

GAHC010256102022



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

Case No. : Tr.P.(C)./123/2022

NILUFA KHATUN
W/O- JAHIDUL ISLAM, D/O- SIKDAR NURUL ISLAM, R/O- VILL.- GARALA
PAM, P.O. NIRALA, P.S. BAGHBAR, DIST. BARPETA, ASSAM

VERSUS

JAHIDUL ISLAM
S/O- IMAN ALI, R/O- F.A. AHMED NAGAR, NO. 2, MATHGHARIA, P.S.
NOONMATI, P.O. NOONMATI, GHY-781020, DIST. KAMRUP(M), ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : MR. N UDDIN

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 08-05-2023

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. N. Uddin, learned counsel for the respondent.

2. The petitioner being the wife of the respondent filed an application under

Section 24 of CPC for transfer of a case being No. T.S.(M) F.C.(Civil)/1139/2022 pending before the Principal Judge, Kamrup(M) at Guwahat to the Principal Judge, Family Court, Barpeta.

3. The case of the petitioner is that her marriage was solemnized with the respondent in the year 2014 as per Muslim Rites and Rituals. After their marriage, they lived together as husband and wife and out their wedlock two children were born. It is alleged that after birth of second child of the petitioner, the respondent demanded an amount of Rs.1 lakh as dowry and at the instigation of his parents, started to quarrel with her on some petty issues. When the petitioner refused to fulfill his demand, the respondent along with his family members started to torture her both physically as well as mentally. Somehow, the father of the petitioner managed Rs.50,000/- which was given to the respondent. But the respondent again started to torture her for remaining amount i.e. Rs.50,000/-. The father of the petitioner is very poor and failed to fulfill the demand of the respondent as a result of which the petitioner was driven out from her matrimonial home. She took shelter in the house of her parents along with her minor son who is about 2 years old.

4. It is further alleged that the respondent has not paid any money to the petitioner for her maintenance or her minor child. Finding no alternative, the petitioner filed an application under 125 Cr.P.C. for her maintenance and her minor son before the Principal Judge, Family Court, Barpeta. The petitioner also has preferred another complaint petition before the learned CJM, Barpeta under Section 12 of Protection of Women from Domestic Violence Act, 2005 vide C.R. Case No.572/2022. Subsequently, the petitioner received a notice from the Family Court, Kamrup(M), Guwahati and came to know that the respondent has filed a case before the Family Court Kamrup(M) for restitution of conjugal rights,

asking her to appear before the Family Court, Kamrup(M) at Guwahati.

5. The petitioner also stated that she is residing at Garala Pam of Barpeta district. The respondent filed the restitution of conjugal rights case in the Family Court, Kamrup(M) which is about 160 k.m. away from Garala Pam village. There is none in her family to accompany the petitioner to Guwahati. She has no income of her own. Therefore, the petitioner filed this petition to transfer the case from the Family Court, Kamrup(M) to Family Court, Barpeta.

6. The learned counsel for the petitioner has submitted that the petitioner is residing along with her minor son in the house of her parents. The father of the petitioner is very poor and he is not in a position to meet the expenses of his daughter. The petitioner has also no income of her own to travel from Barpeta to Guwahati. The petitioner used to reside in a remote area of Barpeta. Therefore, it is not possible on the part of the petitioner to appear in the Family Court, Kamrup(M) on each and every occasion for contesting the case. Hence, the case vide T.S.(M)F.C.(Civil)/1139/2022 be transferred from the Principal Judge, Family court, Kamrup(M) to the Family Court, Barpeta.

7. On the other hand, the learned counsel for the respondent submits that the respondent wants to lead conjugal life with the petitioner and he has no plan to divorce his wife. He filed a case before the Family Court, Kamrup(M) to pass order for restitution of conjugal rights with the petitioner. It is also submitted that the respondent is the only person to look after his parents. It is also difficult for him to travel from Guwahati to Barpeta to attend the proceeding of the case. Hence, the case may not be transferred from the Principal Judge, Family Court, Kamrup(M) to Family Court Barpeta.

8. I have considered the submissions made by the learned counsel for the

parties.

9. Section 24 CPC deals with general power of transfer and withdrawal. According to it, (1) on the application of any of the parties, after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may at any stage:

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same;

- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it;

- (i) try or dispose of the same;

- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; and

- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) where any suit or proceeding has been transferred or withdrawn under Section (1), the Court which is thereafter to try or dispose of such suit or proceeding, may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn;

(3) For the purpose of this Section:-

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) 'Proceeding' includes a proceeding for the execution of a decree or order;

(4) The Court trying any suit transferred or withdrawn under this Section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes; and

(5) A suit or proceeding may be transferred under this Section from a Court which has no jurisdiction to try it, which was introduced by Act 104 of 1976 with effect from 01.02.1977.

10. Keeping in mind the broader perspective of Section 24 of CPC, it is seen that in most cases, the reason for seeking transfer is that the inability of the wife to travel and appear before the Courts at distant places and to meet the expenses of the travel, are disabled to prosecute the proceedings effectively. If, for any reason, the pendency of the respondent on the file of different Courts are not withdrawn and transferred to the other Courts, which they have sought for, it amounts to depriving them to enjoy the fundamental right of access to justice.

11. 'Access to justice', in its general term, means an individual's access to court or a guarantee of legal representation. It has many fundamental elements such as identification and recognition of grievance, awareness, legal advice or assistance, accessibility to court, claim for relief, adjudication of grievance and enforcement of relief; of course, this may be the ultimate goal of a litigant public. The concept of 'access to justice' has two significant components. The first is a strong and effective legal system with rights, enumerated and supported by substantive legislations. The other is a useful and accessible judicial/remedial system easily available to the litigant public. 'Access to justice'

rests on fair treatment.

12. 'The access to justice' is and has been recognized as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens.

13. In case of ***Subramanian Swamy v. Union of India***, reported in **2016 2 Crimes(SC) 147**, the four main facets that constitute the essence of 'access to justice' are:

- i. The State must provide an effective adjudicatory mechanism;
- ii. The mechanism so provided must be reasonably accessible in terms of distance;
- iii. The process of adjudication must be speedy; and
- iv. The litigant's access to the adjudicatory process must be affordable.

14. In many cases, the Courts are liberally taking lenient view towards the wife to withdraw the pending cases at distant places and transferring the matrimonial cases to the places of choice of the wives, ignoring the rights of the husband.

15. The Hon'ble Apex Court in the case of ***Anita Kushwaha v. Pushap Sudan***, reported in **(2016) 8 SCC 509**, held that denial of withdrawal of matrimonial cases from one Court and transfer to another Court, at the request of wife would certainly infringe the fundamental right guaranteed under [Article 21](#) of the Constitution of India.

16. In view of the inability expressed by the parties to appear before the Court where matrimonial cases are pending, and the Court denies such an

opportunity to contest the petitions for withdrawal and transfer, it amounts to denial of access to justice since the judiciary has been a watch dog to protect fundamental rights of every citizen of India. Therefore, the object of transfer of cases in the Courts is only to permit the parties to access justice and get fair justice.

17. Section 22 of the CPC deals with power to transfer the suit which may be instituted in more than one Court. Where a trial of the case is lying pending before the Court and the same jurisdiction is shared by many other territorial or other Court, the defendant, who may have objection to the jurisdiction or place of trial of the Court, may after moving an application, the Court may give an opportunity to be heard and argued and then the Court may determine the merit of the case and order for instructions. In Civil cases, when a case is to obtain specific relief by a party, it is preferred to file a case within the jurisdiction of the Court under which the property or other cause of action or place where the defendant ordinarily residing or work for gain. Section 23 CPC also confers a different type of jurisdiction to withdraw the suits in one of two or more Courts and transfer to all or any such Court and such power can be exercised only after affording an opportunity to the parties to the pending matters.

18. Section 23 of CPC deals with the option of the parties to which Court the petition lies. But Section 24 of CPC deals with general power of transfer as stated above.

19. In the case in hand, it appears that the petitioner/wife has filed a case against the respondent/husband under Section 125 Cr.P.C. which is pending in the Family Court, Barpeta and another case for Domestic Violence Act, 2005 which is also pending in the court of CJM, Barpeta.

20. The petitioner has shown her inability to travel from Barpeta to Guwahati wherein the present matrimonial suit is pending in the Principal Judge, Family Court, Kamrup(M) along with her minor child and also stated that she has no income of her own and thus, it is difficult for her to meet the expenses of travel from Barpeta to Guwahati to contest the case. It appears from the record that in both the cases, summons were issued to the respondent and he has appeared before the Family Court, Barpeta and CJM, Barpeta. As the two cases are pending in the court of Barpeta, it is better to transfer the third case pending between the same parties in one district i.e. Barpeta. As the respondent used to attend the court in Barpeta in two cases, so it is not difficult for him to appear before the same court i.e. Family Court, Barpeta in connection with T.S.(M)F.C. (Civil)/1139/2022.

21. Under the facts and circumstances of the case, the prayer of the petitioner is allowed. The case No. T.S.(M)F.C.(Civil)/1139/2022 is transferred from the court of Principal Judge, Family Court, Kamrup(M) to the Family Court, Barpeta. The learned Principal Judge, Family Court, Kamrup(M) is directed to transmit the case record vide T.S.(M)F.C.(Civil)/1139/2022 along with all the documents to the Family Court, Barpeta.

22. The transfer petition stands disposed of accordingly.

23. Interim order, if there be any, stands vacated.

JUDGE

Comparing Assistant