

GAHC010049432024



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

**Case No. : Tr.P.(Crl.)/14/2024**

SMTI PURNIMA BORUAH AND ANR  
W/O SUREN BORAH, R/O VILL-HATICHUNG, P.O.-KUJIDAH, NAMATI,  
P.S.JAJARI, DIST- NAGAON, ASSAM, PIN-782412

2: MANASH JYOTI BARUAH  
S/O SUREN BORAH  
R/O VILL-HATICHUNG  
P.O.-KUJIDAH  
NAMATI  
P.S.JAJARI  
DIST- NAGAON  
ASSAM  
PIN-78241

VERSUS

NILUTPAL BORAH  
S/O SUREN BORAH, R/O CHABUA TOWN, P.O. AND P.S.-CHABUA, DIST-  
DIBRUGARH, ASSAM, PIN-786184

**Advocate for the Petitioner : ALHAJJ I UDDIN**

**Advocate for the Respondent :**

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**  
**ORDER**

**03.06.2024**

Heard Mr A I Uddin, learned counsel for the petitioners, 1) Smti Purnima Boruah

and 2) Sri Manash Jyoti Boruah, who have filed this application under Section 407 of the Code of Criminal Procedure, 1973 (CrPC, for short), read with Article 227 of the Constitution of India.

2. The petitioner No. 1, Smti Purnima Boruah is aged about 69 years and the petitioner No. 2, Sri Manash Jyoti Boruah, is aged about 33 years. It is submitted that they are permanent residents of Nagaon. The opposite party, Sri Nilutpal Baruah is the petitioner No. 1's son and brother of petitioner No. 2 and he resides at Chabua and he is an employee in the Assam Police Battalion. A case was brought up by the opposite party against both the petitioners by filing a complaint against them with allegations that both the petitioners have forged the signature of Suren Borah, the father of the opposite party and the husband of the petitioner No. 1. After forging the signature of Suren Borah, both the petitioners had allegedly withdrawn an amount of Rs. 50 lacs from the bank account of Suren Borah and a complaint was registered as CR Case No. 63/2019, registered under Sections 120(B)/420/384/294/506/34 of the Indian Penal Code, 1860 (IPC, in short).

3. On receipt of the complaint, the learned Chief Judicial Magistrate, Nagaon had transferred the case for disposal to the Court of learned Judicial Magistrate First Class, at Dibrugarh.

4. It is also apt to mention at this juncture that notices were issued to the opposite party, but the opposite party failed to appear despite delivery of notice in his address.

5. It is submitted on behalf of the petitioners that the petitioner No. 1 is an elderly lady and she is suffering from various ailments. She is surviving on medication and is unable to move without help. The petitioner No. 2 is residing as a member of a joint family along with his parents at Nagaon.

6. It is averred that prior to initiation of the complaint proceeding, the petitioner No. 2's father had paid a considerable amount to the opposite party out of the money received by the petitioner No. 2's father as pensionary benefits. The allegation is basically against the petitioners that they have withdrawn all the pensionary benefits, deposited in the account of Suren Borah, who was an employee of the APDCL, who had retired on superannuation.

7. It is further submitted that the distance from Nagaon to Dibrugarh by bus is 350 kilometres and by train, it is around 400 kilometres and it takes almost 8 hours to reach Dibrugarh and 10 hours by train.

8. It is further submitted that the petitioner No. 1 being an elderly woman of 69 years will be unable to travel regularly on each and every date fixed before the learned trial Court. Thus, the petitioners have prayed to transfer the petition, being CR Case No. 63 of 2019, as the opposite party would not experience any hurdle to travel upto Nagaon, in comparison to his mother.

9. I have perused the complaint petition.

10. It has been alleged by the opposite party that the petitioners forged the signature of

Suren Borah and they had withdrawn an amount of Rs. 50 lacs, leaving a balance of Rs. 700/- only in the account of Suren Borah. Suren Borah was not physically fit, at the time when the petitioners had committed this offence. He was subjected to cruelty by his wife, i.e., the petitioner No. 1 as well as his son, i.e., the petitioner No. 2. After siphoning of the pensionary benefits of Suren Borah, the petitioners have also purchased a vehicle of Scorpio make. The case was transferred to the Judicial Magistrate First Class, Dibrugarh, for disposal by the learned Chief Judicial Magistrate, Dibrugarh.

11. The Annexure-2 of the petition is a copy of the summonses, which have been issued against the petitioners in connection with the aforementioned case.

12. The Annexure-3 of the petition is the copy of the prescription issued by the doctor in support of the submission of the petitioners that the petitioner No. 1, is 72 years old and she is suffering from certain ailments.

13. It is apt to mention that the ailment of the petitioner No. 1 is not discernible through the Annexure-3, i.e., the prescription. However, the clinical notes reveal that the petitioner No. 1 is suffering from forgetfulness and she lies in the bed most of the time. The clinical notes cannot be considered as a certificate, certifying the ailment of the petitioner No. 1. Moreover, there is a vast difference of 3 years in the age mentioned in the petition vis-à-vis the age reflected in the Annexure-3

14. The petitioners are booked under offences triable by the Magistrate of First Class. The petitioner No. 1 can pray for dispensation of her personal attendance before the

learned trial Court. The Annexure-3 cannot be relied upon to the extent, to transfer the case from Dibrugarh to Nagaon. The place of occurrence where the cause of action arose is shown as Chabua, as it is alleged in the complaint, that the petitioner No. 2 came down to Dibrugarh and threatened the opposite party when he demanded some amount of money from his father's pensionary benefits, to purchase a plot of land at Chabua. Both the petitioners are alleged to have committed the offence at Chabua in the District of Dibrugarh.

15. In view of my foregoing discussions, it is thereby held that there appears to be no justified ground to exercise the power of this Court under Section 407 CrPC and transfer this case from Dibrugarh to Nagaon.

16. The Transfer Petition stands rejected.

17. No order as to costs.

**JUDGE**

**Comparing Assistant**