

Chanchla Devi Vs. Faqir Singh

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Court : Jammu and Kashmir

Decided On : Mar-19-2003

Reported in : 2003(2)JKJ373

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC) , Svt. 1977 - Section 24; ;Hindu Marriage Act - Sections 2, 13(1) and 23

Appeal No. : C. Transfer Application No. 30/2002

Appellant : Chanchla Devi

Respondent : Faqir Singh

Advocate for Def. : B.S. Salathia, Adv.

Advocate for Pet/Ap. : Sindu Sharma, Adv.

Judgement :

S.K. Gupta, J.

1. This application has been initiated by the wife seeking transfer of matrimonial proceedings, entitled Faqir Singh v. Chanchla Devi under Sections 13(1)(ii) and (2)(iii) of the Jammu & Kahsmir Hindu Marriage Act, filed by her husband against her for dissolution of marriage in the Court of Additional District Judge, Jammu to

District Judge, Udhampur. The case of the petitioner is that she is residing with her parents alongwith her minor daughter in village Dallah, District Udhampur. After having been ousted from the matrimonial house of her husband, she is getting permanent alimony from her husband granted by Chief Judicial Magistrate, Udhampur under Section 488, Cr.PC. Petitioner's further case is that she has no independent source of income and is dependent on her parents. That the parents are not in a position to bear the travelling expenses of the petitioner for coming to Jammu to prosecute her case and also the expenses of her witnesses to be produced in the Court at Jammu.

2. The application, however, stood resisted by the respondent-husband by filing a demurrer in stating that the petitioner has engaged a counsel and contesting her case in Jammu. That in the event of the transfer of the case from Jammu to Udhampur, the respondent would be burdened with heavy expenditure as he would have to travel to Udhampur from Vijaypur to Jammu and then from Jammu to Udhampur to proute his case. That he has an aged-old-ailing mother with nobody to take care of her and, therefore, would occasion great inconvenience to the respondent in case the matrimonial proceedings are transferred from Jammu to Udhampur.

3. It is not disputed that the matrimonial proceedings have been commenced by the husband. It is the wife's convenience, which has to be looked at in such proceedings, as has been handed down by the Apex Court in *Sumita Singh v. Kumar Sanjay and Anr.*, AIR 2002 SC 396. It is further apt to point out that the respondent would be subjected to visible inconvenience, as he is already travelling from Vijaypur to Jammu for attending the matrimonial proceedings when almost equal is the distance from Udhampur via Mansar where the petitioner seeks the transfer of the case.

4. Mrs. Sindu Sharma, Advocate appearing for the petitioner, also submitted that petitioner has nobody at Jammu with whom she can stay because her parents are residents of Udhampur. In the facts and circumstances of the case, as indicated above, the petitioner has succeeded in carving out a case for the transfer of the petition from Jammu to Udhampur.

5. The petition is accordingly allowed. Matrimonial case entitled Faqir Singh v. Chanchla Devi pending before the Additional District Judge, Jammu shall stand transferred to the District Judge, Udhampur.
6. The application stands disposed of with no order as to costs.

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