

GAHC010212432021



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

Case No. : Tr.P.(Crl.)/26/2021

MOU DAS @ MOU MAZUMDER
W/O SRI RAJA DAS
D/O LATE MANIK CH. MAZUMDER
VILL- LOCO COLONY, BUDHA MANDIR, LUMDING TOWN, P.S. LUMDING,
DIST. HOJAI, ASSAM , PIN-782447

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:RAJA DAS
S/O SRI RATAN KUMAR DAS
RESIDING AT HOJAINALA
MANJA
P.S. MANJA
DIST. KARBI ANGLONG
ASSAM
PIN-782461

3:SRI RATAN KUMAR DAS
S/O NOT KNOWN
RESIDING AT HOJAINALA
MANJA
P.S. MANJA
DIST. KARBI ANGLONG
ASSAM
PIN-782461

4:SMT. GOURI RANI DAS
W/O SRI RATAN KUMAR DAS
RESIDING AT HOJAINALA

MANJA
P.S. MANJA
DIST. KARBI ANGLONG
ASSAM
PIN-782461

5:SMT. BULTI RANI DAS
D/O SRI RATAN KUMAR DAS
RESIDING AT HOJAINALA
MANJA
P.S. MANJA
DIST. KARBI ANGLONG
ASSAM
PIN-782461

6:RANA DAS
S/O SRI RATAN KUMAR DAS
RESIDING AT HOJAINALA
MANJA
P.S. MANJA
DIST. KARBI ANGLONG
ASSAM
PIN-782461

7:SRI ASHOK DEY
S/O SRI LATE KAMAKHYA DEY
RESIDING AT SHUBHAS PALLI
NEAR NATIONAL SCHOOL
LUMDING
P.O. AND P.S. LUMDING
DIST. LUMDING
ASSAM
PIN-78244

Advocates for the petitioner : Mr. N. C. Das

Advocates for the respondents : Mr. D. Das, Addl. P.P.

Mr. U. K. Das, for R- 2 to 7

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 17.02.2023

Date of Judgment & Order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. N. C. Das, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. U. K. Das, learned counsel for the private respondent Nos. 2 to 7.

2. This is an application under Section 407 (C) of the Code of Criminal Procedure praying for transfer of G.R. Case No. 164/2018, pending before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, Assam, to the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, Assam.

3. The brief facts of the case is that the marriage between the petitioner and the respondent No. 2 was solemnized on 01.02.2017 as per Hindu rites and customs at Loco Colony, Lumding, in the District of Hojai, Assam, and after their marriage, they started living as a husband and wife at Hojainala, Manja, in the District of Karbi Anglong, Assam. But, after 10 (ten) days of their marriage, the respondent No. 2 started demanding Rs. 5 Lakhs from her widowed mother. The family members of the respondent No. 2, i.e. the other respondent Nos. 3 to 7 herein, also used to torture the present petitioner mentally and physically and also used to humiliate her by using slang words and even they did not provide

her food for several nights. On 10.06.2017, respondent No. 2 also tried to kill her, but somehow she was able to save her life. She then immediately informed her mother over telephone and on the next day morning, she left her matrimonial house and started living in her parental house. Thereafter, several requests were also made by her mother to the respondent No. 2 and their family members, but instead of taking her back, the respondent No. 2 filed a case for judicial separation before the Family Court, Kamrup (M), Guwahati, which was registered as F.C. (Civil) No. 538/2017. But, later on, the said petition was withdrawn by the respondent No. 2.

4. The petitioner having no other alternative, filed a complaint petition before the learned S.D.J.M., Hojai, Sankardev Nagar, on 30.10.2017, under Sections 498 A/406/34 of the Indian Penal Code, which was registered as C.R. Case No. 1332/2017. The learned S.D.J.M., Hojai, Sankardev Nagar, send the said complaint for investigation and accordingly, Lumding Police Station Case No. 02/2018, under Sections 498 A/406/34 of the Indian Penal Code, was registered and on the jurisdictional point, the same was transferred to the Manja Police Station for investigation by Lumding Police. Accordingly, the investigation was done by the Manja Police Station and Charge-Sheet was accordingly filed against the respondent No. 2 and his family members before the learned Chief Judicial Magistrate, Diphu, Karbi Anglong, which is now pending before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, for final disposal.

5. After the matrimonial dispute, the petitioner started residing in her parental house and she has no source of income. She is fully dependant on her

widowed mother and for which, she has to file a Maintenance Case before the learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, claiming maintenance, which is registered as M.R. Case No. 364/2017, under Section 125 of the Code of Criminal Procedure. The learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, accordingly, dispose of the case on 18.02.2021 directing the respondent No. 2 to pay Rs. 15,000/- per month to the petitioner and also asked to pay Rs. 30,000/- towards cost of case. Further, the petitioner also filed a case under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which was registered as Misc(DV) Case No. 34/2018 and the same is pending before the Court of learned Judicial Magistrate 1st Class, Hojai, Sankardev Nagar, for final disposal.

6. It is further stated that on 03.01.2020, during the pendency of the above mentioned cases, the respondent No. 2 and his family members came to the paternal house of the petitioner and threatened them with dire consequences if the petitioner does not withdraw the cases filed by her and also threatened to kill all the witnesses if they go to Diphu for adducing evidence before the Court in favour of the petitioner.

7. After the said incident, the petitioner also filed a complaint case before the learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, which was registered and numbered as 42/2020, under Sections 447/294/506/34 of the Indian Penal Code.

8. In the month of October, 2019, the petitioner received a summon from the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, in

G.R. Case No. 164/2018, and accordingly, she adduced her evidence. But later on, she came to know that the I.O. did not furnish the name of any witnesses to adduce evidence in favour of the petitioner and for which, she filed a petition under Section 311 of the Code of Criminal Procedure for adducing evidence of some of the witnesses, who are well acquainted with the facts and circumstances of the case. The said petition was allowed by the learned Court below vide order dated 28.09.2021.

9. Accordingly, there are altogether 3 (three) numbers of cases pending before the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, against the respondent Nos. 2 to 7 and due to her poor financial condition, it is not at all possible on the part of the petitioner to travel all the way to Lumding to Diphu, along with her newly impleaded witnesses, to depose in G.R. Case No. 164/2018, pending before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong. She has no relatives or friends at Diphu where she can stay along with her witnesses and due to limited transportation facilities, the witnesses will face great difficulty to adduce evidence in the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong. Apart from that, the petitioner has to bear the other expenses of the witnesses along with the travelling cost if they have to go to the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, to adduce evidence. On the other hand, the respondent No. 2 is working in a Titan Watch Company and economically sound and healthy, and hence, it will not cause any inconvenience to the respondent Nos. 2 to 7 to appear before the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, if the case is transferred from the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong. That

apart, the respondent No. 2 and his family members already threatened her with dire consequences and also threatened to kill all the witnesses if they visit Diphu for adducing their evidence. More so, there is every probability of hampering or tampering the witnesses of the petitioners if they visit Diphu to adduce their evidence.

10. The issues on which the 3 (three) numbers of cases pending before the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, are almost same and identical with the issues raised in G.R. Case No. 164/2018, pending before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, and hence, it will be convenient for both the Court as well as the parties if all the cases can be tried in a same place at Hojai, Sankardev Nagar.

11. Accordingly, it is prayed to transfer the G.R. Case No. 164/2018, pending before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, to the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, for further trial.

12. It is submitted by the learned counsel, Mr. N. C. Das, appearing on behalf of the petitioner, that the petitioner is fully dependant on her widowed mother and she has no source of income of her own to go and appear before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, and also has no financial capacity to bring all the witnesses to Diphu, Karbi Anglong, to adduce their evidence. Apart from that, the respondent Nos. 2 to 7 had already threatened her with dire consequences and even threatened to kill all the witnesses if they come and adduce evidence in the Court of learned Additional

Chief Judicial Magistrate, Diphu, Karbi Anglong. As 3 (three) more cases are still pending in the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, it will be convenient for both the parties to appear before the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, and hence, the transfer of the G.R. Case No. 164/2018 will not cause any prejudice to the respondents side.

13. In this context, the learned counsel, Mr. U. K. Das, appearing on behalf of the private respondent Nos. 2 to 7, has stated in his affidavit-in-opposition as well as made oral submission that the instant transfer petition has been filed by the petitioner with some false allegation and with a *mala fide* intention to drag respondent Nos. 2 to 7 to Hojai to cause further trouble to the respondents. It is further submitted that in the transfer petition, the petitioner brought false and concocted allegation of demand of dowry etc. The actual fact is that the respondent No. 2 used to reside in a rented house at Guwahati for his job leaving his family at his parental house at Hojainala, Manja, but the petitioner was not interested to live with his parents and insisted him to leave separately by leaving his parents. As the respondent No. 2 did not agree to her proposal, she used to visit her parental house without any consent of his family members and also started misbehaving with his parents. Finally, on 11.06.2017, she left her matrimonial house without any reasonable ground and for which, the respondent No. 2 also filed a judicial separation petition before the Family Court, Kamrup (M), Guwahati, which was registered as F.C. (Civil) No. 538/2017. However, subsequently, the respondent No. 2 withdrew the said petition with the assurance from the petitioner side that she will not make any demand to live separately from his parents. But, in spite of the said assurance, the petitioner

never returned back to her matrimonial house and filed cases against the respondent No. 2, along with his family members, with some false and concocted allegation of mental and physical torture on her. The petitioner filed a complaint before the learned S.D.J.M., Hojai, Sankardev Nagar, under Sections 498 A/406/34 of the Indian Penal Code, which was registered as C.R. Case No. 1332/2017, but the S.D.J.M., Hojai, Sankardev Nagar, has sent the complaint for investigation to Lumding Police Station, which was registered as Lumding P.S. Case No. 02/2018. But, on the jurisdictional point, the same was transferred to the Manja Police Station for investigation and accordingly, after investigation, the Charge-Sheet was filed against the respondent No. 2 and his family members. Thus, it is seen that though the case was filed before the Court of learned S.D.J.M., Hojai, Sankardev Nagar, the same was transferred to the Manja P.S. on the jurisdictional point where the investigation was done and Charge-Sheet was filed against the respondent No. 2 along with his family members. Apart from the present case, the petitioner also filed 2 (two) other cases claiming maintenance as well as the case under D.V. Act where the respondent No. 2 had to appear before the Court of law at Hojai, Sankardev Nagar and with some *mala fide* intention, the petitioner is also trying to drag the respondent No. 2 and his family members to the Court of learned S.D.J.M., Hojai, Sankardev Nagar, by transferring the G.R. Case No. 164/2018 from the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, to the Court of learned S.D.J.M., Hojai, Sankardev Nagar.

14. Further it is submitted by the learned counsel appearing on behalf of the private respondent Nos. 2 to 7 that this is a G.R. case and the case is already transferred from the Lumding P.S. to Manja P.S. for investigation on the

jurisdictional point where the respondent Nos. 2 to 7 are appearing before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong and facing trial. Moreover, the petitioner already appeared before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, and adduced her evidence on 02.01.2020 and hence, there is no requirement of her day to day presence before the Court after she has been discharged as a witness. However, it is the choice of the petitioner to appear in the said case on subsequent dates after adducing her evidence. More so, had there been any threat from the respondents side, the petitioner could not have filed a petition under Section 311 of the Code of Criminal Procedure to adduce their evidence in support of her case. Further, the petitioner can seek for a lawful protection from the concerned authority if there is any question of threat to her witnesses. The petition under Section 311 of the Code of Criminal Procedure was allowed by the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, on 15.09.2021 and after a gap of 3 (three) months only, she filed the petition for transfer and even after lapse of more than 1 (one) year, no instances of threatening could be brought by the petitioner in the instant case. The petitioner is trying to transfer the G.R. Case only for her convenience and to harass the respondent Nos. 2 to 7, whose day to day presence are mandatory before the Court as they are facing a criminal trial. More so, the respondent No. 3 is about 70 years old and he is suffering from shortness of breath on exertion, chest pain, fibro bronchiectasis, diabetes etc. and the transfer of said G.R. Case will also cause great inconvenience to the other 2 (two) respondents including the old age lady also. Accordingly, the learned counsel for the respondents has submitted that there is no genuine ground to seek the transfer of G.R. Case No. 164/2018 from the Court of learned Additional Chief Judicial Magistrate, Diphu,

Karbi Anglong, to the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, and accordingly, prayed for dismissal of the same.

15. After hearing the submissions made by the learned counsels appearing on behalf of the parties, I have perused the case record and the annexures filed along with the petition.

16. It is a fact that presently the petitioner is staying in her parental house at Hojai, Sankardev Nagar, after leaving her matrimonial house. Thereafter, she filed 3 (three) numbers of cases against the present respondents alleging mental and physical torture on her and demand of dowry as well as claiming maintenance and other reliefs under P.W.D.V. Act. Both the cases filed under Section 125 Cr.P.C. for maintenance as well as the case filed under Section 12 of P.W.D.V. Act are pending before the Court of learned S.D.J.M., Hojai, Sankardev Nagar. But, from the petition itself, it is seen that though the petitioner filed a complaint before the learned S.D.J.M., Hojai, Sankardev Nagar, alleging demand of dowry along with mental and physical torture on her, after registering a case as C.R. Case No. 1332/2017, the learned S.D.J.M., Hojai, Sankardev Nagar, sent the said complaint for investigation to Lumding Police Station, which was registered as Lumding P.S. Case No. 02/2018, under Sections 498 A/406/34 of the Indian Penal Code, but, on the jurisdictional point, the same was transferred to Manja Police Station for investigation by the Lumding Police. Accordingly, after investigation, the Charge-Sheet was filed against the respondent Nos. 2 to 7 and the same was registered as G.R. Case No. 164/2018.

17. Further it is seen that the petitioner has already adduced her evidence

before the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, and she herself filed a petition under Section 311 of the Code of Criminal Procedure praying for adducing additional evidence through her witnesses in support of her case and the same was also allowed by the learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong. However, she brought an allegation of threatening by the respondent No. 2 and his family members on 03.01.2020 by trespassing into her parental house after she adduced her evidence on 02.01.2020. But, it is seen that after the lapse of more than 1 (one) year, she filed another petition under Section 311 of the Code of Criminal Procedure on 15.09.2021, which was accordingly allowed by the learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, vide its order dated 28.09.2021. Thus, it is seen that though she brought the allegation of threatening on her as well as her witnesses, she filed a petition under Section 311 of the Code of Criminal Procedure after lapse of more than 1 (one) year and there is no further allegation brought by her that during period of 1 (one) year, till her filing of the said petition under Section 311 of the Code of Criminal Procedure, the respondent No. 2 or his family members threatened her as well as her witnesses.

18. Further it is also an admitted position that being the accused, the respondent Nos. 2 to 7 are bound to appear before the learned Trial Court on each and every date, but the presence of the petitioner is not mandatory after her discharge as a witness and hence the issue of inconvenience, as raised by the petitioner, cannot be considered as a genuine ground for transfer of the G.R. Case No. 164/2018 from the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, to the Court of learned Chief Judicial

Magistrate, Hojai, Sankardev Nagar.

19. 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 proceedings and it is required to considered those petition on its merit.

20. Here in the instant case, it is seen that the transfer of the said G.R. Case No. 164/2018 will cause more inconvenience on the part of the respondents where the old aged persons as well as the ladies are also included who have to appear before the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, on each and every date till the final disposal of the said criminal proceeding. On the other hand, the presence of the petitioner is not mandatory and she can appear before the Court on subsequent dates after she being discharge as a witness on her own choice.

21. So, considering all above aspects of the case, I am of the view that the petitioner has not made out any ground to entertain this petition seeking transfer of the proceeding in G.R. Case No. 164/2018 from the Court of learned Additional Chief Judicial Magistrate, Diphu, Karbi Anglong, Assam, to the Court of learned Chief Judicial Magistrate, Hojai, Sankardev Nagar, Assam. Resultantly, I do not find any merit in this petition and accordingly the same stands dismissed.

JUDGE

Comparing Assistant