

GAHC010049672024



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

Case No. : Tr.P.(C)./23/2024

AISHA AO
WIFE OF SRI ARUP KUMAR MEDHI, RESIDENT OF 2 NO. NAOHOLLA, P.O.
NAOHOLLA, P.S. DULIAJAN, DISTRICT- DIBRUGARH, ASSAM

VERSUS

ARUP KUMAR MEDHI
S/O- SRI SIB CHARAN MEDHI, RESIDENT OF VILLAGE- TULUNGIA PART-I,
P.O. NORTH SALMARA, P.S. ABHAYAPURI, DISTRICT- BONGAIGAON,
ASSAM

Advocate for the Petitioner : MR. K D SARMA,

Advocate for the Respondent : MR J I MONDAL, MR M A ISLAM

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 26-09-2024

Heard Mr. K.D. Sharma, learned counsel for the petitioner. I have also heard Mr. M.A. Islam, learned counsel appearing on behalf of the respondent.

2. This petition under section 24 read with section 151 of the Code of Civil procedure, 1908 has been preferred by the petitioner wife seeking transfer of the divorce petition filed by her respondent husband under section 27 of the Special Marriage Act 1954 against her being registered as T.S(D) No.36/2023 (Sri Arup Kumar Medhi vs Smti Aisha Ao) from the Court of Additional District Judge (F.T.C), North Salmara, Abhayapuri Assam to the Court of District Judge Dibrugarh.

3. The learned counsel for the petitioner submits that the petitioner is the wife and the respondent is the husband and their marriage was solemnized on 30.10.2018 before the Marriage Officer, Dibrugarh under the Special Marriage Act, 1954. However, due to the marital discord between them they are now staying in different places. The learned counsel for the petitioner submits that the respondent husband had caused mental torture and physical harassment to the petitioner; the respondent even tried to kill the petitioner by strangulating her neck and also snatched away cash amount and gold necklace. It is further submitted that in the month of December 2018, the respondent was transferred to Bongaigaon and joined his duty without informing the petitioner. And when the petitioner visited Bongaigaon on 20.9.2019 to meet the respondent, to her shock and surprise she found that the respondent was already found married with one Maya Thakuriaas his second wife without giving divorce to the petitioner. On objection being raised against his second marriage, the respondent did not give any heed, the respondent instead physically assaulted and threaten the petitioner that if she come again, she would be killed.

4. The learned counsel for the petitioner submits that due to physical and mental harassment caused by the respondent, the petitioner was compelled

to stay separately and file maintenance petition before the Court of JMFC, Dibrugarh which has been registered as Case No. 21 m/2021. The said maintenance case is pending disposal before the court of JMFC, Dibrugarh. It is submitted that the respondent husband thereupon, filed a Divorce petition before the Court of Additional District Judge (F.T.C), North Salmara, Abhayapuri Assam which is registered as T.S.(D) 36/2023 seeking decree of divorce against the petitioner. It is submitted that the Divorce petition has been deliberately filed at Bongaigaon which is more than 591 kms away from Dibrugarh in order to cause unnecessary harassment to the petitioner while fully knowing that the petitioner is stationed at Duliajan under Dibrugarh.

5. The learned counsel for the petitioner further submits that the petitioner is a housewife with no independent earning source and as such, she cannot afford to bear the expense to go to Bongaigaon to attend the Divorce case in the Court of Additional District Judge Bongaigaon and at the same time to attend Court at Dibrugarh for maintenance case. Therefore, the petitioner prays to withdraw the said Divorce petition No. T.S(D) 36/2023 from the Court of Addl. District Judge (FTC) and transfer the same to the Court of District Judge, Dibrugarh. The learned counsel for the petitioner submits that the respondent is a government employee working as Constable at CISF having posted at Bongaigaon. Further, the maintenance case filed by the petitioner is pending before the Court of JMFC, Dibrugarh where the respondent is appearing for trial. As such, no prejudice would be caused to the respondent if the above-mentioned Divorce case is transferred from the Court of Additional District Judge (F.T.C), North Salmara, Abhayapuri Assam to the Court of District Judge, Dibrugarh.

6. On the other hand, the learned counsel for the respondent while referring to the affidavit-in-opposition filed by the respondent submits that the respondent was a CISF Constable and in the year 2018, he was posted at Dibrugarh on deputation. During the period of posting at Dibrugarh, the petitioner and the respondent came to know each other through social media and out of friendship, the petitioner called the respondent to her house and started blackmailing him to marry her. Accordingly, on 30.10.2018, the petitioner and the respondent solemnized their marriage before the Marriage Officer Dibrugarh. But in the meantime, the respondent was transferred to CISF 106 Company at Abhayapuri. The learned counsel for the respondent further submits that due to the FIR lodged against the respondent, the respondent was arrested and sent to jail custody. Thereafter, a departmental proceeding was drawn against the respondent and finally the respondent was removed from his service by the Disciplinary Authority by order dated 5/6/2020.

7. The learned counsel for the respondent further submits that due to irretrievable breakdown of their marriage, the respondent file Divorce petition against the petitioner before the Additional District Judge (F.T.C), North Salmara, Abhayapuri Assam. However, due to non-appearance of the petitioner, the suit proceeded ex-parte against the petitioner and now the suit is pending for ex parte evidence. It is further submitted that the safety of the petitioner can be resolved by availing VDO conference facility in the learned Court below at Abhayapuri and in the event of the VDO conference facility is provided the petitioner can attend the hearing from her local district. It is further submitted that the financial status of the petitioner to travel from Duliajan to Abhayapurican also be resolved by claiming travelling

cost from the respondent party to appear in the suit at Abhayapuri. For the reasons stated above, the learned counsel for the respondent submits that the petitioner is not entitled for any relief.

8. Heard the learned counsel for the parties and perused the materials available on records and considered.

9. Upon perusal of the record, it appears that the respondent husband has filed a divorce petition under section 27 of the Special Marriage Act, 1954 seeking a decree of divorce on the ground of cutely and irretrievable breakdown in their marriage. The said petition is pending before the Court of District Judge at Abhayapuri, whereas the maintenance petition filed by the petitioner for her maintenance is pending before the Court of JMFC, Dibrugarh. Under the above circumstances, It appears that the evidence produced to prove his case in the divorce petition and evidence in the maintenance petition under section 125 CPC more likely would be common. For the convenience for both the parties and the witnesses likely to appear in those two cases, this Court is of the opinion as far as possible the two cases should be tried in one station.

10. Having regard to the contention raised by the learned counsel for the parties and on consideration of the grounds raised by the petitioner, this Court deems it fit to allow the present transfer petition. As a result, the transfer petition is allowed.

11. Accordingly, the T.S.(D) 36/2023 (Sri Arup Kumar Medhi vs Smti Aisha Ao) pending before the Court of Additional District Judge (F.T.C), North Salmara, Abhayapuri Assam is ordered to be transferred to the Court of District Judge Dibrugarh for further trial and disposal. The parties are

directed to appear before the transferee Court at Dibrugarh on 28.10.2024 with the copy of this order and thereafter, the District Judge at Dibrugarh shall regulate the hearing of the case.

12. With the above observation, the transfer petition stands disposed of.

JUDGE

Comparing Assistant