

GAHC010065732022



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

Case No. : Tr.P.(Crl.)/5/2022

MADHAB DUTTA
S/O LATE KHUDHAR DUTTA
R/O VILL- MADHABPUR
P.S. NARAYANPUR
DIST. LAKHIMPUR, ASSAM
PIN-784164

VERSUS

MIRA SAIKIA DUTTA
W/O MADHAB DUTTA
D/O HIRAESWAR SAIKIA
R/O NO. 1 NOT GAON
P.S. NARAYANPUR,
DIST. LAKHIMPUR, ASSAM

Advocate for the Petitioner : MS. S G BARUAH

Advocate for the Respondent : MR T N SRINIVASAN

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 28-02-2024

Heard Ms. S. G. Baruah, learned counsel for the petitioner.

2. No one represented on behalf of the respondent though earlier two counsels appeared on behalf of the respondent and also filed their Vakalatnama, however, the respondent did not file any affidavit-in-opposition.

3. This application, under Section 407 of the Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India praying for transfer of F.C.(Crl.) Case No. 406/2021 pending before the Court of learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati to the Court of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

4. It is submitted by the learned counsel for the petitioner, Ms. Barua, that the petitioner is the husband of the respondent and they got married on 20.10.1998 as per the Hindu Rites and Rituals and two children were born out of their wedlock namely, Raj Pratim Dutta aged about 16 years and Devasmrita Dutta aged about 15 years, both the children are presently residing with the petitioner at Harmoti and they are studying at Gyanjyoti Academy, Narayanpur, Lakhimpur. It is contended by the petitioner that after birth of their daughter, the respondent became an LIC agent and since 2014 she totally changed her behavior towards the family and for which frequent altercations took place between them. Further, the respondent was terminated from the LIC office in the month of December' 2014 for her such behavior and conduct, however, she

never intimated about her termination to his husband/petitioner. Subsequently, the petitioner came to know about her termination from the LIC Office only in the month of June, 2017, and till then, he believed that the respondent to be an employee under the LIC and for which she might be frequently traveling. Thereafter, the respondent prepared some forged document by forging the signature of the petitioner and misappropriated a good amount of money for which he had to lodge an FIR against her; in this connection, the respondent was under custody for two months and accordingly, the case was charge-sheeted. Thereafter, also the respondent committed several misdeeds, but the petitioner tolerated all such cruelty of the respondent only for the sake of his children. Further, for such cruelty and mental harassment, the petitioner even attempted to commit suicide on 18.04.2017 but, he was saved by his son. Subsequently, when the torture and behavior of the respondent was unbearable, the petitioner filed a petition under Section 13(1) of the Hindu Marriage Act, 1955 for the dissolution of marriage between the petitioner and the respondent before the Court of learned District Judge, North Lakhimpur, Lakhimpur which was numbered as Title Suit (D) No. 14/2021. On 19.02.2021, the Trial Court issued notice to the respondent and after receipt of the notice on 30.10.2021, she entered appearance before the learned District Judge, Lakhimpur, and also filed her written statement on 18.02.2022.

5. During pendency of the divorce case, the respondent only with a view to harass the present petitioner lodged a case under Section 125(1) (d) of Cr. P. C. seeking maintenance before the Court of learned Principal Judge Family Court, Kamrup (M), Guwahati, which was numbered as F. C. (Crl) No.406/2021. In this connection, notice was issued to the petitioner and the next date was fixed on 06.04.2022 for appearance and filing of the written statement.

6. Ms. Baruah, learned counsel for the petitioner has submitted that the petitioner is working as an Assistant Teacher in Narayanpur, Adarsha Higher Secondary School and at present, both the children are staying with him, as the respondent left the petitioner's house on 15.11.2018; she also has no emotions for her children. She further submits that the respondent is residing in her father's house at No.1 Not Gaon, and with that regard one certificate dated 09.03.2022 and 20.03.2022 are issued by Gaon Pradhan of the petitioner's village and the respondent's village, and thus, only to harass the present petitioner, she lodged the F.C. (Crl.) 406/2021 before the learned Principal Judge, Family Court, Kamrup (M), Guwahati.

7. Further, she submits that the petitioner being the government employee and also having the responsibility of two children, he is not in a position to appear before the Court of learned Principal Judge, Family Court, Kamrup (M), Guwahati in each and every date fixed and hence, considering the entire facts and circumstances of this case as well as to avoid multiple proceedings before the different District Courts, the present petition has been filed seeking for transfer of the F.C. (Crl.) 406/2021 filed under Section 125(1) (d) of Cr. P.C. to the Court of learned CJM, North Lakhimpur.

8. The learned counsel for the petitioner, Ms. Baruah has submitted that, earlier, the respondent appeared before the learned District Judge, North Lakhimpur in connection with Title Suit (D)14/2021 and thus, no prejudice will be caused to her as she hails from North Lakhimpur and presently she is residing at her father's house at Lakhimpur. Nevertheless, it will be harassment for the petitioner to frequently visit to Guwahati for his appearance before the Court of learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati by

travelling such a long distance as well as by leaving his minor children and also being a Government employee who is discharging his duty as a teacher in Higher Secondary School, Lakhimpur.

9. After hearing the submissions made by the learned counsel for the petitioner, I have perused the case record which reveals that the criminal case is pending as well as charge-sheeted against the respondent and apart from that, the petitioner has brought several other allegation about the misdeeds and mental harassment, committed by the respondent, and for which reason, he even attempted to commit suicide. Thereafter, finding no other alternative and for the sake of his children, the petitioner lodged a case under Section 13(1) of the Hindu Marriage Act, 1955 for dissolution of their marriage, which is pending before the Court of learned District Judge, North Lakhimpur, Lakhimpur being numbered as Title Suit (D) No. 14/2021. Accordingly, during the pendency of the said divorce case, the respondent lodged a case seeking for maintenance under Section 125(1) (d) of Cr. P. C. before the Court of learned Principal Judge Family Court, Kamrup (M), Guwahati, which was numbered as F. C. (Crl) No.406/2021.

10. From the submission made by the learned counsel for the petitioner, it is seen that the respondent is presently working in a private institution, however, she hails from Lakhimpur and at present, she is residing at her parents' home situated at Lakhimpur. More so, she also appeared in the case filed by the petitioner for divorce which is pending before the Court of learned District Judge, North Lakhimpur, Lakhimpur. It is also seen that both the minor children are presently residing with the petitioner and he has the burden of his two children and apart from that he is a Government servant and thus, he may face

difficulty in appearing before the Court of learned Principal Judge Family Court, Kamrup (M), Guwahati, on each and every date fixed; by travelling such a long distance and leaving his children alone. Further one divorce suit is pending before the learned District Judge, North Lakhimpur, wherein, the present respondent is also facing the trial and hence, it may not be inconvenient for her to appear before the Court of learned Chief Judicial Magistrate, North Lakhimpur, if the case is transferred from the Court of learned Principal Judge Family Court, Kamrup (M), Guwahati.

11. Further, it has been observed by the Hon'ble Apex Court and other High Courts that while considering the application for transfer of cases involving matrimonial relation, the wife should be given priority, when she has no source of income. But, here in the instant case, the allegation brought against the respondent is that; due to her continuous mental and physical torture and for her several misdeeds, the petitioner had to institute a divorce case against the respondent seeking dissolution of their marriage and that apart both the minor children are presently staying with the petitioner. As one case is already pending before the learned District Judge, North Lakhimpur, wherein, the respondent is also facing trial, I find that transferring the case before the Court of learned Chief Judicial Magistrate, Lakhimpur will not cause any prejudice to the respondent, as presently she is staying at her parents' home in Lakhimpur.

12. Considering the entire facts and circumstance of the case and also considering the inconvenient position of the petitioner, I find it appropriate to transfer the maintenance case filed under Section 125(1) (d) of Cr. P. C. pending before the learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati to the Court of learned Chief Judicial Magistrate, North Lakhimpur.

13. Accordingly, the learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati is hereby directed to transfer the case records to the Court of learned Chief Judicial Magistrate, North Lakhimpur with a direction to the parties to appear before the Court of learned Chief Judicial Magistrate, North Lakhimpur on a date fixed by the concerned Court. The learned Chief Judicial Magistrate, North Lakhimpur will accordingly fix a date after receiving the records of F. C. (Crl) No.406/2021 from the learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati.

14. In terms of above, this Transfer petition stands disposed of.

15. Sent a copy of this order to the respective learned Courts below.

JUDGE

Comparing Assistant