

GAHC010187512022



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

Case No. : Tr.P.(C)/97/2022

SMT. NIVA DHAR @ PAUL
WIFE OF SRI SUBHASH CHANDRA PAUL,
D/O NIRMAL DHAR,
RESIDENT OF NORTH EAST COLONY, DANGTOLA,
P.O.- NEW BONGAIGAON,
P.S. AND DIST.- BONGAIGAON, ASSAM- 783380.

VERSUS

SUBHASH CHANDRA PAUL
SON OF LATE BALAI CHANDRA PAUL,
BBC COLONY, RAILWAY QTR. NO. S AND C/34/A TYPE,
P.O.- PANDU,
P.S.- JALUKBARI, GUWAHATI,
KAMRUP(M), ASSAM- 781012.

Advocate for the Petitioner : MR. R DE

Advocate for the Respondent : MS. M DEY

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 08-05-2023

Mr. R. De, learned counsel for the petitioner. Also heard Mr. J. Bharali, learned counsel for the private respondent.

2. This is an application filed under Section 24 of the Code of Civil Procedure, 1908, praying for transfer of the proceeding bearing F.C.(Civil) No.805/2022, which is pending before the Court of learned Principal Judge, Family Court-III, Kamrup (M), Guwahati to the Court of learned District Judge, Bongaigaon.

3. Brief facts leading to the filing of the present transfer petition is that;

I. The petitioner and the respondent got married and started their conjugal life at the residence of the respondent at Railway Colony, Guwahati. But, soon after their marriage, the respondent started to torture the petitioner physically and mentally, and also left his job to harass the petitioner and having no option, the petitioner, was required to seek employment in a private company viz. Silver Drops for a quite some time to meet the family expenses.

II. In the year 2015, her mother-in-law expired, and the petitioner tried her best to adjust the lifestyle of the respondent. In the year 2016, the respondent was appointed in the Railway Department on compassionate ground, and the petitioner left her job. During that period, the petitioner got pregnant and she was subjected to physical and mental torture and for that reason, she left for

her parental place at Bongaigaon. In the month of June, a baby girl was born out of their wedlock. Since, the birth of their child, the petitioner tried her best to return back to her matrimonial house, but, the respondent was not willing to cohabit with her; instead in the month of July 2022, she received a copy of a divorce petition filed by the respondent under Section 13(1) (ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, which is pending in the learned Court of Principal Judge, Family Court-III, Kamrup (M) being F.C.(Civil) Case No.805/2022, where the respondent brought some false and concocted allegations against the petitioner.

III. It is stated that the petitioner is always willing to maintain her relationship with the respondent. Further, it is submitted that the petitioner being unemployed lady is facing difficult in maintaining herself and her daughter. At present she is solely depend upon her mother's pension, who is also old and ailing. The petitioner is facing immense financial crises and thus, it is not possible for her to come and contest the case at Guwahati, kamrup (M) apart from various inconveniences. So, the present transfer petition is filed accordingly for transfer of F.C.(Civil) No.805/2022, which is pending before the Court of learned Principal Judge, Family Court-III, Kamrup (M), Guwahati to the Court of learned District Judge, Bongaigaon.

4. Mr. R. De, learned counsel for the petitioner has submitted that the petitioner has appeared in the case of F.C.(Civil) No.805/2022, through her engaged counsel. But, as per Rules of the Family Court's Act, the appearance of engaged counsel on behalf of the parties are restricted. Therefore, the learned counsel for the petitioner has submitted that the petitioner is an unemployed

lady, and she cannot bear the traveling expenses to appear before the Court of the learned Principal Judge, Family Court-III, Kamrup (M), Guwahati to contest her case, and accordingly, she prays for transferring the case of F.C.(Civil) No.805/2022, to the Court of learned District Judge, Bongaigaon, Assam, for disposal.

5. In this context, Mr. J. Bharali, learned counsel for the respondent has submitted that the ground mentioned in the transfer petition is not at all maintainable in the eye of law. The respondent denies all the averments made in the said petition, and accordingly states that the petitioner herself left the matrimonial house after the appointment of the respondent in the Railway Department. The respondent tried to fulfill all her demands, but, she left his house along with the child. For which the respondent had to file the divorce petition seeking divorce before the Court of learned Principal Judge, Family Court-III, Kamrup (M), Guwahati.

6. It is further submitted that the respondent used to visit at the parental house of the petitioner at Bongaigaon to meet his child, but, the petitioner asked him not to visit in her house; she also started blackmailing the respondent that she will commit suicide, if he visits again. He also submitted that the petitioner is having illicit relationship with other person, and they also threatened him. The learned counsel for the respondent has submitted that it will be inconvenient for him to appear before the Court of learned District Judge, Bongaigaon, if, the case is transferred.

7. More so, it is also seen that the marriage was solemnized within the

jurisdiction of Family Court at Guwahati and the place of residence is also the same. Thus, it will not be convenient on the part of the respondent to appear before the Court of learned District Judge, Bongaigaon, if the case is transferred from the Court of learned Principal Judge, Family Court-II, Kamrup (M) to the Court of learned District Judge, Bongaigaon.

8. In addition to, the learned counsel for the respondent has relied on the decision of the Hon'ble Apex Court in the case of **Preeti Sharma vs. Manjit Sharma**, reported in 2005 (11) SCC 535, wherein, it has been held that;

"2.....The grounds made out are that the Petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard pressed to defend the Suit at Muzaffar Nagar. It is also claimed that there is a Petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the Petitioner wishes that all cases be tried at one place, she may apply for the same and we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the Petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the Respondent shall pay to the Respondent and a companion travel and stay expenses on every occasion that the Petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the Petitioner on every occasion. With these directions, the Transfer Petitions are dismissed."

9. He also relied on another decision of the Hon'ble Apex Court in the case of **Anindita Das vs. Srijit Das**, reported in (2006) 9 SCC 197, wherein, it has been held that;

"This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The Respondent is willing to pay all expenses for travel and stay for the Petitioner and her companion for every visit when the Petitioner is required to attend the Court at Delhi. Thus , the ground that the Petitioner has no source of income is adequately met."

10. In this regard, the learned counsel for the petitioner has submitted that, if, the respondent agrees to bear the travelling expenses of the petitioner, he has no objection, if the case is tried before the Court of the learned Principal Judge, Family Court-III, Kamrup (M), Guwahati.

11. Considering the submissions made by both the learned counsels as well as considering the convenience of the parties and also considering the submission made by the respondent that he will bear the travelling expenses of the petitioner, I find it appropriate to dismiss this transfer petition, with a direction to the respondent to bear the travelling expenses for the petitioner whenever her presence is required before the Court of learned Principal Judge, Family Court-III, Kamrup (M), Guwahati. The learned Principal Judge, Family Court-III, Kamrup (M), Guwahati will accordingly pass the appropriate order.

12. In terms of above observations, this transfer petition stands dismissed.

13. Both the parties are accordingly directed to appear before the Court of learned Principal Judge, Family Court-III, Kamrup (M), Guwahati.

JUDGE

Comparing Assistant