

GAHC010201942024



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

Tr.P.(Crl.)/10/2023

BINOD PRASAD KURMI
S/O LAXMAN PRASAD KURMI
R/O MORIKOLONG CHARIALI
P.S.-MORIKOLONG
DIST-NAGAON
ASSAM
PIN-782001

VERSUS

MONIKA RAI
D/O RAM NARAYAN RAI
W/O BINOD PRASAD KURMI
R/O WARD NO. 5
BOKAJAN
P.S. AND P.O.-BOKAJAN
DIST-KARBI ANGLONG
ASSAM

Advocate for : S AHMED
Advocate for : MR. A ALI appearing for MONIKA RAI

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 08.11.2024

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. B. Ahmed,

learned counsel for the respondent.

2. The petitioner has preferred this application u/s 407 of Cr.PC, 1973 praying for transfer of DV case No. 08/2022 u/s 12 of the Protection of Women from Domestic Violence Act and Misc case no. 07/2022 under Section 125 CrPC, pending in the court of learned SDJM, Bokajan, Karbi Anglong to the court of learned SDJM, Nagaon.

3. The case of the petitioner is that the petitioner got married to the respondent on 28/01/2013 and after their marriage they led peaceful conjugal life for some years and out of their wedlock one female child was born. Subsequently, there was a sudden change in the nature of the respondent and thereby resulting in conflict between the two which resulted in filing of Domestic violence case in the court of learned SDJM, Bokajan. After filing of DV case, the respondent also filed a case claiming maintenance u/s 125 of Cr.PC, vide misc case no. 07/2022 in the court of learned SDJM, Bokajan.

4. It is also the case of the petitioner that even previously the respondent had filed a maintenance case against the petitioner vide misc case no. 18/2018 in the court of JMFC, Diphu but the said case was disposed of due to non-appearance of the respondent.

5. According to learned counsel for the petitioner, the petitioner has been continuously receiving threats from the family members of the respondent who are the local person of the Karbi Anglong district, asking the petitioner not to enter into their district otherwise he would face dire consequences and as such, the petitioner apprehends unfair trial of the case.

6. It is further submitted that due to long distance between Nagaon and

Bokajan which needs a travel of eight hours by car, it is difficult for the petitioner to attend the court on each and every date. If the aforesaid cases are not being transferred, the petitioner will be highly prejudiced and will suffer irreparable loss and injuries as there is every possibility of unfair trial, thereby, resulting in miscarriage of justice.

7. On the other hand, learned counsel for the respondent has submitted that the respondent is physically handicapped having 75 % disability who is suffering from eye disease and unable to see properly. It is further contended that since after the marriage between the parties, the petitioner used to torture the respondent physically as well as mentally on demand of dowry articles. After birth of her child, the respondent was driven out from the house of the petitioner. Finding no other alternative, she took shelter in the house of her parents who are also unable to maintain her and her child.

8. It is also the submission of learned counsel for the respondent that at present the age of the daughter of the respondent is 11 years and she is a student of class five of RG LP school, Bokajan. The petitioner did not provide any maintenance towards his wife and daughter. According to the learned counsel for the respondent, the respondent being a lady, having 75% disability in her eyes, it will be difficult for her to attend the court in Nagaon along with her minor daughter, if the aforesaid cases be transferred from the court of Bokajan. Under such backdrop, the learned counsel for the respondent prays for dismissal of the transfer petition.

9. On careful perusal of averments made in the affidavit filed in support of the petition and the counter, it is found that the relationship between the petitioner and the respondent is not in dispute. It is also not in dispute that the

petitioner started living with her parents. However, the contention of the petitioner/ husband is that the family members of the respondent used to threat him by stating that if he enters into the district of Karbi Anglong, he would be victimized. The respondent is a young lady having a minor daughter and she has no income of her own. Whereas the petitioner is an able bodied person, competent to earn his livelihood.

10. In the instant case, except making allegation that the family members of the respondent/ wife had threatened the petitioner when he went to the Bokajan court on the date fixed for his appearance but it is interesting to note that the petitioner did not mention any specific date when he was threatened by the respondent or her family members.

11. It is not the case of the petitioner that he has been paying maintenance or that the respondent is only residing at Bokajan in her parent's house and intentionally filed those cases to harass the petitioner. It is also noted that though the petitioner was threatened on marriage discord between the parties but the petitioner did not lodge any FIR in connection with the said incident. Even if any such threat is given, the petitioner is at liberty to initiate the appropriate legal action against the respondent or her family members.

12. In this context, I may refer to the judgment of the Hon'ble Supreme Court of India in **Sangeetha alias Shreya v. Prasant Vijay Wargiya, reported in (2004) 13 SCC 407**, wherein it is held that if any threat perception is given to the respondent/husband, he is always at liberty to lodge a report before the police concerned or to complain before the concerned Court. If any such complaint is made, it will be considered by the Court or by the concerned police on its own merits. It is further held that between husband and wife, the

convenience of the wife must prevail.

13. In ***N.C.V. Aishwarya v. A.S. Saravana Karthik Shah, reported in (2022) Live Law (SC) 627***, the Apex Court while dealing with the similar facts held that the applicant/wife who is young lady aged about 21 years staying alone along with her aged parents, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the respondent/husband seeking annulment of marriage. Accordingly, considering the convenience of the wife transferred the matter from the Family Court, Vellore to the jurisdictional Family Court at Chennai.

14. The Apex [Court further held](#) that *"the cardinal principle for exercise of power under [Section 24](#) of C.P.C. is that ends of justice should demand the transfer of the suit, appeal or other proceedings and in matrimonial disputes whenever courts are called upon to consider the plea of transfer, the courts have to take into consideration the social strata of the spouses, their behavioral pattern, their standard of life prior to marriage and subsequent thereto and circumstances under which both the parties are eking out their livelihood and under whose protective umbrella they are seeking their sustenance and that given the prevailing socio economic paradigm in the Indian society generally it is the wife's convenience which must be looked into while considering the transfer application."*

15. Under the facts and circumstances of the case and considering the principles laid down by the Apex court in the above decisions, this court is of the opinion that the petitioner has failed to make out a case to transfer of the aforesaid cases from the court of Bokajan to the court of Nagoan.

16. In the result, the transfer petition filed by the petitioner is dismissed. The stay Order dated 28/04/2023 passed by this court is hereby vacated. The transfer petition is disposed of accordingly. The trial court will proceed with the cases in accordance with law.

JUDGE

Comparing Assistant