

RESERVED
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Court No. - 70 WWW.LIVELAW.IN

Case :- TRANSFER APPLICATION (CIVIL) No. - 185 of 2020

Applicant :- Smt. Shakshi Agrawal

Opposite Party :- Sri Ashutosh Agrawal

Counsel for Applicant :- Pankaj Kumar Ojha

Counsel for Opposite Party :- Shreya Gupta, Ravi Anand Agarwal

Hon'ble J.J. Munir, J.

1. This is a transfer application on behalf of the wife under Section 24 C.P.C., seeking transfer of Case No. 1326 of 2019, Ashutosh Agrawal vs. Shakshi Agrawal, under Section 12 (1)(b) and (c) read with Section 5 of the Hindu Marriage Act, 1955 from the Principal Judge, Family Court, Gautam Budh Nagar to the Principal Judge, Family Court, Allahabad.

2. Parties have exchanged affidavits and the matter was heard elaborately on 22.09.2021, when the judgment was reserved.

3. Heard Mr. Pankaj Kumar Ojha, learned counsel for the applicant and Ms. Shreya Gupta, learned counsel appearing on behalf of the opposite party.

4. The applicant and the opposite party are an estranged couple. They were married according to Hindu rites on June the 8th, 2019 at NOIDA, District Gautam Budh Nagar. The applicant stayed with the opposite party in their matrimonial home at Gautam Budh Nagar, but complaints of cruelty, including physical violence, appeared early into the marriage. It appears that the opposite party is employed as a Senior Manager in the Human Resource Development, Department of

Honda Car India Limited. He is said to draw a salary of Rs. 90,000/- per month. The applicant's father-in-law is also claimed to be gainfully employed. There are allegations also about dowry demand and torture in order to extract more dowry. It is not the province of this Court to go into those allegations, but whatever has transpired between the applicant and the opposite party, their marriage has run into rough weather.

5. The Opposite Party instituted a petition in the Family Court, Gautam Budh Nagar, under Section 12(1)(b) and (c) read with Section 5 of the Hindu Marriage Act, seeking a decree for annulment on the ground that the Applicant was of unsound mind, a condition that her family knew but misrepresented, practicing fraud and deception to induce the opposite party into marrying the Applicant. This petition was registered on the file of the Principal Judge, Family Court, Gautam Budh Nagar as Case No. 1326 of 2019. It is this petition that the Applicant seeks to be transferred from Gautam Budh Nagar to the Family Court at Allahabad.

6. The grounds urged to seek transfer are that there is a case instituted by the wife at Prayagraj under Section 125 Cr.P.C. being Case No. 232 of 2020, besides another under Section 12 of the Protection of Women from Domestic Violence Act, 2005 that is pending before the Additional Chief Judicial Magistrate, Court No. 7, Allahabad, numbered as Case No. 1800 of 2020. Details of these cases are set out in paragraph nos. 17 and 18 of the affidavit filed in support of the transfer application.

7. The ground culled out on this score is that since two cases are already pending *inter partes* before the Courts at Allahabad, it would be convenient if the husband's petition for annulment is also transferred from Gautam Budh Nagar to the Family Court at

Allahabad, where the parties can request the Court/Courts concerned to fix a uniform date. It is pointed out that the applicant stays at Prayagraj after her estrangement, and the further ground is that she is a woman and unemployed, who cannot travel by herself from Allahabad to Gautam Budh Nagar on each date fixed in the petition there. If she is compelled to do that, her defence will be pre-judicially affected. It is also indicated, amongst the adversity of her circumstances that render it difficult for her to travel from Prayagraj to Gauam Budh Nagar, that her father is an old man, who has retired from service. He suffers from old age ailments. She has no one to travel with or escort her on every date from Prayagraj to Gautam Budh Nagar. It is also averred in paragraph no. 26 of the affidavit filed in support of this transfer application that the applicant has apprehensions about her safety, in the event she were compelled to attend at Gautam Budh Nagar, because the husband-opposite party and his family members are politically well connected. Her life would be in danger.

8. In the counter affidavit filed on behalf of the opposite party, there is a specific denial of the various allegations that the wife has come up with regarding the cause for estrangement, particularly, about domestic violence and dowry demand. It is, as earlier said, not a matter of concern to this Court in the present proceedings. In paragraph no. 11 of the counter affidavit, the institution and pendency of the two cases before the Courts at Allahabad, one under Section 125 Cr.P.C. and the other under the Domestic Violence Act, have not been specifically denied in point of fact. So far as the allegations that the applicant is an unemployed woman, unable to travel alone from Prayagraj to Gautam Budh Nagar is concerned, it is averred in paragraph no. 14 that the applicant is a self-dependent woman, who is a dentist by profession. It is averred that she is self-employed at

present. It is also pleaded in paragraph 14 that it is incorrect to say that the applicant cannot travel alone because she is a woman. It is also asserted that the trivial inconvenience involved in travel to the wife cannot be accepted as a ground to transfer the husband's petition for annulment. There is a like stance to the wife's case about her father being a retired man, unable to escort her to Gautam Budh Nagar on every date scheduled there. The allegations about political connections of the husband at Gautam Budh Nagar and the applicant's perception of threat to her life, if she attends at Gautam Budh Nagar have been dispelled on the foot of pleadings in paragraph no. 12 of the counter affidavit, where it is said that the husband belongs to a middle class reputed family. The apprehensions expressed are founded on conjecture. There is an averment in paragraph no. 18 of the affidavit filed in support of this transfer application to the following effect:

“That, since the husband of the applicant and his family was torturing regularly to the applicant therefore she moved a case u/s 12 of Domestic Violence Act before the court of Additional Chief Judicial Magistrate Room No. 7, Allahabad as Case No. 1800 of 2020 on 26.05.2020 and same has also pending in the District Court Prayagraj.”

9. In paragraph no. 14 of the rejoinder affidavit, it is pointed out that the opposite party, on the one hand, says that the applicant is a mentally challenged woman, but on the other, projects her to be an independent woman fit to travel 800 kms on every date fixed from Prayagraj to Gautam Budh Nagar. This stance of the husband's has been castigated as contradictory. It is pleaded that the applicant is, in fact, unemployed and considering that she is a woman, it is unsafe for her to travel all by herself on each date fixed from Prayagraj to Gautam Budh Nagar and back.

10. Reliance has been placed by the learned counsel for the petitioner upon the decision of the Supreme Court in **Manjula Singh**

Chouhan vs. Vishal Singh Chouhan, 2019 (13) SCC 660, where it has been held:

“3. As per the submission of the appellant, two cases are already pending in Family Court, Bhopal, and it will be in the interests of both the parties to try all their cases in Bhopal. Learned counsel for the respondent, however, submits that it will suit to the appellant only, therefore, transfer may not be permitted. The fact remains that the respondent has to travel to Bhopal for conduct of other cases pending in Family Court, Bhopal.

4. We are of the view that it will be in the interests of both the parties that all their cases be heard together by the same Court.”

11. Again, reliance has been placed on the decision of the Supreme Court in **Bhartiben Ravibhai Rav vs. Ravibhai Govindbhai Rav, 2017 (6) SCC 785**. In **Bhartiben Ravibhai Rav (supra)**, it was held by the Supreme Court thus:

3. The transfer petition is strongly objected to by the respondent husband on the ground that he is employed in Ahmedabad and that he is taking care of his two sons, apart from his aged parents. The petitioner wife, on the other hand, contends that the distance between Ahmedabad and her place Dungarpur, Rajasthan is about 200 km and that she finds it difficult to travel to Ahmedabad to contest the divorce petition. That apart, the petitioner wife has also raised difficulty in pursuing the divorce petition in Ahmedabad because of the language problem, as she is not well-acquainted in Gujarati.

4. Apart from the divorce petition, there are other proceedings pending between the parties which have been filed by the petitioner wife at Dungarpur, Rajasthan viz. (i) FIR under Sections 498-A and 406 IPC and under Section 4 of the Dowry Prohibition Act; (ii) petition under Section 125 CrPC before the Family Court, Dungarpur, Rajasthan, and (iii) petition under Sections 12 and 23 of the Protection of Women from Domestic Violence Act, 2005 pending before the Chief Judicial Magistrate, Dungarpur, Rajasthan. It is stated that the respondent husband is already appearing in Dungarpur Court, Rajasthan in connection with the aforesaid cases instituted by the petitioner wife and that it may not be difficult for the respondent husband to pursue the divorce petition in Dungarpur Court, Rajasthan. Considering the facts and circumstances of the

case, we feel that the petition could be transferred to Dungarpur, Rajasthan.

12. Reference has also been made to the decision of their Lordships of the Supreme Court in **G.R. Bhuvaneshwari vs. G.S. Puttaraju, 2018 (13) SCC 650**, where the facts of the case and the remarks of their Lordships read:

1. This appeal is directed against the impugned order dated 11-3-2013 passed by the High Court of Karnataka, at Bangalore, in *G.R. Bhuvaneshwariv. G.S. Puttaraju* [*G.R. Bhuvaneshwari v. G.S. Puttaraju*, 2013 SCC OnLine Kar 10559], whereby the High Court has declined the prayer of the appellant seeking transfer of MC No. 21 of 2010 and WC No. 1 of 2010, filed by the respondent (husband), from the Court of Civil Judge, Senior Division, Maddur to the Family Court at Mysore.

4. We have taken note of the fact that the appellant is employed as a teacher and is a single mother responsible for looking after her 9-year-old son who is studying at a school in Mysore. Moreover, proceedings in Criminal Miscellaneous No. 158 of 2011 between the parties pertaining to maintenance are also pending at Mysore. Considering these facts, we are inclined to allow this appeal.

13. Likewise, learned counsel for the applicant has also relied on the decision of the Supreme Court in **Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap, 2016 (14) SCC 356**. It was observed in **Vaishali (supra)**:

5. Admittedly, the distance between Mumbai and Barshi is around 400 km. Four cases between the parties are pending at Barshi. Apparently, the comparative hardship is more to the appellant wife. This aspect of the matter, unfortunately, the High Court has missed to take note of.

14. Much faith has been reposed in another decision of the Supreme Court in **Sumita Singh vs. Kumar Sanjay and Anr., AIR 2002 SC 396**. The facts and the holding in the decision read:

1. This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living

and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 kilometres from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are residents of Gurgaon.

2. Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed.

3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.

15. Reliance is also placed on the decision of this Court in **Smt. Pinki Rani @ Priyanka vs. Raj Kumar, Transfer Application (Civil) No. 468 of 2013, decided on 02.12.2014**. In **Smt. Pinki Rani @ Priyanka (supra)**, it was observed:

12. In the matrimonial matters the convenience of wife and in particular that she has no one in her family to escort her to undertake a long journey has been held to be good ground for transfer of case as is also evident from Apex Court's decision in **Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani, AIR 2009 SC 1374** and **Fatema vs. Jafri Syed Husain @ Syed Parvez Jafferri, AIR 2009 SC 1773**.

19. Sometimes transfer of suit has also been justified on the ground of convenience to the parties or witnesses etc. but in such cases the paramount factor which should be considered is the convenience of both parties. An exception, however, to some extent, has been made in matrimonial cases where convenience of wife has been given a dominating factor than husband, particularly when she has none to escort her or of quite young age or where she has financial constrained etc.

22. Convenience of wife to pursue the proceedings is a relevant factor if pleaded bona fide for justifying transfer of a matter to the place where it is convenient to the wife. The applicant is not doing any job having no source of income to bear the expenses. None is there to escort her to Ghaziabad from Meerut to do pairavi of the case. Looking to the facts of the case, stated above, I am of the view that it is in the interest of justice that transfer application should be allowed.

16. In **Mona Aresh Goel vs. Aresh Satya Goel, 2000 (9) SCC 255**,
the facts and holding of their Lordships read:

2. The transfer petition is filed by the wife to transfer the divorce proceedings taken by the husband in Bombay to Delhi, where she now stays with her parents. The transfer petition avers that the wife has no independent income and that her parents are not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. She avers that she is twenty-two years old and cannot travel to and stay in Bombay alone for there is no one in Bombay with whom she can stay. We are of the opinion that the transfer petition should, in the circumstances, be allowed.

3. The transfer petition is made absolute in terms of prayer (a). MJ Petition No. A-636 of 1999 pending before the Family Court at Bandra, Bombay is transferred to the Court of the District Judge, Tis Hazari, Delhi, who shall hear it himself or assign it for hearing to a competent court.

17. Ms. Shreya Gupta, learned counsel for the husband, has stiffly resisted the proposition that it is always the convenience of the wife that is the guiding factor in judging a plea for transfer brought by the wife. She has very elaborately addressed the Court about the issue and brought to our notice the guidance in various decisions of the Supreme Court that have considered principles, where a wife's plea for transfer would not be liable to be accepted. The first to be noticed on behalf of the respondent is the decision of the Supreme Court in **Anindita Das vs. Srijit Das, (2006) 9 SCC 197**. In the said decision, it was held that if the husband undertakes to bear the necessary expenses for the wife's travel and stay, the ground based on wanting livelihood or source of income with the wife, would be of no avail. In **Anindita Das (supra)**, the short facts and the holding read:

1. This transfer petition has been filed by the wife on the ground that the petitioner has a small child of six years. She has further claimed that she has no source of income and it is difficult for her to attend the court at Delhi. She has further claimed that she is not keeping good health.

2. In support of this petition, a large number of authorities have been cited, namely, *Reena Bahri v. Ajay Bahri* [(2002) 10 SCC 136], *Leena Mukherjee v. Rabi Shankar Mukherjee* [(2002) 10 SCC 480], *Ram Gulam Pandit v. Umesh J. Prasad* [(2002) 10 SCC 551] and *Rajwinder Kaur v. Balwinder Singh* [(2003) 11 SCC 726]. These authorities are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent.

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.

4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The respondent is willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner is required to attend the court at Delhi. Thus, the ground that the petitioner has no source of income is adequately met.

5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out.

18. Again in **Kanagalakshmi vs. A. Venkatesan, 2004 (13) SCC 405**, the short decision of their lordships of the Supreme Court reads:

1. This is a petition filed by the wife seeking transfer of pending matrimonial dispute before the Family Court at Bandra, Mumbai to the Subordinate Judge, Tirunelveli, Tamil Nadu on the ground that it is difficult for her to travel from Tirunelveli to Mumbai to pursue her case. Learned counsel appearing for the respondent husband has filed his counter stating therein that he is prepared to bear the expenses not only of the petitioner but also of her accompanying person both for travel and stay at Mumbai. Recording the said statement, we think it is not necessary to transfer the pending case at the Family Court, Bandra, Mumbai.

However, we direct the respondent to pay to the petitioner the travel expenses as well as for their stay during the dates of hearing in Mumbai. We direct the Family Court to dispose of the petition and applications for interim maintenance if any within six months from the receipt of this order and direct the Family Court, if possible, to cross-examine both the parties in regard to their affidavit on the same day.

2. The transfer petition is disallowed.

19. In **Teena Chhabra vs. Manish Chhabra, 2004 (13) SCC 411**, it was observed:

2. At the hearing, the learned counsel for the respondent husband submitted that the respondent is ready and willing to bear the expenses of the petitioner wife from Chandigarh to Bombay, whenever her presence is required at Bombay for the purpose of this case, by second class train fare.

3. Having regard to the facts and circumstances of the case, we dismiss this transfer petition, subject to the condition that the respondent will bear the travel expenses of the petitioner from Chandigarh to Bombay, whenever her presence is required at Bombay for the purpose of this case, by second class train fare and rupees five hundred towards incidental expenses for lodging and boarding.

20. Still again, in **Shiv Kumari Devandra Ojha vs. Ramajor Shitla Prasad Ojha & Ors.**, the short facts and holding of their Lordship read:

1. The petitioner has filed this petition for transfer of proceedings, viz., Succession Application No. 43 of 1995 along with Miscellaneous Application No. 23 of 1996 titled *Ramajor Shitla Prasad Ojha v. Shiv Kumari Devendra Ojha* pending in the Court of Civil Judge, Senior Division, Valsad, Gujarat to the competent court of Civil Judge at Sadar, District Pratapgarh in Uttar Pradesh. We had adjourned the matter by our order dated 9-12-1996 to find out whether the suit was still pending or stood disposed of. It is reported that the matter is still pending and the Civil Judge, Senior Division is yet to take up the matter. The learned counsel for the petitioner has stated that the petitioner being a lady is unable to travel from Uttar Pradesh to Valsad in Gujarat and it is really a great difficulty for her to meet the expenditure in that behalf. Shri Upadhyay, learned counsel appearing for the respondents has agreed to bear the expenditure for her travel and stay whenever she attends court.

Under the circumstances, we do not find that there is any justification for transferring the matter to Pratapgarh, U.P. Whenever the petitioner goes to the court, the respondents would pay Rs 750 (Rupees seven hundred and fifty only) on each occasion to the petitioner and the amount would be paid to her in advance. The petitioner would intimate the Civil Judge, Senior Division who would direct the respondents to pay the amount to the petitioner.

2. It is next contended that the petitioner had to engage her counsel from Surat since no advocate would be available at Valsad where the suit is pending. We think that the apprehension of the petitioner is not correct. The petitioner is at liberty to engage counsel at Valsad and the counsel would give his best to the petitioner in defending her case. If the petitioner requires any financial assistance from the respondents, it would be open to her to file an application in the Court of Civil Judge, Senior Division, Valsad for this purpose and the same would be ordered by the Civil Judge. The learned Civil Judge is directed to dispose of the application for restoration immediately and would simultaneously take up the main matter and dispose of the same expeditiously.

21. Depending on these decisions, learned counsel for the respondent, Ms. Shreya Gupta, very persuasively submits that the wife does not have any indefeasible right to ask the case filed by the husband at a different station to be moved to a station where she is located. Rather the difficulty, if any, that she faces on account of financial constraints, can be offset by the husband being required to compensate her expenses for travel and stay on each day the cause is scheduled before the Court where the husband has instituted it.

22. It is, in the last, submitted that the husband being employed in the NCR, the interest of both parties will be best served by requiring the wife's participation in the hearing through video conferencing.

23. This Court has considered the rival submissions advanced by parties. So far as the suggestion to direct hearing at Gautam Budh Nagar through Video Conferencing for the wife is concerned, it may not accord with the law. Though, it is a possibility to be seriously

considered, if the law were to permit it. But, the law on the subject is laid down in **Santhini vs. Vijaya Venketesh, 2018 (1) SCC 1**, where speaking for the majority, the learned Chief Justice of India has held:

56. We have already discussed at length with regard to the complexity and the sensitive nature of the controversies. The statement of law made in *Krishna Veni Nagam* [*Krishna Veni Nagam v. Harish Nagam*, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394] that if either of the parties gives consent, the case can be transferred, is absolutely unacceptable. However, an exception can be carved out to the same. We may repeat at the cost of repetition that though the principle does not flow from statutory silence, yet as we find from the scheme of the Act, the Family Court has been given ample power to modulate its procedure. The Evidence Act is not strictly applicable. Affidavits of formal witnesses are acceptable. It will be permissible for the other party to cross-examine the deponent. We are absolutely conscious that the enactment gives emphasis on speedy settlement. As has been held in *Bhuvan Mohan Singh* [*Bhuvan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200], the concept of speedy settlement does not allow room for lingering the proceedings. A genuine endeavour has to be made by the Family Court Judge, but in the name of efforts to bring in a settlement or to arrive at a solution of the lis, the Family Court should not be chained by the tentacles by either parties. Perhaps, one of the parties may be interested in procrastinating the litigation. Therefore, we are disposed to think that once a settlement fails and if both the parties give consent that a witness can be examined in videoconferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. **However, we make it clear that in a transfer petition, no direction can be issued for videoconferencing.** We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing. **(Emphasis by Court)**

24. In view of the decision in **Santhini** (*supra*), it is not possible for this Court to direct the wife to address the Court or contest the case before the Family Court at Gautam Budh Nagar through Video Conferencing. That is a possibility which the learned Judge, Family Court could consider, but the present application is not the proceeding to consider that prayer in view of the guidance in **Santhini**. The preponderant opinion, on the other hand, that has evolved in latter pronouncement of their Lordships of the Supreme Court like those in **Manjula Singh Chouhan, Bhartiben Ravibhai Rav, G.R. Bhuvaneshwari, Vaishali Shridhar Jagtap, Sumita Singh** appear to favour the principle that convenience of the wife is to be accorded preference in the matter of venue of proceeding in causes matrimonial. Also, if proceedings have been instituted by the wife at one station, proceedings instituted by the husband at another are favoured for a transfer to the station where the husband, in any case, would have to appear, to wit, where the wife has brought proceedings. The question would then be of a convenient disposition at one station. The relevant factor about the wife not having anyone to accompany her across a long distance, is also a relevant consideration in ordering transfer. Here, the distance is about 700 Kms. between Gautam Budh Nagar and Prayagraj. Two cases are already pending at Prayagraj and the wife has no one in her family to act as her escort on every date that is scheduled before the Court at Gautam Budh Nagar. The wife, though well qualified, has not been shown to be possessed of any gainful occupation in her profession for the time being. The handicap that arises from lack of resources, cannot be always arithmetically calculated in terms of money spent on travel, lodging and board. Lack of financial resources bring many other kinds of handicaps, that cannot always be liquidated through taxable recompense.

25. In the opinion of this Court, therefore, this transfer application

succeeds and is **allowed**. The proceedings of Case No. 1326 of 2019, Ashutosh Agrawal vs. Shakshi Agrawal, under Section 12 (1)(b) and (c) read with Section 5 of the Hindu Marriage Act, 1955 are withdrawn from the Principal Judge, Family Court, Gautam Budh Nagar and transferred to the learned Principal Judge, Family Court, Allahabad. The Principal Judge, Family Court, Allahabad, upon receipt of the record, shall proceed to try and determine the case himself or make it over for trial and decision in accordance with law to an Additional Judge available on the Court, as he may consider appropriate. The parties shall appear before the Principal Judge, Family Court, Allahabad on **28.02.2022**. During this period of time, the Principal Judge, Family Court, Gautam Budh Nagar shall ensure that the records are transmitted to the Principal Judge, Family Court, Allahabad. The parties take notice of this order through learned counsel.

26. Let this order be communicated to the Principal Judge, Family Court, Gautam Budh Nagar and the Principal Judge, Family Court, Allahabad by the Registrar (Compliance).

Order Date : 04.02.2022
Brijesh Maurya

(J.J. Munir, J.)