

JYOTI MISHRA

v.

DHANANJAYA MISHRA

(Transfer Petition (Criminal) Nos. 94-95 of 2010)

AUGUST 27, 2010

[AFTAB ALAM AND R.M. LODHA, JJ.]

Code of Criminal Procedure, 1973:

Transfer petition – Estranged wife seeking transfer of criminal case filed by her against her husband and his relatives – HELD: Transfer petition is liable to be dismissed on the ground that only the husband is impleaded as respondent and the other accused in the criminal case have not been made parties in the petition.

Transfer petition – Seeking transfer of criminal case filed by petitioner-complainant against her husband and his relatives – HELD: In criminal proceedings, the right of accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife – Court is not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there – It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, much indulgence is shown to the wife and, ordinarily, the case is transferred to a place where it would be more convenient for the wife to prosecute the proceedings – But, a criminal case is on a somewhat different footing – Accused may not be able to attend the proceedings before the court suggested by complainant for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the

A *accused before such court would be quite drastic – Having regard to the consequences of non-appearance of the accused in a criminal trial, the Court is loath to entertain the prayer for transfer.*

B *Transfer Petition:*

Transfer of a criminal case or a matrimonial dispute – Factors to be considered – Explained – Code of Criminal Procedure, 1973 – Practice and Procedure.

C **CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Crl.) Nos. 94-95 of 2010.**

Anjani Kr. Mishra, Rajeev Kumar Bansal, Akshay K. Ghai, Sanjeev Bansal for the Petitioner.

D The following order of the Court was delivered

O R D E R

1. We have heard counsel for the petitioner.

E 2. No one appears for the respondent despite service of notice.

3. The petitioner is the estranged wife of the respondent. While still living with him at Hyderabad, she had filed a written report before the Station House Officer, P.S. Alwal, Secunderabad, that led to the institution of FIR No. 470/2009 dated September 09, 2009 under Section 498-A of the Penal Code citing her husband Dhananjaya Mishra (the sole respondent) and five others as accused. The Police, after investigation, submitted charge sheet and the proceedings against the accused are now pending before the VIth Metropolitan Magistrate, Cyberabad in CC No. 804/2009.

4. In the meanwhile, the petitioner left her husband at Hyderabad and came to live with her parents at Indore. She has filed this petition for transferring the criminal case pending

before the VIth Metropolitan Magistrate, Cyberabad to a court of competent jurisdiction at Indore, Madhya Pradesh. A

5. The first thing that needs to be noticed is that in the Transfer Petitions only the husband Dhananjaya Mishra is impleaded as respondent. The other accused in the criminal case are not made parties to these Transfer Petitions. The Transfer Petitions are, therefore, liable to be dismissed on that score alone. B

6. Otherwise also, we are not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. C
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7. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife. E
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8. For all these reasons, we are not inclined to accept the prayer for transfer in these cases. G

9. The Transfer Petitions are dismissed.

R.D.: Transfer Petitions dismissed.