

Soni Devi Vs. The State of Jharkhand and Anr

Soni Devi Vs. The State of Jharkhand and Anr

SooperKanoon Citation : sooperkanoon.com/76782

Court : Jharkhand

Decided On : Sep-07-2016

Appellant : Soni Devi

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Transfer Petition (Civil) No.06 of 2015 ----- Soni Devi, W/o Santosh Kumar Verma, D/o Shri Shankar Ram Resident of behind Plaza Cinema, Loharakocha, P.O. & P.S.-Lalpur District-Ranchi Petitioner Versus 1. The State of Jharkhand 2. Santosh Kumar Verma, S/o Jitnath Ram, R/o Village Chaichai, P.O. & P.S.Sisai, District-Gumla Opp. Parties ----- CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioner : Ms. Amrita Mukherjee, Advocate For the State : A.P.P. For the O.P. No.2 : Ms. Nivedita Kundu, Advocate Mr. Saibal Mitra, Advocate C.A.V. ON:

01. 09.2016 PRONOUNCED ON:- 07.09.2016 By filing this instant application, the petitioner has prayed for transfer of Matrimonial Divorce Suit No.13 of 2014 filed by the opposite party no.2-husband from the court of learned Principal Judge, Family Court, Gumla to the court of learned Principal Judge, Family Court, Ranchi.

2. The opposite party no.2, who is the husband of the petitioner, filed a divorce suit under Section 13(1a) and 13(1b) of the Hindu Marriage Act, 1955 for a decree for divorce against the petitioner. The facts of the case which is relevant for the proper adjudication of the issue involved in this case, in short, is that the marriage of the

petitioner was solemnized with the present opposite party no.2 on 01.06.2005 at the residence of petitioners parent at Loharakocha, P.S.-Lalpur, Ranchi and after marriage the petitioner went to her Sasural which is at Sisai, Gumla to live with the opposite party no.2 but after few years of the marriage the opposite party no.2 and his family members started demanding dowry and because of non-fulfillment, she was physically and mentally tortured. Even after giving a Tata Magic to the opposite party by her father, lust for dowry of the opposite party continued. 2 Transfer Petition (C) No.6 of 2015 Whereafter, she was ousted from her matrimonial house. The petitioner has got no independent source of income and she is fully dependent on the income of her old father and it is difficult for her to attend the court at Gumla on each and every date. Hence, her prayer is to transfer the divorce suit from Gumla to Ranchi.

3. It appears from the record of this case that as the petitioner appears to be financially weak, she approached the Jharkhand High Court Legal Services Committee with prayer to file appropriate petition before the court for transfer, whereafter this transfer petition was filed at the instance of Jharkhand High Court Legal Services Committee.

4. After notice, the opposite party no.2-the husband appeared in this case and filed a counter affidavit and opposed the prayer of transfer of the case from Gumla to Ranchi on the ground that the Principal Judge, Family Court, Gumla has only jurisdiction to entertain the divorce petition as the petitioner and opposite party no.2 were living as husband and wife lastly at Sisai, District-Gumla. The prayer for transfer is not covered under Section 21A of the Hindu Marriage Act and the entire allegation of torture and demand of dowry are false and baseless and only with intention to harass the opposite party no.2, the present petition has been filed for transfer. There will be no inconvenience or much expenses in travelling from Ranchi to Gumla and she can defend herself without any difficulty. It was also submitted that for transfer of a suit filed under Section 21 A of the Hindu Marriage Act, 1955 certain situations have been given and only in those situations the case can be transferred from one district to another but the case of the petitioner does not fall under any of such situation and as such cannot be transferred.

5. Before I enter into the veils of submissions of the learned counsels, a reference of Section 21A of the Hindu Marriage Act is necessary upon which the learned counsel for the opposite 3 Transfer Petition (C) No.6 of 2015 party no.2 has relied. The said Section 21A is reproduced hereinbelow:- S. 21A. Power to transfer petitions in certain cases- (1) Where (a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13, and (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same district court or in a different district court, in the same state or in a different state, the petitions shall be dealt with as specified in sub-section (2). (2) In a case where sub-section (1) applies,- (a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court; (b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented. (3) In a case where clause (b) sub-section(2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code. From bare perusal of the aforesaid provision, it would appear that it is applicable only where two petitions for restitution or divorce has been filed by the husband and wife at two different districts and the above Section provides for consolidated hearing of both the petitions at one place but the same has no application in the instant case as the opposite party no.2 has only filed the petition for divorce at Gumla. In a case, Sumita Singh Versus Kumar Sanjay and Anr.; A.I.R. 2002 S.C. 396 the Honble 4 Transfer Petition (C) No.6 of 2015 Supreme Court while considering the same issue of transfer of divorce suit from one State to another held that court has to look into the wifes convenience.

6. Admittedly, both the parties are living separately one at Gumla and another at Ranchi and the distance between the two place is approximately 85 Kms. Obviously it would be difficult for a lady to travel 85 Kms to attend a court, so balance of convenience in the light of the ratio decided by the Honble Supreme Court, is in favour of the wife who is a young lady and cannot travel such a long distance. On the other hand, it would not be very inconvenient for the opposite party no.2 to attend a court at Ranchi. It also appears that the petitioner is financially weak and that compelled her to approach to the Jharkhand High Court Legal Services Committee for legal assistance and on her request, the said committee filed the transfer petition. The interest of justice determines that the matrimonial suit filed by her husband-the opposite party no.2 be transferred from Gumla to the competent court at Ranchi.

7. Considering the facts and circumstances stated above and the fact that the balance of convenience is in favour of the petitioner, this transfer petition is, hereby, allowed. The Divorce Suit No.13 of 2014 pending in the court of learned Principal Judge, Family Court, Gumla is, hereby, ordered to be transferred to the court of learned Principal Judge, Family Court, Ranchi. Learned Principal Judge, Family Court, Gumla is directed to send the records of Divorce Suit No.13 of 2014 filed by the opposite party no.2 to the court of learned Principal Judge, Family Court, Ranchi forthwith. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 7th September, 2016 Anit/N.A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com