

GAHC010033912023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(C)./16/2023

SMT. MAMPI SARKAR
W/O SRI ARUP SARKAR, D/O SRI RATAN SARKAR, R/O VILL-DIGHALI
GAON, P.O. AND MOUZA-BALIPARA, P.S.-CHARIDUAR, DIST-SONITPUR,
ASSAM, PIN-784101

VERSUS

ARUP SARKAR
S/O SRI BABUL SARKAR, R/O TANGLA TOWN WARD NO. 2, P.O. AND P.S.-
TANGLA, MOUZA-DAKUA, DIST-UDALGURI BTR, ASSAM, PIN-784521

Advocate for the Petitioner : MR H J TAMULI

Advocate for the Respondent : MR S K CHHETRY

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 08-05-2023

Mr. H. J. Tamuli, learned counsel for the petitioner. Also heard Mr. N. Uddin, learned counsel for the respondent.

2. This application filed under Section 24 of the Code of Civil Procedure, 1908, praying for transfer of F.C. (Civil) Case No. T.S.(D)45/2022 from the Court of the learned District Judge, Udalguri, BTR, Assam to the Court of the learned District Judge, Sonitpur at Tezpur, Assam.

3. It is stated that the petitioner got married with the respondent on 30.06.2019 at village-Dighali Gaon, P.O – Mouza-Balipara, P.S.-Chariduar, District- Sonitpur, Assam, as per the Hindu rites and rituals. Thereafter, they started living together as husband and wife at Ward No.2, Tangla Town, District- Udalguri, BTR, Assam, in the house of the respondent. One female child is also born out of their wedlock. Soon after their marriage the respondent started inflicting physical and mental torture on the petitioner and also drove her out of his house along with the minor girl child in the month of 30.06.2021, and since then, the petitioner is residing at Balipara in her maternal uncle residence. The petitioner is unemployed and the financial condition of her parent's is not good. The father of the petitioner is tailor by profession, and he also runs a shop at Bhairabkunda, and stays there in a rented house temporarily. The petitioner was born and brought up at Dighali Gaon, Balipara and presently she is staying at

her maternal uncle's house at Balipara.

4. After receiving summon along with a copy of the petition from the Court of the learned District Judge, Udalguri, she came to know that the respondent/husband had filed one petition under Section 13 of the Hindu Marriage Act, 1955 for a decree of divorce, which was registered as Title Suit (D)No.45/2022, which is pending before the Court of learned District Judge, Udalguri. The petitioner is a lady and having no source of income of her own. At present she along with her minor daughter is residing at her maternal uncle's house in Balipara at Tezpur, and there is no able bodied person in her parent's house to accompany the petitioner, while travelling to appear before the Court of learned District Judge at Udalguri.

5. More so, the financial condition of the petitioner is poor and hence, she is not in a position to bear the expenses of transportation. Also, frequent travelling along with her breast feeding child is not convenient for her. Thus, it becomes very difficult for the petitioner to travel from Balipara and to contest the case at Udalguri. Further, she also does not have the financial capacity to produce her witnesses before the said Trial Court, Udalguri to adduce the evidence to defend her case. There is also a chance of threatening the petitioner and her witnesses at the time of adducing evidence at Udalguri. The petitioner has been residing at Balipara since her birth and inspite of knowledge about the petitioner's residence at Balipara, the respondent filed the divorce petition before the Court of learned District Judge, Udalguri, only to cause undue difficulties and to harass the petitioner.

6. Being highly aggrieved, the petitioner has filed this transfer petition praying for transferring of the F.C. (Civil) Case No. T.S.(D)45/2022 from the Court of the learned District Judge, Udalguri, BTR, Assam to the Court of the learned District Judge, Sonitpur at Tezpur, Assam.

7. Mr. H. J. Tamuli, learned counsel for the petitioner has submitted that the petitioner along with her breast feeding child is facing difficulty to travel a long distance to appear before the Court of learned District Judge at Udalguri, and there is no person in her family to accompany her, while traveling from Balipara to Udalguri. In addition to, the petitioner is an unemployed lady and she is not in a position to bear the expenses for herself and her witnesses.

8. The learned counsel for the petitioner, further relied on the decision of the Hon'ble Apex Court in the case of **N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha** reported in 2022 SC 627, wherein, it has been held that;

"9.....The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioral pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society,

generally, it is the wife's convenience which must be looked at while considering transfer."

9. Citing the above stated judgment, the learned counsel for the petitioner has further submitted that the parent's of the petitioner is not economically sound as well as it will be convenient for the petitioner to appear before the Court of learned District Judge, Sonitpur at Tezpur, Assam instead of appearing at Udalguri, which is about 100 KM far from the place of her present residence.

10. In this context, Mr. N. Uddin, learned counsel for the respondent has submitted that the father of the petitioner is working as a tailor and he is residing at Udalguri, hence, the petitioner has no difficulty to appear before the Court of learned District Judge, Udalguri. He also submitted that the present transfer petition is filed only to harass the respondent. It is also stated that there is possibility of threatening the witnesses of the respondent. Hence, the learned counsel for the respondent has prayed for dismissal of the present transfer petition.

11. In this regard, the learned counsel for the petitioner has submitted that in para 2 of the Transfer petition, which is annexed as Annexure-B, it has been stated that the marriage between the petitioner and the respondent was solemnized at village Dighali Basti, under Balipara Police Station, according to the Hindu Religious rites and customs, that too in a rented house of the petitioner. So, it is a fact that the petitioner was born and brought up at Tezpur, Balipara, and also at present she is residing in her maternal uncle's house at Balipara.

12. After hearing the submissions made by both the learned Advocates, and also considering the view of the Hon'ble Apex Court in the case of ***N.C.V. Aishwarya*** (*Supra*), it is seen that it will be inconvenient on the part of the petitioner to appear before the Court of learned District Judge, Udalguri, as she is not in a position to travel along with her breast feeding child and also being unemployed she cannot bear the traveling expenses. Thus, I find it a fit case, under Section 24 of the Code of Civil Procedure to transfer the F.C. (Civil) Case No. T.S.(D)45/2022 from the Court of the learned District Judge, Udalguri, BTR, Assam to the Court of the learned District Judge, Sonitpur at Tezpur, Assam to the Court of learned District Judge, Sonitpur, Assam.

13. With the above observation, this transfer petition stands allowed and disposes of.

14. The learned District Judge, Udalguri is hereby asked to send the case record of T.S.(D)45/2022 to the Court of learned District Judge, Sonitpur, Assam, within a reasonable time. Accordingly, both the parties are directed to appear before the learned District Judge, Tezpur, Sonitpur, on a date to be fixed by the learned District Judge, Udalguri while transmitting the case records before the said Court.

JUDGE

Comparing Assistant