

Ankita Bhati vs Dev Raj Singh Bhati on 13 July, 2023

Author: Abhay S. Oka

Bench: Sanjay Karol, Abhay S.Oka

2023 INSC 643

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. 1770 OF 2021

ANKITA BHATI

VERSUS

DEV RAJ SINGH BHATI

WITH

TRANSFER PETITION (CRIMINAL) NO. 659 OF 2019

J U D G M E N T

ABHAY S. OKA, J.

1. Heard the learned counsel appearing for the petitioner and the learned senior counsel appearing for the respondent.
2. This is a usual case where a matrimonial dispute which resulted in multiple cases being filed by the parties. Though an effort was made to arrive at a mediated settlement, perhaps the parties have not seen the reason and therefore, the mediation has failed.
3. Both the Transfer Petitions are filed by the wife which are strongly opposed by the husband. There are 17:20:21 IST Reason:

multiple proceedings pending as stated above. The wife has filed a maintenance petition under Section 18 of the Hindu Adoption and Maintenance Act, 1956 which is pending before the Additional District Judge at Solan, Himachal Pradesh. Apart from that, there is a complaint filed by her under the Protection of Women from Domestic

Violence Act, 2005 which is also pending in the Court of the Judicial Magistrate at Solan. There is one more case which is a petition under Section 125 of the Code of Criminal Procedure, 1973 filed by the wife which is pending in the Court of the learned Chief Judicial Magistrate at Kasauli, District Solan, Himachal Pradesh. Lastly, there is a criminal case pending in the Court of the Chief Judicial Magistrate, Jaisalmer, Rajasthan which is on the basis of a First Information Report lodged by the wife for the offences punishable under Section 323, 341 and 498A of Indian Penal Code, 1860.

4. Transfer Petition (Civil) No. 1770 of 2021 is in respect of one more case which is filed by the husband, which is pending in the Family Court at Jaisalmer, Rajasthan, which is a petition for divorce. Transfer Petition (Criminal) No. 659 of 2019 is filed by the wife seeking transfer of the criminal case pending at Jaisalmer which arises out of a First Information Report lodged by her. Thus, there are more than one cases pending in the Courts in District Solan, Himachal Pradesh filed at the instance of the wife. The respondent-husband is attending those cases and he has not sought transfer of those cases.

5. The learned senior counsel appearing for the respondent has not raised serious issue about transfer of the petition for divorce filed by the husband. However, his serious objection is to the transfer of the criminal case which is pending in the Court at Jaisalmer, Rajasthan to the Court of the learned Chief Judicial Magistrate, Kasauli, District Solan, Himachal Pradesh. His first submission is that the State Government is not made a party to the Transfer Petition. The second submission is that the trial has commenced in the sense that the charge has been framed. His third submission is based on a decision of this Court in *Jyoti Mishra v. Dhananjay Mishra*¹. His fourth submission is based on another decision of this Court in the case of *Nahar Singh Yadav and Anr. v. Union of India and Ors.*²

6. It cannot be disputed that the criminal case pending in the Court at Jaisalmer arises out of the matrimonial dispute. We must note here that as far as the exercise of jurisdiction under Section 25 of the Code of Civil Procedure, 1908 and Section 406 of the Code of 1(2010) 8 SCC 803 2(2011) 1 SCC 307 Criminal Procedure, 1973 is concerned, it all depends on facts and circumstances of each case. The consistent view taken by this Court is that normally the convenience of wife is to be seen when the cases arise out of matrimonial dispute. In exceptional cases where the facts are glaring, a departure can be made from this normal rule.

7. The decision in the case of *Jyoti Mishra*¹ is in the facts of the case. This Court noticed that apart from the husband, there were other accused in the case which were not made parties to the Transfer Petition. The second reason why this Court did not accede to the prayer of transfer was that the respondent-accused will not be in a position to attend the proceedings at Indore, Madhya Pradesh where the case was sought to be transferred for the various reasons. The Court discussed the consequences of non-appearance of an accused in a criminal case.

8. In the facts of this case, it is not the contention of the respondent that there are other accused who are not impleaded as parties. Secondly, the respondent-husband is attending to at least two

proceedings filed by the wife in the Courts in District Solan, Himachal Pradesh. Moreover, in a criminal case arising out of matrimonial dispute, the Court can always grant exemption from personal appearance to the accused and his presence can be procured only when it is absolutely necessary. The possible prejudice to the husband can be always minimized by directing that as far as possible, all cases should be kept on the same day.

9. Now coming to the case of Nahar Singh Yadav², we may note here that the transfer of case was sought in a prosecution filed by Central Bureau of Investigation for a very serious offences. Paragraph 21 relied upon by the learned senior counsel appearing for the respondent deals with the contingency where after transfer, the accused may not get fair trial. In this case, there is nothing placed on record to show that after the transfer of the case, the respondent will not get a fair trial. In Paragraph 22, this Court discusses the possibility of sending wrong signals by transferring the trial, as it may reflect on the Court in which the case was originally pending. This becomes relevant when the transfer is sought to be effected by making allegations against the Court or the Judge. In this case, the transfer is sought purely on the ground of the convenience of the petitioner-wife. When there are multiple proceedings between the husband and wife arising out of a matrimonial dispute, in fact, such transfer is in the interests of husband, as all cases between the parties will be heard at the same place. Therefore, we cannot accept the objections raised by the learned senior counsel appearing for the respondent, while opposing the prayer for the transfer of the criminal case.

10. Even if we pass order of transfer, the State will hardly be affected, considering the nature of the criminal proceedings. Therefore, in the facts of the case, we do not agree with the submission that the State is a necessary party. The complainant and accused are before the Court.

11. Accordingly we pass the following order:

(i) Transfer Petition (C) No.1770 of 2021 is allowed. Accordingly, Divorce Petition No.7 of 2021 titled "Dev Raj Singh Bhati v. Ankita Bhati", pending before the Family Court, Jaisalmer, Rajasthan is ordered to be transferred to the District Judge, Family Court, Solan, Himachal Pradesh;

(ii) Transfer Petition (Criminal) No.659 of 2019 is allowed. Accordingly, Criminal Case No.393 of 2019 titled "State v. Dev Raj Singh", pending before the Chief Judicial Magistrate, Jaisalmer, Rajasthan is ordered to be transferred to the Chief Judicial Magistrate, Kasauli, district Solan, Himachal Pradesh;

(iii) The Court to which criminal case mentioned in clause (ii) above is transferred, shall endeavour to fix the same date in the criminal case which is fixed in the other matters pending in the Courts at Solan, Himachal Pradesh; and

(iv) On a formal application being made by the respondent-husband, the transferee Court will grant exemption to the respondent-husband from personal appearance, subject to the condition that whenever the said Court passes an order requiring his personal presence, he shall personally remain present in the Court.

.....J. (ABHAY S.OKA)J. (SANJAY KAROL) NEW DELHI;

July 13, 2023.