

GAHC010095742023



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

Case No. : Tr.P.(Crl.)/25/2023

SANOWAR HUSSAIN MONDAL
S/O AJMAT ALI
PERMANENT RESIDENT OF VILL- AMBARI, P.S. ABHAYAPURI
DIST. BONGAIGAON,
PIN-783384
PHONE NO. 8876062100/7086461001
PRESENTLY RESIDENT OF PRAGATI NAGAR SATGAON P.S. SATGAON,
DIST. KAMRUP (M), ASSAM, PIN-781027

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, GOVT. OF ASSAM

2:JILIMA KHATUN
D/O JINNAT ALI
W/O SANOWAR HUSSAIN MONDAL
R/O VILL- AMBARI
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. A K DEY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT**

16.11.2023

Heard Mr. C.K. Baruah, learned counsel appearing for the petitioner. Also heard Mr. B. Sharma, learned Addl. P.P., Assam, appearing for the State/respondent No.1, and Mr. A. Roshid, learned counsel appearing for the respondent No.2.

2. This application, under Section 407 of the Cr.P.C. is preferred by Sanowar Hussain Mondal, for transferring of PRC Case No.431/2020, under Section 498(A) IPC, pending in the court of learned Judicial Magistrate 1st Class, North Salmora, Abhayapuri, District - Bongaigaon to the Court of learned CJM, Kamrup (M) Guwahati.

3. The factual background leading to filing of the present petition is briefly stated as under:

“The respondent No.2 - Smti. Jelima Khatun has lodged an FIR with the Borghola Police Out Post on 12.09.2019, alleging inter-alia amongst others that she got married with Sanowar Hussain as per Muslim law and thereafter lived together as husband and wife in his house, and thereafter Sanowar Hussain subjected her to both physical and mental torture. Thereafter, on 23.07.2019, as per instruction of his family members, namely Ajmot Ali, Anowara Khatun and Noor Alom, he again married another woman, namely, Moyna Khatun from Satgaon, Guwahati and thereafter, Sanowar Hussain had demanded money from her and

assaulted her and driven her out of the matrimonial home. And since then she has been taking shelter in her parental abode and she has also been carrying pregnancy of three months. Thereafter, on 05.09.2019, at about 7 pm, Ajmot Ali and Anowara Khatun had tried to administer Kabiraji medicine to her, with a view to kill her and to cause miscarriage of her pregnancy. When she raised alarm they fled away, and thereafter, on 07.09.2019, Sanowar Hussain and Noor Alam attempted to kidnap her four years old child, but they could not succeed.

Upon the said FIR the Officer-In-Charge has registered a case, being Abhayapuri P.S. Case No. 603/2019, and endorsed ASI Rakhal Sutradhar to investigate the same. The investigation culminated in submission of charge sheet against Sanowar Hussain to stand trial in the court under section 498(A)/494/506/34 IPC. Upon the said charge sheet the learned Judicial Magistrate 1st Class, North Salmora, Abhayapuri, had taken cognizance and issued process to him and one of his friends had received the same on his behalf and informed him about the same. He then went there and had appeared before the learned court below. And that the family members of respondent No.2, threatened to cause harm to him and to kill him on his way to Abhayapuri Station from the court premises, and while returning, he apprehended that some unknown persons follows him, which frightened him and that his life is in danger. Therefore, he approached this court for transferring the PRC case No. 431/2020, arising out of Abhayapuri P.S. Case No.

603/2019, from the Court of Judicial Magistrate 1st Class, North Salmora, Abhayapuri, to the court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati or to any of court of the neighboring district.”

4. Mr. C.K. Baruah, learned counsel for the petitioner submits that the petitioner has approached the court to transfer the PRC case No. 431/2020, arising out of Abhayapuri P.S. Case No. 603/2019, from the Court of Judicial Magistrate 1st Class, Abhayapuri to the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati, or to any other competent court of neighbouring district, on the following two grounds:-

(i) That, though the petitioner hails from Village-Ambari, under Abhayapuri P.S., yet, he resides at Guwahati because of his avocation and on such counts it is difficult for him to appear before the learned court at Abhayapuri;

(ii) That, there is apprehension of life of the petitioner, if he used to attend the court at Abhayapuri from Guwahati as the family members of respondent No.2 threatened to cause harm to him and to kill him on his way to Abhayapuri Station from the court premises.

5. Whereas, Mr. A. Rashid, learned counsel for the respondent No.2, submits that the respondent No.2 is a poor lady and she has been taking shelter at her parental house, having been driven out by the petitioner from his house. Mr. Rashid further submits that the ground for transfer is not at all satisfactory and for a poor lady, with minor children, it would be impossible to attend the court at Guwahati. Mr. Rashid also submits that the apprehension of threat from the family members of the respondent No.2, is false and no FIR was lodged by

the petitioner to that effect with any police station, and therefore, Mr. Rashid contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have perused the petition and the document placed on record and gone through the relevant provisions of law.

7. Section 407 of the Cr.P.C. deals with the power of the High Court to transfer cases and appeals. Section 407 of the CrPC reads as under:

“407: Power of High Court to transfer cases and appeals.—(1)
Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be held in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.....”.

8. It is to be noted here that while dealing with the claims for the transfer of a case, under [Section 406](#) of the Code, from one State to another, Hon’ble Supreme Court in **Mrs. Maneka Sanjay Gandhi and Anr. v. Ms. Rani Jethmalani (1979 (4) SCC 167)**, emphasized the necessity to ensure fair trial, observing as hereunder:

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner’s grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

9. Now, advertent to the facts and circumstances herein this case, I find that both the parties belong to the same village i.e. Ambari, under Abhayapuri Police Station. It is not in dispute that respondent No.2 resides at her parental abode in the village at Ambari. It is also not in dispute that the occurrence took place at Ambari village and the case was lodged at Borkhola

Police Out Post, under Abhayapuri P.S. of Bongaigaon District, and now pending in the court of learned Judicial Magistrate, 1st Class, Abhayapuri. However, the petitioner resides at Satgaon, Guwahati on account of his avocation with his second wife, who also hails from Satgaon, Guwahati.

10. If we examine the grounds, so assigned for transfer of the case from the court of learned Judicial Magistrate, 1st Class, Abhayapuri to the court of learned Chief Judicial Magistrate, Kamrup (M) Guwahati and in the light of submission of learned counsel for both the parties and apply the principle laid down by the Hon'ble Supreme Court in the case discussed herein above, to the facts and circumstances of the case in hand, we will find that the grounds so assigned by the petitioner are not at all justified in as much as the petitioner had not informed about his apprehension either to learned court below or to police. Besides, the respondent No.2 is a poor lady and she has been taking shelter in her parental abode having been driven out from the matrimonial home. And on such count it would be impossible for her to appear before the court at Guwahati with her minor children.

11. Thus, weighing the circumstances, and also balancing the convenience of the parties, specially of the respondent No.2, who is the complainant of this case and who has the right to choose any court having jurisdiction, and in absence of any substantial, more compelling, more imperiling grounds from the point of view of public justice and its attendant environment, the prayer of the petitioner cannot be acceded to. The petitioner, being the accused, cannot dictate where the case against him should be tried. Moreover, it is not the case of the petitioner that fair or impartial inquiry or trial is not possible in the Court of learned Judicial Magistrate 1st Class at North Salmora,

Abhayapuri and no question of law of unusual difficulty is shown to have arises there.

12. In the result, I find no merit in this petition and accordingly the same is dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant