HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Criminal Miscellaneous Transfer Petition No. 59/2022

- 1. Kusuma Kumari Saini W/o Shri Ashok D/o Shri Mohan Lal, Aged About 26 Years, Resident Of Halena Tehsil Weir, District Bharatpur Presently Residing At Palanheda, Tehsil Mahwa, District Dausa Rajasthan
- 2. Madhav S/o Shri Ashok, Aged About 3 Years, Resident Of Halena Tehsil Weir, District Bharatpur Presently Residing At Palanheda, Tehsil Mahwa, District Dausa Rajasthan Minor Through Legal Guardian Their Mother Smt. Kusuma Kumari Saini W/o Ashok
- 3. Divyanshi D/o Shri Ashok, Aged About 2 Years, Resident Of Halena Tehsil Weir, District Bharatpur Presently Residing At Palanheda, Tehsil Mahwa, District Dausa Rajasthan Minor Through Legal Guardian Their Mother Smt. Kusuma Kumari Saini W/o Ashok

----Petitioners

Versus

Ashok S/o Shri Ramesh Chand Saini, Aged About 26 Years, Resident Of Halena Police Station Halena, District Bharatpur Rajasthan

----Respondent

Connected With

S.B. Criminal Miscellaneous Transfer Petition No. 60/2022

Kusuma Kumari @ Kushama Kumari Saini W/o Shri Ashok D/o Shri Mohan Lal, Aged About 26 Years, Resident Of Halena Police Station Halena, District Bharatpur Presently Residing At Palanheda, Tehsil Mahwa, District Dausa Rajasthan

----Petitioner

Versus

- 1. State Of Rajasthan, Through P.p.
- 2. Ashok S/o Shri Ramesh Chand Saini, Resident Of Mali Mohalla, Halena Police Station Halena, District Bharatpur Rajasthan
- 3. Ramesh Cahnd s/o Shri Ghamandi Ram, Aged About 57 Years, Resident Of Mali Mohalla, Halena Police Station Halena, District Bharatpur Rajasthan
- 4. Smt. Uganti Devi W/o Shri Ramesh Chand, Resident Of Mali Mohalla, Halena Police Station Halena, District Bharatpur Rajasthan

----Respondents

For Petitioner(s) : Mr. Arvind Kumar Arora.

For Respondent(s) : Mr. Riyasat Ali, P.P.

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HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

24/08/2023

These transfer petitions were preferred by petitionersapplicants to transfer Criminal Misc. Case No. 11/2022 filed under Section 125 Cr.P.C. and Criminal Case No. 306/2021 arising out of FIR No. 258/2021 registered at P.S. Halena, District Bharatpur under Sections 498-A and 406 IPC, from Weir (Bharatpur) to the ASJ Mahwa (Dausa) wherein petition under Section 9 of the Hindu Marriage Act, 1955, is pending.

Learned counsel for the petitioner submitted that the petitioner has filed petition under Section 125 Cr.P.C. for maintenance against respondent-Ashok in the Court of Addl. Chief Judicial Magistrate, Weir and same is pending for consideration. He also submitted that an FIR was also registered at P.S. Halena, District - Bharatpur, wherein Police has submitted charge-sheet under Sections 498-A and 406 IPC and the case is pending in the Court of Addl. Chief Judicial Magistrate, Weir, but subsequent to aforesaid, petitioner has also filed petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The petitioner-Kusuma Kumari Saini wants to reside with respondent-Ashok, but they are adamant so petitioner wanted to transfer the case to the Court of Addl. District & Sessions Judge, Mahwa, District - Dausa.

Aforesaid contentions were opposed by learned Public Prosecutor though none present for the respondent.

We have considered the grounds after hearing the learned counsel for the petitioner and learned Public Prosecutor.

[2023:RJ-JP:31432] (3 of 4) [CRLTP-59/2022]

Both the cases in hand were instituted by the petitioner-Kusuma Kumari Saini in the Court of Addl. Chief Judicial Magistrate, Weir, but now she wants to transfer these two cases to the Court of Addl. District & Sessions Judge, Mahwa, District - Dausa. First case pertains to Section 125 Cr.P.C. and the learned Addl. Sessions Judge is Revisional Authority for the purpose. Similarly, another pending case is a warrant trial case by Magistrate, therefore, Addl. Sessions Judge is Appellate Authority for the purpose.

Considering aforesaid, it is not possible to transfer the case from Addl. Chief Judicial Magistrate, Weir to the Court of Addl. District & Sessions Judge, Mahwa, District - Dausa, particularly looking to difference in procedure of trial of criminal cases under the Code of Criminal Procedure.

As regard to other ground of shifting to Mahwa is concerned, again both the cases are instituted in the Courts of competent jurisdiction and shifting of cases at the whims of parties is not a healthy practice unless there are compelling reasons to secure the ends of justice.

A perusal of copy of petition filed under Section 9 of the Act of 1955 indicates that the same address of P.S. Halena, District Bharatpur was also mentioned by the petitioner. The reasons of transfer is not convenience of the parties rather whims of the petitioner to transfer the case to same Court, wherein petition under Section 9 of the Hindu Marriage Act, 1955 is pending.

Considering the aforesaid, I am of considered view that no ground is made out to transfer the Criminal Cases from Weir to Mahwa. Otherwise also Weir and Mahwa are not far distance from

each other and no threat of any well-being is mentioned by the

Consequently, both the petitions are devoid of merit, hence, same are dismissed.

Misc. application, if any, stands disposed of.

petitioner, so the prayer cannot be allowed.

(ASHOK KUMAR JAIN),J

PKS/240-241