

GAHC010058702023



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

Case No. : Tr.P.(C)./25/2023

RINA RABI DAS
D/O- DEVAKANTA RABI DAS, W/O- SRI KAMAKHYA DAS, R/O- HATIGAON,
P.O. KUWARITUL, P.S. KALIABOR, DIST. NAGAON, ASSAM

VERSUS

KAMAKHYA DAS
S/O- LATE RAM SINGH DAS, R/O- FONEY ALI, WARD NO. 2, JORHAT, P.O.,
P.S. AND DIST. JORHAT, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : DR. R SARMAH

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 22.01.2024

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Dr. R. Sarmah, learned counsel for the respondent.

2. The petitioner being the wife of the respondent filed an application under Section 24 of CPC, 1908 praying to transfer the case vide M(TS)164/2019 filed

under Section 13(1)(ia) of Hindu Marriage Act, 1955 pending in the court of Addl. District Judge, Jorhat to the court of learned District Judge, Sonitpur at Tezpur.

3. The case of the petitioner is that the petitioner got married to the respondent/husband on 28.04.2016. After their marriage, they started to live together as husband and wife but the youngest sister of her husband misbehaved with the petitioner regarding goods given as dowry. When it was intimated by the petitioner to her husband, he also abused and physically tortured her. In spite of such physical and mental torture, the petitioner stayed in her matrimonial house till 19.01.2018. Thereafter, she was compelled to leave the house of her husband and started to live along with her parents at Kaliabor.

4. Subsequently, the petitioner filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 before the JMFC, Kaliabor which has been registered as D.V. 77/2019 and the case is still pending.

5. According to learned counsel for the petitioner, by concocting a false story to the effect that the petitioner had left her matrimonial house on her own and had not returned back in spite of repeated requests made by the respondent/husband and thereafter, the respondent filed a divorce case before the court of District Judge, Jorhat for dissolution of their marriage by a decree of divorce. In fact, in order to avoid paying maintenance to the petitioner, the respondent filed the divorce case.

6. It is submitted by the learned counsel for the petitioner that the parents of the petitioner are old aged and ailing and are unable to accompany her to Jorhat for contesting the case and also her younger brother who after his

marriage is living separately with his family. It is also submitted that the petitioner has no income of her own and her parents are also not such affluent. For all such reasons, the petitioner is presently not in a position to attend the court of District Judge, Jorhat for proceeding of the divorce case. The learned counsel for the petitioner also has submitted that though the petitioner has preferred an application to transfer the case in the court of District Judge, Tezpur at Sonitpur but she has no objection if the case is transferred to the court of District Judge, Nagaon which is also similar distance from Kaliabor.

7. The learned counsel for the respondent has filed a written objection by stating that the petitioner did not appear before the court on a number of occasions and cost was imposed on the petitioner on several occasions. However, one PW was cross-examined and discharged by the learned trial court. It is also submitted that the petitioner has been living at present at Kuworitol, Kaliabor, in the district of Nagaon which is only two hour journey from Jorhat. According to learned counsel for the respondent, the petitioner belongs to a well-to-do family having sufficient income of her parents but suppressing the financial status of the parents, the petitioner has been trying to mislead this Court to gain undue sympathy. Therefore, it will not be difficult for the petitioner to go to Jorhat to attend the court proceeding. Learned counsel for the respondent further stated that as there being no sufficient and cogent ground to transfer the matrimonial suit from the court of Jorhat to Tezpur, hence, the transfer petition is liable to be dismissed.

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

9. The convenience of a party in a matrimonial matter is one of the relevant factors for consideration of a transfer petition. This view finds support from the

judgments passed in the cases of Jyoti Bangde v Sanjay Bangde, reported in 2010 (4) MPLJ 391, Rajkumar v. Saroj, reported in 2010 (2) MPLJ 256 and the judgment passed by the Hon'ble Apex Court in the case of Kulwinder Kaur v. Kandi Friends Education Trust and Ors., reported in 2008 (3) SCC 659. Further, this view is fortified by the judgment of the Apex Court in the case of Tejalben v. Mihirbhai Bharatbhai Kothari, AIR 2016 SC 718 where the Apex Court transferred the matrimonial matter from Rajkot to Jamnagar on the ground that the parties were participating the other proceedings at Jamnagar.

10. Admittedly, one D.V. Case vide No. 77/2019 is pending between the parties in the court of JUMFC, Kalibor in the district of Nagaon. On being asked, the learned counsel for both the parties are on agreement that they have no objection if the case vide M(TS) 164/2019 is transferred from the court of Addl. District Judge, Jorhat to the court of District Judge, Nagaon. Accordingly, the case M(TS)164/2019 pending in the court of Addl. District Judge, Jorhat is transferred to the court of District Judge, Nagaon.

11. The Addl. District Judge, Jorhat is directed to send the case record along with the relevant documents to the District Judge, Nagaon, for further proceeding of the case.

12. With the above observation, the transfer petition vide No. Tr.P. (C)/25/2023 is disposed of accordingly.

JUDGE

Comparing Assistant