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T.P.(Cr1.) No. 31 OF 2000

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IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NO. 31 OF 2000@@

CC

Ramesh Kumar Verma & Ors. ... Petitioners

versus

Jai Shankar Prasad Srivastava ... Respondent

O R D E R@@

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The learned Magistrate First Class, Aizwal District, Aizwal has on a private complaint filed by the respondent taken cognizance under Sections 323, 352 and 365 IPC against the petitioners and by order dated 30.9.1999 directed notices to be issued to the petitioners requiring their presence before the learned Magistrate at Aizwal. On 11.11.1999 as the petitioners failed to appear before the learned Magistrate, he directed notices to be issued once again along with an observation that if the petitioners did not make appearance then warrants shall be issued for enforcing their attendance.

It is not disputed that the respondent, posted at Aizwal, was married to Smt. Ranjana, who is resident of Siwan (Bihar). The marriage failed and ultimately ended in divorce on 15.7.1997. The couple had a male child named ...2/-

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Gulshan. The child seems to have been taken by the mother with herself. The respondent went to the house of his in-laws where his erstwhile wife was residing and demanded the custody of the child to be given to him. That was refused. On such refusal, respondent filed a complaint on 24.9.1999 before the learned Magistrate First Class, Aizwal. The learned Magistrate did not hold any inquiry nor directed any investigation to be held under Section 202 Cr.P.C. Straightaway on receipt of the complaint he took cognizance and directed notices to be issued. It may be stated that the four petitioners are respectively brother, father, mother and sister of Smt. Ranjana, the wife of the respondent.

The petitioners moved this petition before this Court seeking a transfer of the proceedings from Aizwal to Siwan (Bihar). During the course of hearing, when the records of the proceedings were brought to the notice of this Court, on 2.3.2001 this Court directed that notice be issued to the respondent to show cause why the proceedings in Complaint Case No.10/1999 pending before the Magistrate First Class, Aizwal District be not quashed as amounting to abuse of the process of the court, by this Court in exercise of

jurisdiction under Article 142 of the Constitution. The respondent has appeared and shown cause.

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Having heard the learned counsel for the parties we are satisfied that the complaint and the subsequent proceedings taken thereon amount to an abuse of the process of the court and are, therefore, liable to be quashed. We have carefully perused the averments made in the complaint dated 24.9.1999 filed by the respondent. All that is said therein is that the mother of the child took away the child and the petitioners have refused to restore custody to the respondent. There is a vague averment made in the complaint that Rajesh Kumar, petitioner No.3, the father-in-law of the respondent used to assault and hurt the petitioner without any provocation, time and again during their marriage and a similar assault was made on 27.6.1997. On such bald averments made in the complaint no cognizance could have been taken under Sections 323, 352 and 365 of IPC. There are no facts stated and no averment made in the complaint disclosing prima facie the commission of any of the three offences. No inquiry was held under Section 202 Cr.P.C. and not even the complainant was examined under Section 200 Cr.P.C. There is basically a matrimonial dispute and the purpose of initiating these proceedings appears to be to pressurize the petitioners into restoring custody of the child to the respondent.

...4/-

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No case for initiating proceedings before a criminal court and proceeding against the petitioners accusing them of commission of substantive offences was made out even prima facie. In the background of the relationship of the parties we are satisfied that the complaint filed by the respondent and the process issued by the learned Magistrate thereon are all abuse of the process of the Court.

In exercise of jurisdiction of this Court under Article 142 of the Constitution, the complaint and the proceedings initiated thereon are directed to be quashed. In view of that order, the prayer for transfer of the criminal case from Aizwal (Mizoram) to Siwan (Bihar) becomes infructuous.

The petition be treated as disposed of in the above terms.

.SP1

.....J.  
(R.C. LAHOTI)

.....J.  
(BRIJESH KUMAR)

New Delhi,  
September 27, 2002.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Transfer Petition.(Crl.) No. 31/2000

RAMESH KUMAR VERMA AND ORS.

Petitioner (s)

VERSUS

JAI SHANKAR PRASAD SRIVASTAVA

Respondent (s)

(With appln. for stay and office report for direction)  
( For Final Disposal )

Date : 27/09/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s)

Mr. Avijit Bhattacharjee, Adv.

For Respondent (s)

Mr. Vijay K. Mehta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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.SP2

The petition be treated as disposed of in terms  
of the signed order.

.SP1  
.....L.....T.....J

(P.D. Balodi)  
Court Master

(Radha R. Bhatia)  
Court Master

(signed order is placed on the file)