

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMO No. 116 of 2019**

**Reserved on : 23.10.2019**

**Decided on : 20.11.2019**

Aarti Rana

....Petitioner

Versus

Gaurav Rana & ors.

....Respondent

*Coram:*

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

***Whether approved for reporting? Yes.***

For the petitioner: Ms. Anjali Soni Verma, Advocate

For the respondents: Mr. Ashwani Dhiman, Advocate

**Chander Bhusan Barowalia, Judge.**

The present petition has been maintained by the petitioner under Section 482 of the Code of Criminal Procedure for transfer of Case No.90-2 of 2017, filed under Section 498-A of the Indian Penal Code, titled *State* versus *Gaurav* from the Court of learned Addl. Chief Judicial Magistrate, Court No.1, Shimla to the Court of learned Chief Judicial Magistrate, Kangra at Dharamshala, H.P.; another case filed under Section 125 Cr.P.C. bearing Case No.900 715/2015, titled *Aarti Rana* versus *Gaurav Rana* from the

***Whether reporters of Local Papers may be allowed to see the judgment? Yes.***

Court of learned Judicial Magistrate Ist Class, Court No.6, Shimla to the Court of learned Chief Judicial Magistrate, Kangra at Dharamshala and case filed under the provisions of Protection of Women from Domestic Violence Act, 2005 bearing Case No.18/2017, titled *Aarti Rana and others* versus *Gaurav Rana and others*, from the Court of learned Addl. CJM, Court No.1 Shimla to the Court of learned CJM, Kangra at Dharamshala.

3. Briefly stating the facts, giving rise to the present petitions are that the marriage of both the petitioner and respondent was solemnized on 29.01.2007, as per Hindu rites and customs and from the loins of the respondent, a son aged about 10 years old and a daughter aged about 08 years old were born. It has been alleged that after marriage, everything was fine, but after a few months of marriage, the respondent, alongwith his family, started torturing and leveling allegations against the character of the petitioner. It is averred that the husband of the petitioner is habitual drunkard and used to remain under the influence of

excessive liquor and drunken condition and the respondent and his family used to loose all the norms of decency and good behaviour. It has been averred that the respondent also used to give beatings to the petitioner and tortured her physically and mentally. The petitioner has been treated in very inhuman manner. After the marriage, the petitioner started living in the joint family of the respondent at Narain Building, Gali No.14, Lower Bazar, Shimla, but for some duration, the petitioner was forced by the parents of the respondent to shift to another place and as such, the parties started living in New Shimla against the interest of the petitioner. It has been alleged that the respondent filed a petition under the Hindu Marriage Act. After some time, the petitioner was bound to left the matrimonial house to her parents, house at Pragpur in District Kangra, HP. The petitioner filed petition under Sections 24 and 25 of the Code of Civil Procedure for transfer of proceedings from the Court of Additional District Judge-I, Shimla to the Court of District Judge, Kangra at Dharamshala, in CMPMO No.395 of 2015.

That petition was allowed and the case was ordered to be transferred from the Court of learned Addl. District Judge-I, Shimla to the Court of District Judge, Kangra at Dharamshala. It has been averred that the parties agreed to compromise the matter with each other and decided to stay together at Shimla. Further that the petitioner alongwith children i.e. a son (10 years old) and a female minor child (08 years old) came to Shimla and started living in the joint family at Shimla, but the respondent and his family members did not mend their behaviour and started torturing the petitioner again and ultimately petitioner left with no option but to file a case under Protection of Women from Domestic Violence Act, bearing Case No.18/2017 against the respondent and his parents, which is pending adjudication in the Court of learned ACJM, Court No.1, Shimla, H.P. and one more case under Section 498-A in F.I.R. No.157 of 2019, Case No.19-2 of 2017, which is pending before the Ld. ACJM, Court No.1, Shimla. It has also been averred that thereafter, the respondent filed a petition under Section 24 and 27 C.P.C. for

transfer of the cases on the ground that the parties are residing together at Shimla and the CMPMO was allowed on this ground that the petitioner alongwith children residing with the respondent and the matter under Hindu Marriage Act case No.21-S/30/2015 was transferred to the Court of District Judge, Shimla and one another case, which was filed under Section 125 Cr.P.C. i.e. case No.900 715/2015, which is also pending adjudication before the learned JMIC, Court No.6, Shimla.

4. It has been alleged that the petitioner was very much interested to settle her family life for this reason, she agreed to live together with the respondent as husband and wife, despite many differences. She joined the company of her husband at Shimla, but the respondent did not stop torturing her and ultimately the two above mentioned cases were filed between that period. Hence, the petitioner was compelled to leave in the matrimonial house and went to her parents house at Pragpur, District Kangra. The respondent and his parents took the custody of the male child with them and the custody

of minor girl child is with the petitioner.

5. The transfer of the cases has been sought primarily on the ground that she neither has finances nor the capacity to bear the expenses, as she is totally dependent upon her parents who are retiree. Therefore, it will be impossible for the petitioner to visit Shimla time and again to effectively contest the above said petition. It has been averred that her minor girl got admission in a School in the same vicinity i.e. Saffron City School, Pragpur in District Kangra, as also the daughter of the petitioner is not keeping good health and cannot live without mother(petitioner). Further it has been averred that Shimla is at a distance of about more than 250 Kms from Pragpur and it is not possible for the petitioner to visit Shimla on each and every hearing and bear the expenses.

6. It has been averred that the husband/respondent has sufficient means i.e. movable and immovable property in his name and possession, whereas the petitioner has no source of income for her livelihood, because she has no

movable/immovable property in her name, hence, she is unable to contest and defend the cases at Shimla.

7. It has been alleged that in case the cases of the petitioner are not transferred from Shimla to Dharamshala, in that eventuality, the interest of the petitioner will be adversely effected, whereas the respondent can attend the hearing of the cases at Dharamshala as he has good financial means.

8. The petitioner prayed that the cases, as mentioned above, may be transferred from the Courts at Shimla to the Courts of Kangra at Dharamshala.

9. I have heard the learned Counsel for the parties and gone through the record carefully.

10. Ms. Anjali Soni Verma, learned counsel for the petitioner, has argued that, as the petitioner has no source of income and has a minor girl aged about 10 years and not in a position to manage for her livelihood, as well as, her minor girl, who is now school going and also not capable to attend the

Courts at Shimla, on each and every date of hearing of the cases.

11. On the other hand, Mr. Ashwani Dhiman, learned Counsel appearing for the respondent has argued that the parents of the respondent are senior citizens of about 68 and 70 years old and are not keeping good health as they are suffering from many ailments and his minor son is also studying in a School at Shimla and the petitioner just to harass the respondent has filed many petitions in the Courts, hence, the present petition be dismissed.

12. The respondent has not contested the factual position, but has stated that his old aged parents and minor son are residing with him at Shimla and his parents are not keeping good health and he has to get them medically treated frequently. He has further submitted that the petitioner is entitled to seek services of legal aid authority in order to defend her case. He has further submitted that he offered to pay the expenses in the Court

of Ld. ACJM, Shimla, but the petitioner did not disclose her bank account. He has submitted that the minor daughter was admitted in Chalet Day School Shimla and the fee etc. are being provided by him, but the petitioner withdrew her daughter without informing the respondent.

13. This Court has gone through the record of the case in detail. As far as the petitioner-wife is concerned, she is now residing at Dehra and she is also looking after her minor daughter, who is residing with her. If she is to visit Shimla time and again, she will not be capable to pursue her case (s) in the right manner, as the distance between Dehra and Shimla is such that without staying for night at Shimla, one cannot pursue the case. Similarly, the distance between Dharamshala and Shimla is also 250 Kms and in Shimla stay becomes necessary.

14. Learned counsel appearing for the respondent has cited a judgment rendered in a case titled ***Kalpana***

***Deviprakash Thakar (Smt.) Vs. Dr. Deviprakash***

**Thakar**, (1996) 11 Supreme Court Cases 96. However, ◇

this case law is not applicable in the present case, as in

this case the respondent has shown his desire to provide

escort to the wife and to pay her travel expenses and stay

etc. Hence, this Court finds that for the petitioner-wife, to

come to Shimla to make her stay at Shimla, will be a

difficult task for the petitioner, when she has also to

lookafter her minor daughter, who is studying in a School

at Dehra. In these circumstances, after considering law, as

cited by the learned counsel for the respondent, the Court

comes to the conclusion that the petitioner may face great

inconvenience/difficulties and so the judgment is not

applicable to the facts of the present case. Otherwise also,

the facts of the case are different, as the wife is to

lookafter her minor daughter, who is studying in the

School at Dehra. At the same point of time, there is no

connectivity from Dehra to Shimla by Train and the source is to travel by buses which will not be in the interest of wife and husband and also earlier the cases were at Dharamshala. So, the judgment is not applicable to the facts of the present case. At the same point of time, the case law cited by the learned counsel for the respondent in a case titled as **Suman Lata** versus **Brijesh Mani Tripathi & Anr.** II (1997) DMC 548 Allahabad High Court is also not applicable to the facts of the present case, as the transfer of the case was sought for on the ground of threat, but in the present petition, the transfer has been sought on the ground of difficulty to the petitioner-wife to come to Shimla and to attend the proceedings. At the same point of time in the similar circumstances this Hon'ble High Court in CMPMO No.79 of 2015 titled **Smt. Ruchi Kumari** versus **Sh. Sanjeev**

**Attri**, has ordered to transfer the cases taking into consideration the following three judgments of the Hon'ble Supreme Court.

15. In **Sumita Singh** versus **Kumar Sanjay and another** (2001) 10 SCC 41, it was held by the Hon'ble Supreme Court that in a case where the wife seeks transfer of the petition, then as against husband's convenience, it is the wife's convenience, which must be looked at.

16. In **Soma Choudhury** versus **Gourab Choudhary** (2004) 13 SCC 462, it was held by the Hon'ble Supreme Court that once the wife alleges that she has no source of income whatsoever and was entirely dependent upon her father, who was a retired government servant, then it was the convenience of the wife which was required to be looked into and not that of the husband, who had pleaded a threat to his life. It was

further observed that if the respondent therein had any threat to his life, he could take police help by making an appropriate application to this effect.

17. In *Rajani Kishor Pardeshi* versus *Kishor Babulal Pardeshi* (2005) 12 SCC 237, in a case seeking transfer of the case at the instance of the wife, it was specifically held by the Hon'ble Supreme Court that convenience of wife was the prime consideration.

18. Similarly, while dealing with the application for transfer of proceedings in *Kulwinder Kaur alias Kulwinder Gurcharan Singh versus Kandi Friends Education Trust and others* (2008) 3 SCC 659, the Hon'ble Supreme Court after analyzing the provisions of Sections 24 and 25 of the Code of Civil Procedure laid down certain broad parameters for transfer of cases and it was held:-

**“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They**

are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

19. *In Arti Rani alias Pinki Devi and another*

versus *Dharmendra Kumar Gupta (2008) 9 SCC 353,*

the Hon'ble Supreme Court was dealing with a case where

the wife had sought transfer of proceedings on the ground

that she was having a minor child and it was difficult for

her to attend the Court at Palamu, Daltonganj, which was in the State of Jharkhand and at a quite distance from Patna where she was now residing with her child. Taking into consideration the convenience of the wife, the proceedings were ordered to be transferred.

20. Similarly, in **Anjali Ashok Sadhwani** versus **Ashok Kishinchand Sadhwani AIR 2009 SC 1374**, the wife had sought transfer of the case to Bombay from Indore in Madhya Pradesh on the ground of inconvenience as there was none in her family to escort her to Indore and on this ground the proceedings were ordered to be transferred.

21. From the conspectus of the aforesaid judgments the broad consensus that emerges is that in dispute of the present kind where the petitioner is residing at Dehra with her minor girl and studying in a School there, it is the convenience of the petitioner-wife, which is required to be considered over and above the inconvenience of the husband.

22. It is more than settled that the cases relating to transfer of matrimonial proceedings, it is the convenience of the wife, which has to be looked at.

23. After considering the aforementioned judgments of the Hon'ble Apex Court, this Court finds that the petitioner has a case for the transfer of the petition from Shimla to Dharamshala. In view of the aforesaid discussion and exposition of law laid down by the Hon'ble Supreme Court in the aforesaid cited judgments, the petition is allowed and proceedings in Case No.90-2 of 2017 filed under Section 498-A of Indian Penal Code titled as State versus Gaurav from the Court of learned Additional Chief Judicial Magistrate, Court No.1, Shimla to the Court of learned Chief Judicial Magistrate, Kangra at Dharamshala and another case filed under Section 125 Cr.P.C. bearing Case No.900 715/2015 titled as Aarti Rana versus Gaurav Rana from the Court of learned Judicial Magistrate, Ist Class, Court No.6, Shimla to the Court of

learned Chief Judicial Magistrate, Kangra at Dharamshala and case filed under the provisions of Protection of Women from Domestic Violence Act, 2005 bearing case No.18/2017 titled as Aarti Rana and ors. Versus Gaurav Rana and others from the Court of learned Additional Chief Judicial Magistrate, Court No.1, Shimla to the Court of learned Chief Judicial Magistrate, Kangra at Dharamshala are ordered to be transferred. Interim order granted by this Court on 14.3.2019 is vacated. Parties are directed to appear before the learned Courts below on **23<sup>rd</sup> December, 2019.**

24. Pending application(s) if any, shall also stand disposed of accordingly.

**(Chander Bhusan Barowalia)**  
**Judge**

**November 20, 2019**  
**(M.gandhi)**

*This is a Print Replica of the raw text of the judgment as appearing on Court website.*

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