

GAHC010082552023



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

Case No. : Tr.P.(Crl.)/8/2023

RAJDEEP BHUYAN @ RAJDIP BHUYAN
S/O LT. LAKHI BHUYAN
R/O HOUSE NO. 48, ANANDA NAGAR,
SIXMILE, DIST. KAMRUP (M), ASSAM, PIN-781022

VERSUS

SARKIRIBINI HANSE AND ANR
S/O SARET HANSE
R/O VILL- DIPHU, NEAR GOOVT. BOYS HIGH SCHOOL, P.O. AND P.S.
DIPHU, DIST. KARBI ANGLONG, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE PP
ASSA

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 20-05-2024

1. Heard Mr. I.H. Saikia learned counsel for the petitioner.
Also heard Mr. A Phukan learned counsel for the respondent No.1.
2. The present petition is filed under section 407 Cr.P.C, 1973

Cr.P.C praying for transferring of NI Act Case No.04/2022 pending before the learned Chief Judicial Magistrate, Diphu, Karbi Anglong to any other courts in Assam.

3. The basic ground for seeking such transfer is that the commercial transaction for which the alleged cheque was issued, did take place outside Diphu and therefore, the Diphu court shall have no jurisdiction to entertain such application.

4. Further ground is that the petitioner got infected from Covid 19 virus for a prolonged period and his lungs were damaged and therefore, it may not be possible for him to travel to Diphu to contest the case.

5. Yet another ground is that the dispute for which the cheque was allowed to have been issued arises out of a contractual liability and therefore, a criminal case is not maintainable inasmuch as the amount has not become due.

6. It is also contended that there is imminent threat to the life and property of the petitioner in Karbi Anglong. In support of such contention, the petitioner has referred to a Whatsapp communication between the petitioner and the complainant to suggest that the petitioner was threatened by the accused.

7. Per contra, Mr. Phukan learned counsel for the respondent No.2 submits that in terms of sub-section (2) of section 142 of the NI Act, the learned CJM Diphu is having jurisdiction to entertain such petition inasmuch as the bank, where the cheque was presented by the complainant/respondent is situated at Diphu.

8. He further contends that there is no threat to the petitioner

and the complainant is a law abiding citizen and he will not give any threat, inasmuch as the whatsapp message referred by the learned counsel for the petitioner cannot be said to be a threat to the petitioner and such message was forwarded out of frustration as the petitioner did not return back the money.

9. I have heard the learned counsel for the parties.

10. Sub-section 407 Cr.P.C empowers high court to transfer case and appeals when it appears to the high court that a fair and impartial enquiry or trial cannot be held in any criminal court subordinate thereto or that some question of law of unusual difficulty is likely to arise or that an order under the said section is required will tend the general convenience of the parties or witnesses or is expedient for ends of justice.

11. Section 142 of the NI Act, 1881 deals with cognizance of the offences. Sub-section (2) of section 142 provides that offences under section 138 shall be enquired into and tried only by a court, amongst others, in the event the cheque is delivered for collection through an account of the branch of the bank, where the payee or the holder in due course, as the case may be, maintains the account is situated.

12. Admittedly in the case in hand, the cheque issued in favour of the complainant was presented by the complainant in Diphu branch of SBI, where the complainant maintains an account. Therefore the contention of Mr. Saikia that the Diphu court shall have no jurisdiction, cannot be accepted in view of the aforesaid clear provisions of law.

13. It is by now well settled that for transfer of a criminal case, there must be reasonable apprehension on the part of the party that

justice will not be done. It is one of the principles of administrative of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegation that there is apprehension that justice will not be done in a given case, does not suffice; in other words, the court has further to see whether apprehension alleged is reasonable or not.

14. It is also well settled that assurance of a fair trial is the first imperative of the dispensation of justice and the central criteria for the court to consider when a motion of transfer is made is not the hyper sensitivity or relative convenience of a party, easy availability of legal services but something more substantial, more compelling, more impelling from the point of view of public justice and its attendant environment is necessary, if the court is to exercise the power of transfer.

15. Now coming to the life threat as alleged, the materials available on record do not disclose that there is such imminent threat which may create a situation, where fair and impartial trial cannot be held by the Diphu court. Therefore, in the considered opinion of this court the present is not a fit case to exercise power under section 407 Cr.P.C. Accordingly, the present petition stands dismissed.

16. The interim order passed earlier stands vacated.

JUDGE