

GAHC010199152017



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

Case No. : Tr.P.(Crl.)/24/2017

MAMPI BISWAS
D/O. SRI NITYALAL BISWAS, W/O. RAJIB MITRA, R/O. PANIKHETI,
RAILWAY GATE, DIST. KAMRUPM, ASSAM.

VERSUS

RABINDRA CHANDRA MITRA
FATHER OF SRI RAJIB MITRA, R/O. LULUKAI, P.O. DHEKIAJULI, P.S.
DHEKIAJULI, DIST. SONITPUR, ASSAM, PIN-784221.

Advocate for the Petitioner : MS.D GHOSH

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21-07-2023

Heard I.Chakma, learned counsel appearing on behalf of Ms. D. Ghosh, learned counsel for the petitioner.

None appears for the respondents on call.

It reveals from the order passed by this Court that the respondent remained absent on several consecutives dates, though the names of two counsels for the respondent are reflected in the cause list.

This is an application filed under Section 407(2) of the Code of Criminal Procedure, 1973 praying for transfer of the Complaint Case No. 957/2016, which is pending before the Court of learned Chief Judicial Magistrate, Sonitpur at Tezpur.

It is stated that the marriage between the petitioner and the son of respondent were solemnized in the year 2013 at Sonitpur following the Hindu rites and rituals and thereafter they led a conjugal life, and out of the wedlock, a female child was born to them on 10.05.2016 at Nagaon, Assam. During her stay at the matrimonial house, she was tortured both mentally and physically by the respondent, his son and other in-laws. The petitioner husband has an illicit relationship with a woman of their village Phuluguri. The petitioner has been thrown out of the matrimonial house on 22.10.2015, and thereafter, she took shelter in her paternal house. On 23.10.2015 the respondent lodged an FIR against her in Dhekiajuli Police Station alleging that the petitioner had left her

matrimonial house in the night by taking all the jewelry, money and suitcase. The said FIR was accordingly registered under the Dhekiajuli Police Station bearing case No.635/15 under Section 379 and 511 of IPC . However, no such stolen property was recovered from the possession of the petitioner. Further, to harass the petitioner, the husband filed a Divorce petition Title Suit (D) No.39/2016 at Tezpur District Court for dissolution of their marriage.

It is also submitted that, as the petitioner has a difficulty in pursuing the matter in Tezpur, as she could not visit frequently before the Court of learned District Judge, Tezpur and therefore she had filed a Transfer Petition before this Court bearing case No. Tr.P.(C)08/2017. The IO of the Dhekiajuli Police Station had forwarded the CD and Final Report to the learned Chief Judicial Magistrate, Sonitpur finding no prima facie case, but, by receiving the notice from the learned CJM, Sonitpur, the respondent appeared and filed their objections and accordingly on the protest petition, the learned CJM, Sonitpur has recorded the statement of the respondent and accordingly complaint case was registered as CR No.957/2016 under Section 406 of IPC, which is pending before the learned SDJM, Tezpur.

The learned counsel for the petitioner also submits that the petitioner belongs to a poor family and she still is dependent upon her old aged father, who is a agricultural labour and has no source of income to maintain the petitioner along with her daughter. Due to financial crises and economic constraint , the petitioner came to her maternal uncle's house at Guwahati along with her minor daughter and started to reside at Pani Kheti, Railway Gate, Kamrup(M), Guwahati at Assam. Therefore, it is very much difficult for the petitioner to pursue the matter in Tezpur, as frequent visit from her present

place of resident and also living her 13 months baby in Guwahati.

Moreover, the petitioner has no income of her own and she is completely dependent upon her parents and has no enough means to travel to Tezpur to pursue her case. The petitioner has also filed a Domestic Violence case which is registered as D.V. Case No.66m/2017, which is pending before the Court of learned SDJM, Kamrup(M), Guwahati. Accordingly, it is submitted by the learned counsel for the petitioner that the petitioner being accused in the complaint case her presence is necessary before the Court of learned SDJM, Tezpur as and when call for. But, she is not in a position to attend the Court at Tezpur due to her financial constraint as well as it is also difficult for her to leave her 13 months baby at Guwahati.

Further, it is submitted by the learned counsel for the petitioner that there are catena of decision of the Hon'ble Apex Court as well as of various High Courts, wherein, it has been observed that while considering the application for transfer of cases involving matrimonial relation the convenient of the wife should be taken, especially when she has no source of income should be given priority. Thus, if the petition is not allowed the prejudice will be caused to the petitioner as she is not in a position to appear before the Court of learned SDJM, Tezpur.

After hearing the submission made by the learned counsel for the petitioner, it is seen that the petitioner is a accused in the complaint case No.957/2016, hence, her presence in the Court of learned SDJM, Tezpur in each and every date is necessary. In the same time she is facing financial crises on her part and also at present she is taking shelter at her maternal Uncle's house at Guwahati along with her minor daughter, who is only 13 months old. Thus,

she is not in a position to travel with her minor daughter to attend the Court at Tezpur. Further, it is also seen that the respondent is not required to appear in each and every date of the case and his presence may be required only at the time of evidence. Further, it is a admitted fact that the petitioner has to appear regularly on fixed date of the case.

So considering the entire facts and circumstance of the case and also considering the view of the Hon'ble Apex Court, I hereby find appropriate to transfer the Complaint case No.957/2016 from the Court of learned CJM, Tezpur to the Court of learned CJM, Kamrup (M), Guwahati. Accordingly, the learned SDJM, Tezpur is hereby directed to transfer the case records to the court of learned CJM, Kamrup(M) with a direction to the parties to appear before the Court of learned CJM, Kamrup(M), Guwahati on a date fixed by the concerned Court. The learned CJM, Kamrup(M) will accordingly fixed a date after receiving the records of Complaint case NO.957/2016 from the Court of learned CJM, Tezpur.

In terms of above, this Transfer petition stands disposed of.

Sent a copy of this order to the respective learned Courts below.

JUDGE

Comparing Assistant