ors.*, reported in (2019) 5 SCC 384, wherein the Hon'ble Supreme Court in Paras-15 and 16 held as follows:-

“15. *The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.*

16. *We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.”*

9. Mr. Pratiyush Lala, learned counsel appearing on behalf of the for the O.P. No. 2 has submitted that the learned Sub-Divisional Judicial Magistrate, Seraikella has taken cognizance on 17.02.2020 for the offence under Section 506 of the Indian Penal Code against the petitioners. He further submitted that in a criminal case, the accused cannot choose the place of trial rather they are bound to try in place wherein the offence is committed. He also submitted that there is specific allegation against the petitioners that on 04.06.2019 when the petitioners have visited the house of the O.P. No. 2, they threatened the O.P. No. 2 with dire consequences and intentionally insulted the O.P. No. 2. He further submitted that the O.P. No. 2 has adduced three enquiry witnesses and all the enquiry witnesses are the residents of Seraikella and all these witnesses have stated that the petitioners have committed the offence within the jurisdiction of learned Court of Seraikella. He also submitted that all the enquiry witnesses are the resident of Seraikella and it will cause great hardship to the enquiry witness if this criminal case will be transferred from the Court of Seraikella to the Court of Bokaro. He further submitted that Chapter-XIII of the Cr.P.C. deals with the jurisdiction of the criminal courts and further Section 177 Cr.P.C. clearly says that every offences shall ordinarily be enquired and tried by the Court within whose jurisdiction, it was committed.

10. On these grounds, he submitted that the case is fit to be rejected as the competent Court is the Seraikella Court. He relied in the case of *Kaushik Chatterjee Versus State of Haryana & Ors.*, reported in (2020) 10 SCC 92, wherein the Hon'ble Supreme Court in Para-17 held as follows:-

“17. As seen from the pleadings and the rival contentions, the petitioner seeks transfer, primarily on the ground of lack of territorial jurisdiction. While the question of territorial jurisdiction in civil cases, revolves mainly around (i) cause of action; or (ii) location of the subject matter of the suit or (iii) the residence of the defendant etc., according as the case may be, the question of territorial jurisdiction in criminal Cases revolves around (i) place of commission of the offence or (ii) place where the

consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject matter of an offence was required to be returned or accounted for, etc., according as the case may be.”

11. He further relied in the case of ***Raj Kumar Sabu Versus M/s Sabu Trade Private limited***, reported in **(2021) SCC Online SC 378**, wherein the Hon'ble Supreme Court in Para-10 thereof held as follows:-

*10. The petitioner's plea for transfer is based primarily on convenience. But convenience of one of the parties cannot be a ground for allowing his application. Transfer of a criminal case under Section 406 of the 1973 Code can be directed when such transfer would be "expedient for the ends of justice". This expression entails factors beyond mere convenience of the parties or one of them in conducting a case before a Court having jurisdiction to hear the case. The parties are related, and are essentially fighting commercial litigations filed in multiple jurisdictions. While instituting civil suits, both the parties had chosen fora, some of which were away from their primary places of business, or the main places of business of the defendants. The ratio of the decision of this Court in the case of *Mrudul M. Damle (supra)* cannot apply in the factual context of this case. In that case, a proceeding pending in the Court of Special Judge, CBI Cases, Rohini Courts, New Delhi was directed to be transferred to the Special Judge, CBI cases, Court of Session, Thane. Out of 92 witnesses enlisted in the charge sheet, 88 were from different parts of Maharashtra. That was a case which this Court found was not "Delhi-centric". The accused persons were based in western part of this Country. It was because of these reasons, the case was directed to be transferred. The circumstances surrounding the case pending in the Salem Court are entirely different. In the case of *Rajesh Talwar vs. CBI [(2012) 4 SCC 217]* it was held:-*

“46. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across an entire State to attend to criminal proceedings before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned. The instant plea, therefore, deserves outright rejection.”

12. In view of the above and considering the submissions of learned counsel appearing for the parties, the Court has gone through the materials available on record. It is an admitted fact that the petitioner No. 1 is married with O.P. No. 2 and the Original Suit No. 92 of 2019 arising out of Section 9 of the Hindu Marriage Act, for restitution of conjugal life, filed by the O.P. No. 2 has been transferred by this Court, vide order dated 12.06.2020 passed in Transfer Petition (Civil) No. 66 of 2019 from the Court of learned Principal Judge, Family Court, Seraikella to the Court of learned Principal Judge, Family Court, Bokaro, considering that the petitioner No. 1 likely to suffer serious inconvenience and it would be rather expensive for her to attend the proceedings at Seraikella.

13. There is no doubt that in the criminal proceeding, the trial is required to be conducted within the Court where the jurisdiction of that Court is made out so far as the occurrence is concerned. Section 407 of the Cr.P.C. empowers the High Court to transfer any case, if a case for transfer is made out.

14. Reference may be made to the case of *Abdul Nazar Madani*

Versus State of Tamil Nadu & Anr., reported in (2000) 6 SCC 204, wherein the Hon'ble Apex Court in para-7 held as under.

7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Cr. P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.

15. In the case of *Abdul Nazar Madani (Supra)*, the Hon'ble Supreme Court clearly held that no universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.

16. In the judgment relied by learned counsel appearing for the O.P. No. 2 in the case of *Kaushik Chatterjee (Supra)* is on the specific ground of jurisdiction, wherein the case was prayed to be transferred on the ground that the second respondent wields a lot of influence

locally in Gurugram and the petitioner will not get a fair trial, further in this case jurisdiction of the Civil Courts and Criminal Courts has been distinguished and this is not the issue in the case in hand, thus, this case is not helping the O.P. No. 2.

17. It is settled proposition of law that in a criminal proceeding, the trial is required to be conducted within the Court, where the jurisdiction of that Court is made out, so far as the occurrence is concerned. The further judgment relied upon by the learned counsel appearing for the O.P. No. 2 in the case of *Raj Kumar Sabu (Supra)*, which is within the territorial jurisdiction of Salem Court, wherein the proceedings have already been proceeded and their evidences have been completed and the case is fixed for appearance of the two accused persons. The case was registered as a Civil Suit (Commercial) and the suit was for declaration and injunction to prevent the use of trade mark in the Court of District Judge, Salem and on these facts the Hon'ble Supreme Court has not allowed the transfer petition, filed by the petitioner of that case, the facts of this case is different from the case in hand and this case is also not helping the O.P. No. 2 in any manner.

18. There is no dispute with regard to the fact that the case has to be tried within the jurisdiction of the concerned Court where the occurrence took place. Section 407 of the Cr.P.C. empowers the High Court to transfer the case in the facts and circumstances of the case if the grounds for transfer is made out. In the case in hand, the petitioner No. 1 is a lady and the other petitioners (i.e. petitioner Nos.2 and 3) are her father and mother, who are critically ill and the petitioner No. 1 is residing with her mother and father and she has got no income. For attending one case, which has been transferred by this Court in Transfer Petitioner (Civil) No. 66 of 2019, in which, the O.P. No. 2 is required to appear in the Court of Bokaro, no prejudice will be caused to the O.P. No. 2, if he is appearing in another case at Bokaro. However, on the other hand, the petitioners will suffer serious inconvenience and it would be rather expensive for them to attend the proceeding at Seraikella.

19. In view of the above, let the Complaint Case (C.C.) No. 513

of 2019 [filed by the O.P. No. 2 Avinash Kumar Vajpayee in the Court of learned Sub-Divisional Judicial Magistrate, Seraikella] be transferred from the court of learned Sub-Divisional Judicial Magistrate, Seraikella to the Court of Bokaro.

20. Accordingly, this transfer petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, Ranchi.
Dated the 22nd of February, 2022.
NAFR/ *Amitesh*-