

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRIMINAL) NO(S). 253 OF 2020

DR. VIJAY KUMAR GUPTA & ANR.PETITIONER(S)

VERSUS

MANALI GUPTA & ORS.RESPONDENT(S)

O R D E R

1. Heard Mr. Aakash Nandolia, learned counsel appearing for the petitioners. The respondent No. 1, who is the divorced wife of the petitioners' son, is represented by Mr. Shoeb Alam, learned senior counsel. The respondent No. 2 is, however, unrepresented although notice was served upon him.

2. In this case, notice was issued on 25.08.2020 with the following order:

"The accused are the parents in-law of Manali Gupta (Respondent No.1). They seek transfer of the Domestic Violence case filed by their daughter-in-law pending in the Court at Pondicherry, to a Competent Court at Bhopal, Madhya Pradesh.

Ms. Ratti Tandon, the learned counsel submits that the son of the petitioner Rajiv Kumar resides in USA. Following the marriage on 07.07.2016 after some time, the Respondent No.1- wife joined her husband at USA. However, the daughter-in-law returned from USA in November,2017 and three years later, she filed the Domestic Violence case at Pondicherry on 23.01.2020.

The learned counsel submits that both elderly petitioners are suffering from various health problems and their son is still residing in USA, therefore, they should not be forced to face prosecution at Pondicherry in the belated case filed by their daughter-in-law.

In view of above, let notice, returnable within four weeks, be issued.

In the meantime, there shall be stay of further proceedings in D.V.C. No. 1/2020 titled "Manali Gupta Vs. Rajiv Kumar & Ors.", pending before the learned JM-II, Karaikal, Pondicherry."

3. Since then, the respondent No. 1 has filed the counter affidavit.

4. Admittedly, the respondent No. 1 has got an ex-parte decree of divorce from respondent No. 2, on 27.11.2019. It is also borne out by the records that the respondent No. 1 returned from U.S.A. and since then, she is living with her parents. Currently, the respondent No. 1 is temporarily in U.K., allegedly to pursue a course but her mother continues to reside in Pondicherry.

5. It is submitted that the respondent No. 1 had filed a belated complaint under the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') against the in-laws and the husband, although she has had separate residence from her husband and the in-laws, since November, 2017.

6. To explain the delayed filing, Mr. Shoeb Alam, learned senior

counsel would refer to the averments in paragraph '10' of the counter affidavit to show that after return of the respondent No. 1 from the U.S.A. in November, 2017, in July, 2019, she has filed the complaint. The same was forwarded by the All Women Police, Karaikal, Pondicherry to the Department of Women and Child Development and only after due process, the Complaint was filed before the Judicial Magistrate-II, Karaikal.

7. The above explanation in the counter affidavit filed by the respondent No. 1 does not satisfactorily explain as to why although the parties are living apart since November, 2017, the complaint came to be filed only in July, 2019.

8. The DV Act is enacted as a special legislation to protect women in matrimonial relationship and if the divorce had happened on 27.11.2019 and the parties are lived apart, the filing of complaint in July, 2019 after nearly two years of living separately, hardly appears to be bonafide.

9. In any case, the respondent No. 1 is currently residing in U.K. as per her own averment and her mother only is living in Pondicherry.

10. Having regard to the totality of circumstances, we deem it appropriate to order transfer of petition bearing D.V.C. No. 1/2020 titled as "*Manali Gupta vs. Rajiv Kumar & Ors.*", pending before the Court of JM-II, Karaikal, Pondicherry to the Court of Judicial Magistrate, Bhopal, Madhya Pradesh. It is ordered accordingly.

11. The Court of JM-II, Karaikal, Pondicherry shall send the case records to the transferee Court without any delay.

12. The Transfer Petition is allowed in the aforesaid terms.

13. However, it is made clear that the pending proceedings under the DV Act should be decided on its own merits, without being influenced by this transfer order.

14. Pending application(s), if any, shall stand closed.

.....J.
[HRISHIKESH ROY]

.....J.
[SANJAY KAROL]

NEW DELHI;
DECEMBER 06, 2023.

ITEM NO.1

COURT NO.7

SECTION II-C

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 S

Transfer Petition(s)(Criminal) No(s). 253/2020

DR. VIJAY KUMAR GUPTA & ANR.

Petitioner(s)

VERSUS

MANALI GUPTA & ORS.

Respondent(s)

(IA No. 78598/2020 - STAY APPLICATION)

Date : 06-12-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. Aakash Nandolia, Adv.
Ms. Sagun Srivastava, Adv.
Mr. Arjun Garg, AOR

For Respondent(s) Mr. Shoeb Alam, Sr. Adv.
Mr. Fauzia Shakil, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Transfer Petition is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(POOJA SHARMA)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)