

GAHC010187522022



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

Case No. : Tr.P.(C)/95/2022

SMT. Y. KALPANA SINGHA
D/O- SHRI Y. HARI KUMAR SINGHA, R/O- GANGA NAGAR, P.O. SAINT
KATHERINE, P.S. KACHUDARAM, DIST. CACHAR, ASSAM

VERSUS

SHRI F. RAKESH SHARMA
S/O- SRI F. DEVANANDA SHARMA, PERMANENT RESIDENT OF VILL.-
BANTARAPUR, P.O. SUNDARI, P.S. KACHUDARAM, DIST. CACHAR, ASSAM

Advocate for the Petitioner : MRS. R RONGMEI

Advocate for the Respondent : MR SARFRAZ NAWAZ

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.05.2023

Heard Mrs. R. Rongmei, learned counsel for the petitioner. Also heard Mr. S. Das, learned counsel for the respondent.

2. The petitioner has filed an application under Section 24 of CPC praying to transfer of T.S.(D) Case No. 52/2022 from the court of District Judge, Sankardev Nagar, Hojai to the Family Court, Silchar, Cachar.

3. The case of the petitioner is that she got married to the respondent on 24.04.2019 and after their marriage, they lived together as husband and wife. The respondent was a neighbor prior to their marriage. The respondent is an Indian Army personnel. The respondent has filed a divorce case which is pending before the court of District Judge, Sankardev Nagar, Hojai just to harass the petitioner.

4. The allegation made by the petitioner against her husband is that after a few days of their marriage, the respondent and his family members started to torture her both physically as well as mentally. Further, the respondent and his family members had wrongfully confined the petitioner in the house of Iboton Sharma and Ronibala Sharma at Hojai and accordingly, the life of the petitioner became insecure for which the father of the petitioner filed a complaint before the Addl. District Magistrate, Cachar, Silchar with a prayer for recovery of the petitioner from the house of the relative of the respondent and accordingly, as per order of the learned Addl. District Magistrate, Cachar, the Superintendent of Police, Hojai was in search of the petitioner in the probable places for her recovery.

5. It is also alleged that the respondent had kidnapped the victim and committed rape on her forcefully. Subsequently, a case was registered by filing of an FIR vide Kachudaram P.S. Case No. 108/2017 under Section 342/376/323/307/34 IPC. Thereafter, due to fear, as because of the FIR filed by the victim girl, the respondent married the petitioner. Subsequently, the respondent filed a divorce case against the petitioner in the court of District Judge, Sankardev Nagar, Hojai. On receipt of the notice, the petitioner came to know that she was asked to appear before the court of District Judge,

Sankardev Nagar, Hojai on 20.09.2022 but she could not appear before the District Judge, Sankardev Nagar, Hojai due to her severe financial constraints. It is further stated that the petitioner is also suffering from various illness and she is staying with her age old ailing parents. It is further stated that the petitioner is economically poor and she has no source of income. It is not possible for her to travel from Silchar to Hojai to attend the court proceeding and prays to transfer the case from the court of learned District Judge, Sankardev Nagar, Hojai to the Family Court, Cachar.

6. Against the transfer petition, the respondent has filed an objection, wherein he admitted that he got married to the petitioner on 16.09.2017 but subsequently their marriage was registered under the Special Marriage Act in the year 2019. The respondent also admitted that he filed the Title Suit being No. 52/2022 before the court of learned District Judge, Sankardev Nagar, Hojai as because he and the petitioner last resided together under Hojai police station till 21.04.2022 which is within the jurisdiction of the court of learned District Judge, Hojai. It is also stated in the objection that a week after the marriage, the respondent went to his place of posting in Delhi, leaving petitioner at her matrimonial home. But the petitioner started misbehaving with his parents and talked to them very disrespectfully by using filthy language.

7. It is further alleged that after two months of marriage, the petitioner went back to her parental home and did not return. The petitioner in collusion with her family members, thereafter, filed a false case against the respondent and his family members at Kachudaram Police Station which was registered as Kachudaram P.S. Case No. 108/2017 under Section 342/376/323/307/34 IPC alleging that the respondent forcefully married the petitioner without her

consent and committed rape on her. After proper trial, the learned Additional Sessions Judge, Cachar acquitted the respondent and his family members i.e. father, mother, brother and sister. In the evidence before the court of Additional Sessions Judge, Cachar, the petitioner herself deposed that she had filed the case out of maladjustment which she had reconciled.

8. It is also alleged by the respondent that during pendency of Kachudaram P.S. Case No. 108/2017, the parents of the petitioner called the respondent and his brother-in-law, Ibonton Sharma to discuss about pending case. The respondent in good faith, went to the house of the petitioner on 30.12.2018 but the family members of the petitioner illegally confined the respondent and his brother-in-law in their house and called the police and handed over them to the police. Thereafter, the mother of the petitioner lodged an FIR against the respondent and his brother-in-law alleging that they forcefully entered into her house and tried to commit rape on the petitioner. Subsequently, a case was registered as Kachudaram P.S. Case No. 126/2018 under Section 448/354/376/511/34 IPC. It is also stated by the respondent that his brother-in-law got suspended after his arrest in the said case and both of them were in judicial custody for a period of 21 days. During trial, after taking the evidence of witnesses, the respondent and his brother-in-law were acquitted.

9. After acquittal from the aforesaid two cases, the petitioner and her family members approached before the respondent to accept the petitioner and to start conjugal life again. The respondent agreed with the proposal of the petitioner's family members to resume conjugal life with the petitioner. Accordingly, the respondent took the petitioner to Delhi on 26.01.2019 with a view to lead conjugal life peacefully where he was being posted at the relevant

time. But the petitioner did not change her attitude towards the respondent to lead conjugal life peacefully rather she insisted the respondent to leave his parents and family members. Then the respondent came to Hojai on 11.10.2021 and took a rented house thereon wherein he stayed with the petitioner for a while. He then returned to his place of posting leaving the petitioner in the rented house at Hojai. It is further stated that the mother of the petitioner on 21.04.2022 came at Hojai and took the petitioner with her in the absence of the respondent from the rented house. The respondent also stated in his objection that he could realize that it is not possible for him to lead conjugal life with petitioner. Finding no other alternative, he filed a divorce case before the court of Sankardev Nagar, Hojai.

10. The learned counsel for the petitioner has submitted that the petitioner has no income of her own. She is residing with her age old ailing parents in the house of her parental home at Cachar, Silchar. She is not in a position to meet the expenditure of her travel from Silchar to Hojai which is more than 280 k.m. The petitioner is suffering from some diseases also for which she filed a petition for transfer of her case from the court of District Judge, Sankardev Nagar, Hojai to the Family Court, Silchar.

11. On the other hand, the learned counsel for the respondent has submitted that he has already been made to face two trials of rape case against his legally married wife during the subsistence of their marriage and there is every possibility of causing harm towards the respondent either physically or through initiation of false case by the petitioner and his family members. It is also the submission of the learned counsel for the respondent that the respondent has serious apprehension of travelling to Cachar where the petitioner is seeking the

suit to be transferred as there is an eminent threat of physical harm as well as possibility of being implicated in false case.

12. It is further submitted by the learned counsel for the respondent that he has no objection if the case is transferred to nearest places of Silchar i.e. Hailankandi or Karimganj from the court of District Judge, Hojai. The learned counsel for the respondent also submitted that the respondent is ready to bear the expenditure i.e. travelling cost of the petitioner from Silchar to the court where the case will be transferred.

13. Considering the submissions of the learned counsel for the parties as well as under the facts and circumstances of the case, this Court is of the view that the submission of the learned counsel for the respondent has some substance in consideration of entire back ground of the case. Hence, the T.S.(D)52/2022 is transferred from the court of District Judge, Sankardev Nagar, Hojai to the court of District Judge, Hailakandi. The District Judge, Sankardev Nagar, Hojai is directed to send the case record of T.S.(D)52/2022 to the court of District Judge, Hailakandi for disposal. It is made clear that the respondent will bear the necessary travelling expenditure of the petitioner from Silchar to Hailakandi for attending the court on the date when the petitioner would be physically present in the court of District Judge, Hailakandi.

14. The transfer petition stands disposed of accordingly.

JUDGE

Comparing Assistant