

GAHC010145212023



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

Case No. : Tr.P.(C)./55/2023

SMTI. BABLY DAS
W/O SRI ANJAN PATHAK, P/R/A QUARTER NO. 5, DOODHNATH,
MAGISTRATE COLONY, WARD NO. 3, BALURCHAR, DHUBRI, DIST-DHUBRI
(ASSAM), PIN-783301

VERSUS

ANJAN PATHAK
S/O SRI JOGENDRA NATH PATHAK, R/O HOUSE NO. 39, SURAJ NAGAR, SIX
MILE, P.O.-KHANAPARA, GUWAHATI-781022, DIST- KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. P P DAS

Advocate for the Respondent : MR. R N D SARMA

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.01.2024

Heard Mr. S. Das, learned counsel for the petitioner. Also heard Mr. A.K. Bhuyan, learned counsel for the respondent.

2. The petitioner/wife has preferred an application under section 24 of CPC,

1908 praying to transfer the case of F.C.(Civil) Case No. 342/2021 pending in the Court of Principal Judge, Family Court No.1, Kamrup(M) at Guwahati to the Family Court, Dhubri.

3. The factual matrix leading to this petition is that on 15.02.2006, the petitioner entered into marriage with the respondent. After their marriage, they lived together as husband and wife and out of their wedlock, one child was born. After the marriage, the petitioner started to reside at Holland and thereafter at U.K. with the respondent as her husband was working there at the relevant period. In the year 2013, the respondent came back to Guwahati with the petitioner along with their son. After returning to Guwahati, the petitioner started to reside with the respondent permanently at Dona residency, Guwahati and the respondent started a business under the name and style of Vantage Circle at Kanapara area of Guwahati.

4. The further case of the petitioner is that due to ill treatment by the respondent/husband, the petitioner and her son were compelled to leave the house of the respondent and took shelter to her parental house. During the period of staying at the house of the of her parents, the petitioner tried her best efforts to establish herself and ultimately in the year 2022, the petitioner was selected in Assam Civil Service Examination and accordingly the petitioner got her appointment as Assistant Commissioner, Dhubri district. On 22.12.2022, the petitioner joined in her place of posting and since then the petitioner has been working as the Assistant Commissioner of Dhubri district.

5. The learned counsel for the petitioner has submitted that the petitioner is now posted at Dhubri. The case being F.C.(Civil) Case No. 342/2021 was earlier filed by the respondent which is pending in the court of Principal Judge, Family Court, Kamrup(M) which is around 250 k.m. away from Dhubri district and it is difficult for her to attend each and every occasion the court

proceedings at Kamrup(M), Guwahati. Hence, the petitioner prays to transfer the case being F.C.(Civil) 342/2021 from the court of Principal Judge, Family Court, Kamrup(M) to the Principal Judge, Family Court, Dhubri.

6. It is also the submission of learned counsel for the petitioner that the Dhubri district is connected with international boundary as well as boundary of other States of India for which it is not possible for the petitioner to take regular steps in the case filed by the respondent before the Principal Judge, Family Court, Kamrup(M) by obtaining necessary station leave permission from the employer of the petitioner. It is also submitted that the petitioner is residing in Dhubri town with her minor son who is a student of class VII at Happy Convent School, Dhubri. As there is no other family member residing with the petitioner at Dhubri as such, it is also not possible for the petitioner to allow her minor son to stay in Dhubri unattended as and when the petitioner has to attend the proceeding of the court of Principal Judge, Family Court, Kamrup(M) at Guwahati.

7. According to learned counsel for the petitioner, the respondent is an established businessman having sufficient manpower and money also. On the other hand, the petitioner is a helpless woman, having no family support to help the petitioner and her minor son. As such, it is not possible for the petitioner to take regular steps in the case filed by the respondent before the court of Principal Judge, Family Court, Kamrup(M) at Guwahati coming from Dhubri. Accordingly, it is prayed to transfer the case from Kamrup(M) to Dhubri district.

8. In support of his submission, learned counsel for the petitioner has placed reliance on a case law- 2022 LiveLaw (SC) 627 (N.C.V. Aishwarya v. A.S. Saravana Karthik Sha).

9. On the other hand, learned counsel for the respondent submits that after getting the job, the petitioner is presently posted at Dhubri. It is an administrative transfer caused by the Government of Assam. After some days, she may be transferred to Dhemaji or Hailakandi. So accordingly, if her prayer is allowed, the case will be transferred in that way which is not permissible as per provision of law.

10. It is also submitted by learned counsel for the respondent that the petitioner is the permanent resident of 'Dona Residency' at Guwahati and as per divorce petition pending in the Family Court Kamrup(M), the alternate address of the petitioner is C/O Shri Chandra Mahan Das, Aparajita Lodge, House No. 14, Ganeshguri, Dispur. The petitioner is a permanent resident of Guwahati, so at this stage it cannot be acceptable to transfer a petition from Guwahati to Dhubri.

11. Learned counsel for the respondent also submits that the petitioner also preferred a case under section 125 Cr.P.C. claiming maintenance from her husband i.e respondent, which is still pending in the court of Principal Judge, Family Court, Kamrup(M) vide F.C.(Crl.) Case No. 424/2021. The petitioner has concealed the fact in her petition regarding pendency of maintenance case in the same court. So under such backdrop, the prayer of the petitioner may be rejected.

12. In support of his submission, learned counsel for the respondent has placed reliance on the case laws-

(i) 2018 1 SCC 62 (Santhini v. Vijaya Venketesh).

(ii) AIRonline 2021 SC 21 (Anjali Brahmawar Chauhan v. Navin Chauhan).

(iii) TA 328 of 2022 (O&M) (Rinky Rani v. Daljit Kumar).

13. I have heard the submissions made by the learned counsel for the parties.

14. It is an admitted fact that the petitioner used to stay at Dhubri along with her son as she is posted at Dhubri as Assistant Commissioner. There is no allegation against the respondent that he is not ready to take care of his child. According to learned counsel for the respondent, the respondent is ready to give proper maintenance to her child and to lodge in a Boarding School for his best education.

15. It appears from the record that the petitioner is a permanent resident of Guwahati and the present place of posting at Dhubri, which is for temporary period. So it cannot be said how long she would be at Dhubri in the post of Assistant Commissioner. If the case is transferred from Guwahati to Dhubri, there is likelihood of multiple proceeding of cases that the husband who is dealing with his business at Guwahati, may file a petition to transfer the case again from Dhubri to Guwahati. It is also not denied by the petitioner side that one maintenance case which was filed by the petitioner is still pending in the Family Court, Kamrup(M). It is quite obvious that she used to visit the Family Court, Kamrup(M) to take steps in the said case.

16. 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, 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.

17. In the instant case, admittedly, except the F.C.(Civil) Case No. 342/2021, another maintenance case under Section 125 Cr.P.C. vide F.C.(crl.) Case No. 424/2021 filed by the petitioner/wife are pending in the Family Court, Kamrup(M).

18. It is also noticed that the case before the family court was filed by the respondent vide F.C.(civil) Case No. 342/2021 in the year 2021 and the petitioner filed the application for transfer of the present case in the year 2023 i.e. after two years on getting her job. It is needless to say that the petitioner was reluctant to make any effort for conciliation/mediation in the period of two years as submitted by learned counsel for the petitioner.

19. Under the facts and circumstances of the case, this Court finds no merit in the petition. Hence, the transfer petition vide No. Tr.P.(C)/55/2023 is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant