

Sweety Kumari Choudhary @ Nitya Vs Dr. Nikunj Kumar Verma

Court: Jharkhand High Court

Date of Decision: Oct. 16, 2020

Acts Referred: Hindu Marriage Act, 1955 " Section 13(1)(i-a)
Indian Penal Code, 1860 " Section 307, 354, 406, 420, 468, 471, 498A, 499, 509,
Dowry Prohibition Act, 1961 " Section 3, 4

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Pradeep Kumar Deomani, Shyam Narsaria

Final Decision: Disposed Of

Judgement

1. Heard learned counsel Mr. Pradeep Kumar Deomani for the petitioner wife and Mr. Shyam Narasaria for the opposite party husband.

2. Petitioner wife seeks transfer of Original Suit (MTS) No. 405 of 2019 from the learned Family Court at Ranchi to the learned Family Court at

Dumka, instituted by the opposite party husband seeking divorce under Section 13 1 (i-a) of the Hindu Marriage Act, 1955.

3. The marriage between the parties was solemnized on 22.04.2016 and no child has been born out of the wedlock. On the allegations of torture due to

non-fulfillment of demand of dowry, petitioner instituted complaint case no. 186 of 2018 in the court of learned Chief Judicial Magistrate, Dumka

against the opposite party and his parents under Section 498A /354/509/499/406/307/420/468/471 of the I.P.C and Section 3/4 of the Dowry

Prohibition Act. Petitioner has alleged that during marriage also sufficient dowry in the form of cash, jewellery, expensive clothes and furniture were

given to the groom and his parents. However, they were not satisfied. Petitioner returned to Dumka from Nagar Untari in Garhwa, the native place of

the opposite party, after 20 days of the marriage on bidai. Petitioner was subjected to indecent treatment even during their trip to Manipur and later on

assaulted and abused by the opposite party husband, after taking drinks. Her parents were also assaulted at Ranchi. Though, she was sent to

Faridabad to serve her ailing mother-in-law but she was forcefully sent to Dumka after her mother-in- law got well. Other allegations of torture have

been made.

4. Petitioner contends that a false case for restitution of conjugal rights was instituted at Garhwa on 30.06.2017 though she was living at Nagar Untari

at her matrimonial home. It was disposed of on the basis of a mediation exercise. After that she lived with opposite party husband at Ranchi for two

months but she was terrorized in several mental and physical ways. The demand of dowry persisted. She has further questioned the qualification of

the opposite party as a MBBS doctor. She further asserted that the allegation of torture by the opposite party and his parents was reported to the local

police at Ranchi and even to the Hon'ble Chief Minister of Jharkhand but no action was taken. The opposite party is attending to the criminal case

pending before the learned C.J.M., Dumka. She further states that the inquiry report dated 17.03.2018 by the A.S.I Namkum Police Station on

instruction of Senior Superintendent of Police, Ranchi also confirms the allegations made by the petitioner against the opposite party (Annexure-1).

However, petitioner came to know through paper publication about the court's notice to appear in the instant matrimonial suit instituted at Ranchi by

the opposite party husband on frivolous grounds. Though, she has appeared in the said case, but it would be very onerous and expensive for her to

contest the suit at Ranchi because her father is old and she does not have independent source of income. The suit has been instituted after several

months of the complaint case instituted at Dumka. Therefore, if the matrimonial suit is transferred from Ranchi to Dumka, petitioner would be in a

position to properly contest it, otherwise it may end up in an ex parte judgment and decree.

5. Learned counsel for the opposite party husband has strongly opposed the prayer. It is submitted that petitioner is not seeking this transfer of the

instant matrimonial suit on bonafide grounds. Petitioner has been lodging false cases at different places against the husband and his parents, as is

evident from her own averments. One complaint case has been instituted at Dumka while petitioner has lodged another complaint before the Ranchi

Police and also before the Hon'ble Chief Minister of Jharkhand. She has also lodged a complaint before the Jharkhand State Women Commission.

Petitioner is a person with sufficient source of income having property at Bhagalpur and bank accounts in ESAF Bank, ICICI Bank and Central Bank.

Her family is running a hardware business in the name and style of Jagdamba Hardware in Dumka and she also has agriculture land at Jabra village.

Petitioner is also running a marriage hall in the residence premises situated at Mohalla Bagan Para at Dumka. As such, opposite party does not feel

safe and secure in case he has to regularly visit Dumka, if the matrimonial suit is transferred to Dumka. Petitioner's family is resourceful and may

harm the opposite party in person if he has to visit Dumka frequently to prosecute the matrimonial suit. Learned counsel for the opposite party submits

that in case this Court is inclined to transfer the matrimonial suit out of Ranchi, it would be convenient to the opposite party and the petitioner also, if it

is transferred to some other Family Court nearby Dumka .

6. Learned counsel for the petitioner submits on instruction that if the case is transferred to any other Family Court even near Dumka, petitioner may

have difficulties in contesting the same as her father is very old and no other family members are cooperative. Learned counsel for the petitioner

submits that the contentious statement made in the counter affidavit have also been disputed and denied by way of reply filed by the petitioner.

Petitioner does not have any property in her name as alleged and opposite party is put to strict proof thereof. She is fully dependent for her livelihood

on her parents. Her father is old person with only few bighas of land as meagre source of income.

7. I have heard learned counsel for the parties and taken note of the materials borne on record. It appears that the marriage is about 4 years old but

there is no offspring born out of the wedlock. Due to the matrimonial discord parties are living separately since two years and more. Petitioner has

lodged a complaint case against the opposite party and his family members under Section 498A and other allied sections of the I.P.C and 3/4 of the

D.P. Act, which is pending before the learned C.J.M. Dumka. Petitioner does not have any independent source of income as asserted by her, though

opposite party has given details of the assets of the petitioner or her family members in the nature of immovable property like marriage hall etc. which

is of course subject to proof. It is also evident that petitioner has lodged complaint case against the opposite at Dumka. Petitioner has also lodged

complaint against the opposite party before the Ranchi Police and also before the Jharkhand State Women Commission. She also appears to have

made a representation before the Chief Minister of the State. In these circumstances, the opposite party bears genuine apprehension about his safety

and that he may not be able to prosecute the matrimonial suit, if it is transferred to Dumka.

8. Considering the rival submission of the parties, this Court is of the view that it would not be inconvenient or expensive for the petitioner to properly

contest the matrimonial suit if it is transferred from the court of learned Principal Judge, Family Court, Ranchi to the learned Family Court at Deoghar

which is situate at a distance of about 75 Km only and connected by good roads from Dumka. In that way the proceedings will also be held at a

neutral place.

9. Having regard to the aforesaid facts and circumstances and the reasons recorded herein above, this Court therefore directs that the Original

Suit(MTS) No. 405 of 2019 be transferred from the court of learned Principal Judge, Family Court, Ranchi to the court of learned Principal Judge,

Family Court, Deoghar. Let the records be transferred to the Court of learned Principal Judge, Family Court, Deoghar from the court of learned

Principal Judge, Family Court, Ranchi without any delay. Needless to say, it would be open for the learned Family Court at Deoghar to award cost in

favour of petitioner / defendant wife for attending the proceedings at Deoghar, on such application being made and in accordance with law.

10. The transfer petition is accordingly disposed of.