

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Transfer Petition(Criminal) No.230/2021

SHIVANGI KASAR & ORS.

Petitioner(s)

VERSUS

SHANI VERMA

Respondent(s)

O R D E R

1. This Transfer Petition (Criminal) has been filed by the petitioner no.1 (wife) seeking transfer of Criminal Complaint No.1304 of 2018 titled "Shani Verma vs Shivangi Kasar and Ors" filed by the respondent (husband), which is pending before the Court of Chief Judicial Magistrate, Etawah, Uttar Pradesh.

2. The petitioner no.1 (wife) seeks transfer of the above-stated case to the Court of Chief Judicial Magistrate, Raipur, Chhattisgarh.

3. The marriage between the petitioner no.1 and the respondent was solemnized on 16-02-2015 and a daughter, born out of the wedlock, is in the care and custody of petitioner no.1.

4. As the parties could not pull on together and the respondent (husband) was allegedly not maintaining petitioner no.1 or their daughter, petitioner no.1 initiated maintenance proceedings under Section 125 (1) of the Code of Criminal Procedure, 1973 on 09-03-2018. Despite an order of maintenance, it is alleged that no payment has been made by the respondent (husband) till date. He rather sought recall of the order of maintenance.

5. The respondent (husband) has filed Criminal Complaint No.1304 of 2018 before the Court of Chief Judicial Magistrate, Etawah, Uttar Pradesh, alleging commission of offences punishable under Sections 498, 363, 366A/34, 377, 120B, 506 of the Indian Penal Code, 1860 (IPC) and Sections 66D/67A of the Information Technology Act, 2000.

6. In the said complaint not only petitioner no.1 (wife), her parents (petitioner nos.2 and 3) and her relatives (petitioner nos. 4 and 5) have been implicated as accused.

7. All of them have been summoned by the Chief Judicial Magistrate, Etawah vide order dated 28-07-2018 to face trial under Sections 498 and 363 IPC.

8. The petitioners have already sought quashing of the above-stated complaint by way of a petition under Section 482 of the Code of Criminal Procedure, 1973 bearing Criminal Miscellaneous Application No.6709/2019, which is pending before the High Court of Judicature at Allahabad, in which directions for not taking any coercive action have been issued.

9. Meanwhile, petitioners have sought transfer of the above-stated complaint from the Court of Chief Judicial Magistrate, Etawah, U.P. to the Court of Chief Judicial Magistrate at Raipur, Chhattisgarh.

10. We have learned counsel for the parties and perused the material placed on record.

11. The question that falls for consideration is whether the petitioners have made out a case of transfer of the above-stated criminal proceedings from Etawah (U.P.) to Raipur (Chhattisgarh)?

12. In this regard, the following factors require due consideration:-

(i) petitioner no.1 does not have any source of livelihood and no maintenance is being paid to her by the Respondent (husband);

(ii) the daughter born out of the wedlock is in the care and custody of petitioner no.1 (wife);

(iii) the distance between the two places is around 938 kms;

(iv) petitioner nos.2 and 3 are old parents of petitioner no.1;

(v) it is difficult to ascertain as to on what basis petitioner nos. 4 and 5 have been implicated though it is a question to be effectively decided in the court of trial only;

(vi) since two more cases are reported to be pending against the respondent at Raipur, Chhattisgarh, it will be in the interest of justice to consolidate all the cases at one place.

13. From the above-noted circumstances, we are satisfied that it will *prima facie* amount to harassment of petitioner no.1 and her family members, in case they are forced to face trial in the Court of Chief Judicial Magistrate, Etawah, U.P. It goes without saying that the petitioners are residents of Raipur, Chhattisgarh.

14. Some subsequent events also have bearing on the fate of this Transfer Petition.

15. During the course of hearing, we are informed that petitioner no.1 (wife) applied for grant of a decree of divorce, which has been accorded in her favour on 17-03-2022.

16. The respondent, on the other hand, does not suffer from any type of disability from pursuing his complaint before the Court at Raipur, Chhattisgarh. There may be no language barrier even for the witnesses. That apart, with the advancement of technology, the Transferee Court can be impressed upon to arrange recording of statements of witnesses through virtual mode. Even the respondent can avail such facility and need not necessarily appear on each and every date of hearing before the Transferee Court.

17. We are equally satisfied that petitioner no.1 (wife) and her family members will not be able to secure a fair and just trial at a far away place as it may be extremely difficult for petitioner no.1 to leave her child alone and to travel to a far away place. Such difficulty will be experienced by petitioner nos.2 and 3 on account of their old age. It thus appears to be in the interest of justice that the Criminal Complaint No.1304 of 2018 titled "Shani Verma vs Shivangi Kasar and Ors" pending before the Court of Chief Judicial Magistrate, Etawah, Uttar Pradesh, is ordered to be transferred to the Court of Chief Judicial Magistrate, Raipur, Chhattisgarh.

18. Ordered accordingly.

19. The parties are directed to appear before the Court of Chief Judicial Magistrate, Raipur, Chhattisgarh on 24-04-2023.

20. However, this order shall have no bearing on the proceedings in the Criminal Miscellaneous Application No.6709/2019 pending before the High Court of Judicature at Allahabad in which the petitioners have sought quashing of the above-stated Criminal Complaint.

21. The petitioner No.1 (wife) shall be at liberty to take necessary steps for recovery of the arrears of maintenance in terms of the order dated 16-07-2021 passed by this Court.

22. The respondent (husband) may request the Courts at Raipur to list all the cases on one date so as to avoid hardship of repeated appearances. Such a request shall be favourably entertained by the Courts concerned.

23. The Transfer Petition is disposed of in above-terms.

.....J
(SURYA KANT)

.....J
(J.K. MAHESHWARI)

NEW DELHI
22ND MARCH, 2023.

ITEM NO.1

COURT NO.8

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G STransfer Petition(Criminal) No.230/2021

SHIVANGI KASAR & ORS.

Petitioner(s)

VERSUS

SHANI VERMA

Respondent(s)

(IA No.62725/2021-EX-PARTE STAY)

Date : 22-03-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s)

Ms. Neelam Singh, AOR
Mr. Padmesh Mishra, Adv.
Mr. Shivam Shukla, Adv.

For Respondent(s)

Mr. Varinder Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E RThe Transfer Petition is disposed of, in terms of the signed
Order.

Pending application also stands disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS(AVGV RAMU)
COURT MASTER (NSH)

(Signed Order is placed on the file)