



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Transfer Petition (C) No. 46/2024

Sajida Jesmine,
D/o Faizul Haque,
R/o Juhir Kandi,
P.O. - Jadutilla,
PIN - 788720,
P.S. & District – Karimganj, Assam.

.....Petitioner.

-Versus-

Abdul Hashim,
S/o Mozir Uddin,
R/o Alamkhani, PO & PS-Nilambazar,
PIN - 788722,
District – Karimganj, Assam.

Temporary Address :-

House No. 52, South Sarania,
P.O. - Ulubari,
P.S. - Paltanbazar, Guwahati 781007,
District - Kamrup (M) Assam.

.....Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the petitioner	:-	Mr. N. Haque.
For the respondent	:-	Mr. P.K. Deka.
Date of hearing	:-	06.08.2024.
Date of Judgment & Order	:-	16.08.2024.

JUDGMENT & ORDER

Heard Mr. N. Haque, learned counsel for the petitioner and Mr. P.K. Deka, learned counsel for the sole respondent.

2. This petition, under Section 24 read with Section 151 of the Code of Civil Procedure (C.P.C.), 1908, is preferred by Smti. Sajida Jesmin for transferring F.C. (Civil) Case No. 301/2024, pending before the court of learned Principal Judge, Family Court Kamrup (M) Guwahati to the court of learned District Judge, Karimganj.

The background facts:-

3. The background facts leading to filing of the present petition are briefly stated as under:-

“The petitioner got married with the respondent/opposite party on 02.12.2018, as per Muslim Sariat. After marriage, they have started their conjugal life at the permanent resident of the respondent/opposite party at

village Alamkhani in the district of Karimganj. In the marriage she was gifted with articles by her father as per his capacity. But, the family members of the respondent/opposite party were not satisfied with the said articles. The respondent/opposite party is working at Dubai for longtime, even prior to marriage. Out of their wedlock a girl child was born and now she is 2 & ½ years old. The respondent/opposite party used to come to his native village at-least once in a year and accordingly, on 23.05.2022, he came to his resident and stayed with the petitioner and after living few days with the petitioner, he wanted to meet one Smti Begum Sahin Habiba @ Babli at Guwahati, with whom he has maintained an extra-marital affairs and the petitioner has objected to the said extra-marital affairs. Then, on 25.05.2022, the petitioner was beaten by her husband (respondent/opposite party) and she received head and chest injury and for which she was undergoing treatment at Nilambazar P.H.E. and she was advised to do C.T. Scan and X-Ray of chest.

Thereafter, on 12.07.2022, the respondent/opposite party returned to Dubai and thereafter, on 23.07.2022, family members of the respondent/opposite party assaulted the petitioner, demanding Rs. 10,00,000/- as dowry and driven her away from the matrimonial home

with the minor child. Then, the petitioner was taking shelter in her parental home and since then, she has been living with her parents and she was treated at Karimganj Civil Hospital on 24.07.2022 and doctor prescribed her medicine for her physical injury and also advised her to do C.T. Brain(P).

On many occasions the petitioner was harassed both physically and mentally by the respondent and his family members, more particularly on 25.05.2022 and on 23.07.2022. After the incident of 23.07.2022, the petitioner lodged an ejahar before the Officer In-Charge, Nilambazar P.S. and also filed a complaint case, being C.R. No. 553/2024, before the learned Chief Judicial Magistrate, Karimganj, under Section 498(A) of the Indian Penal Code (I.P.C.).

In the meantime, the respondent also filed a petition under Section 281 of the Mahammadan Law, praying for restitution of conjugal life, before the learned Principal Judge, Family Court Kamrup (M) Guwahati, which was registered as F.C.(Civil) Case No. 301/2024 and the petitioner received notice to appear before the said court on 18.05.2024.

It the said case, the respondent stated that he is the original resident of Alomkhani village, under

Nilambazar P.S. of Karimganj district and he served in various corporate sectors of Guwahati and thereafter, he had shifted to UAE, Dubai, wherein he is presently working. It is further stated that the marriage of the petitioner with the respondent was solemnized at Karimganj and they have started their conjugal life at Karimganj and the child was also born at Karimganj and she was driven out from the matrimonial home at Karimganj and all the cause of action of the case were arose at Karimganj.

In view of aforementioned facts and circumstances, the learned Principal Judge, Family Court Kamrup (M), Guwahati, has no jurisdiction to try the said case.”

Therefore, it is contended to transfer the F.C. (Civil) Case No. 301/2024, pending before the Court of learned Principal Judge, Family Court Kamrup (M) Guwahati to the court of learned District Judge, Karimganj.

4. The respondent has filed affidavit-in-opposition and denied the averments made by the petitioner in the petition. It is stated that on 23.07.2022, the respondent came to India to meet his family members and reached his native place. It is further stated that the allegation of maintaining an extra-marital affair with another lady, i.e. the cousin sister of the petitioner, is false. It is

also stated that beating the petitioner for protesting such elicited relationship is absolutely false and concocted. It is also stated that rather, the respondent and his family members are very much willing that the petitioner, i.e. the wife of the respondent, and their child, to leave for Dubai with the respondent and for which the respondent had already obtained Passport of the petitioner, but, he could not obtain the Passport for their child due to non-cooperation of the petitioner and her family members. It is also stated that due to instigation and misdirection, the petitioner had filed the case against the respondent. It is also stated that the respondent is ready to accept the petitioner and their child and also to take them to Dubai. It is also stated that if the case is transferred to the court of learned District Judge, Karimganj, then there is every possibility of being influenced by the third party and in that case, his marital life would be ruined and there will be no prospect for reconciliation and therefore, it is contended to dismiss the petition.

Submissions :-

5. Mr. Haque, learned counsel for the petitioner submits that cause of action if any, arises within the jurisdiction of District Judge, Karimganj and marriage was solemnized within the jurisdiction of District Judge, Karimganj and the parties also, after the marriage lived within the jurisdiction of District Judge, Karimganj and at no point of time, the petitioner used to reside with the respondent at Guwahati, though the address of the respondent is

shown at Guwahati. Mr. Haque further submits that the respondent used to reside at Dubai and he used to visit occasionally his native place and that the petitioner has a little child of two and half years old and she lived in her parental house and she has no source of income and she is financially unsound and that the witnesses of the case also resides at Karimganj and as such, it is not possible on her part to appear before the Family Court at Guwahati and also not possible on the part of the witnesses to undertake such an arduous journey from Karimganj to Guwahati by covering a distance about 350 km and as such, the balance of convenience is always in favour of the petitioner and therefore, it is contended to allow the petition. Mr. Haque has referred a decision of this Court in **Jhuma Kaibarta vs. Dadhichi Kaibarta**, in **Tr.P.(C)./31/2023**, wherein this court has allowed the petition filed by the petitioner wife to transfer T.S.(M) No.140/2022 from Sivasagar to Cachar where the petitioner resides.

6. On the other hand, Mr. Deka, learned counsel for the respondent submits that the respondent has shown his address at Guwahati in the case filed before the Family Court at Guwahati. Mr. Deka further submits that the respondent is willing to take back the petitioner and her daughter and that the respondent managed the passport of the petitioner, but he could not manage the passport of his daughter and therefore, he could not be able to take them to Dubai to live with him. Mr. Deka also submits that if the case is

being tried at Guwahati in the Family Court, there is every possibility of ending the case in compromise, otherwise there is less possibility of compromise of the case, if the case is transferred to Karimganj, as there is influence of third party on the petitioner and therefore, it is contended to dismiss the petition. Mr. Deka also submits that the respondent resides at Dubai and it would be convenient for him to attend the proceeding at Guwahati and that he will also bear the expenditure of travelling of the petitioner from the Karimganj to Guwahati. Mr. Deka has referred one case law of Gujarat High Court, in **Jayshreeben Pravinbhai Algothara vs. Chintan Kumar Kalyanbhai**, in **Civil Appeal No. 932/2019**, and another decision of this court in the case of **Rosalind Margaret Baksh vs. District Judge Golaghat**, reported in **2004 (2) GLT 126**.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the relevant provisions of law.

Legal Frame Work:-

8. Section 24 of the C.P.C. provides for transfer of a suit. It reads as under:-

- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of

its own motion without such notice, the High Court or the District Court may at any stage

- (a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
 - (b) Withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which ¹[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.
- (3) For the purposes of this section,
- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) Proceeding includes a proceeding for the execution of a decree or order].

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

9. The relevant provision herein this case is 24(1)(ii) of CPC. Before a discussion is directed into the issue it would be in the interest of justice to understand the principles, governing transfer of cases, presently occupying the field.

10. In the case of **Indian Overseas Bank vs. Chemical Construction Company**, reported in (1979) 4 SCC 358, while dealing with consideration that has to be taken into account for transferring a case, the Hon'ble Supreme Court has held as under :-

“16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of

prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

17. As compared with Section 24, the power of transfer of civil proceeding to another court, conferred under the new Section 25 on the Supreme Court, is far wider. And, so is the amplitude of the expression, “expedient in the interest of justice” which furnishes a general guideline for the exercise of the power. Whether it is expedient or desirable in the interest of justice to transfer a proceeding to another court, is a question which depends on the circumstances of the particular case.”

11. There is, however, unanimity of opinion that ‘*balance of convenience*’ is the prime consideration for transfer of a suit. The expression “*balance of convenience*” has inspired profound legal thought and has acquired the gloss of many judicial interpretations. Restated in simple terms it is a question of fact in each case. ‘*Balance of convenience*’ is neither the convenience of the plaintiff alone nor of the defendant alone but the balance of convenience of both. In determining the balance of convenience for the trial of a suit, the Court has to take into consideration the following:-

“(1) Convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forum;

- (2) Convenience or inconvenience of the defendant;
- (3) Convenience or inconvenience of the witnesses required for a proper trial of the suit;
- (4) Convenience or inconvenience of the particular place of trial having regard to the nature of the evidence on the main points involved in the suit and also having regard to the doctrine of 'forum convenience'; and
- (5) Nature of issues in the suit.” (Ref. Baburam Agarwalla vs. Jamunadas Ramji And Co. reported in AIR 1951 Cal 239)

12. Again, in the case of *Mrs. Maneka Sanjay Gandhi and Anr. vs. Ms. Rani Jethmalani* (1979) 4 SCC 167, Hon'ble Supreme Court has emphasized the necessity to ensure fair trial, observing as hereunder: "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the

accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

13. Although, *Mrs. Maneka Sanjay Gandhi* (supra) relates to a criminal case, yet the context is same i.e. transfer. Therefore, this court is of the view that the principle enunciated therein can be applied in other cases also.

14. Thus, it appears that though the plaintiff is *dominus litis*, yet, the aforesaid right can be interfered with by the court on consideration of several factors and out of the same ‘balance of convenience’ is the prime consideration.

Analysis:-

15. Having informed ourselves about the proposition of law on transfer of a suit, now, we will proceed to deal with the arguments so advanced by the learned counsel of both sides, in the light of facts and circumstances on the record.

16. It appears from the record that the petitioner and respondent, both hail from Karimganj. The marriage between the petitioner and the respondent was solemnized at Karimganj and after the marriage they reside at Karimganj. Though the respondent has showed one of his addresses at Guwahati, yet, there is no material to suggest that at any point of time they reside at Guwahati. Therefore, this court is of the view that mere showing of

an address at Guwahati by the respondent would not confer jurisdiction upon the Family Court at Guwahati. Therefore, the submission of Mr. Hoque in respect of jurisdiction bears sufficient force.

17. It is submitted that the witnesses proposed to be examined in the case at Family Court at Kamrup, hails from Karimganj. It is further submitted that the witnesses, whom the petitioner would examine, also hails from Karimganj. The petitioner has also a baby and if the case is allowed to be tried at Guwahati, she and her witnesses have to undertake an arduous journey from Karimganj to Guwahati covering 350 km through the hilly track of Meghalaya, which, in the rainy season; mere often occurs frequent land sliding and road blockage. Indisputably also, the petitioner has no source of income. Besides, the respondent is also not residing at Guwahati. He resides at Dubai and working there in a Company. Further, it appears from the averments made in the petition that the respondent has extra-marital relationship with a woman of Guwahati. Under such circumstance also, the prayer of the petitioner bears significance.

18. Thus, having tested these grounds of petitioner on the touchstone of the propositions, so laid down in the case of *Menaka Gandhi* (supra), and weighing the ‘*balance of convenience*’ against the *dominus lities*, we find that the ‘*balance of*

convenience’ of the petitioner has outweighed the *dominus Lities* of the respondent herein.

19. I have carefully gone through the case laws, **Rosalind Margaret Baksh (supra)** and **Jayshreeben Pravinbhai Algothrara (supra)**, referred by Mr. Deka, learned counsel for the petitioner and I find that the same are based on their respective facts. These decisions cannot be read as a precedent as they don’t lay down any particular law. That being so, the case laws referred by Mr. Deka, learned counsel for the respondent would not advance his argument. Same is the position in respect of **Jhuma Kaibarta (supra)** also. Therefore, reference to all those decisions found to be not necessary to decide the issue involved herein.

Finding:-

20. Under the above mentioned facts and circumstances and taking a pragmatic approach to the issue, this Court is of the view that, justice demands that the case should be transferred from the court of Principal Judge, Family Court, Kamrup(M) at Guwahati to the court of learned District Judge, Karimganj.

21. Accordingly, the petition stands allowed. The F.C. (Civil) Case No. 301/2024, pending before the court of learned Principal Judge, Family Court Kamrup (M) Guwahati, stands transferred to the court of learned District Judge, Karimganj.

22. In terms of above, this petition stands disposed of. The parties have to bear their own cost.

JUDGE

Comparing Assistant