

GAHC010222222023



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

**Case No. : Tr.P.(Crl.)/33/2023**

USHARANI SHYAM @ USHA SHYAM  
D/O PUSPA SHYAM  
R/O NIZ MANKOTA  
KHANIA GAON  
P.O. C.R. BUILDING  
P.S. MILAN NAGAR  
DIST. DIBRUGARH  
ASSAM

VERSUS

BASTAB THAKURIA  
S/O RAMEN THAKURIA  
R/O VILL- NO. 2

DHEMAGARH  
P.O. DHEMAGARH  
P.S. BIHPURIA  
DIST. LAKHIMPUR  
ASSAM  
PIN-787023

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Advocate for : MR. S ISLAM  
Advocate for : MR. P J SAIKIA  
SR. ADV appearing for BASTAB THAKURIA

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

**01.03.2024**

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. P. J. Saikia, learned Senior counsel assisted by Mr. B. Deuri, learned counsel for the respondent.

**2.** This is an application filed under Section 407 of the Code of Criminal Procedure, 1973, praying for transfer of the N. I. Case No. 39/2021 from the Court of learned Additional Chief Judicial Magistrate, Lakhimpur (in short Id. Addl. CJM, Lakhimpur) to the Court of learned Chief Judicial Magistrate, Charaideo or learned Chief Judicial Magistrate, Dibrugarh, Assam (in short Id. CJM, Charaideo or Id. CJM, Dibrugarh).

**3.** It is contended by the petitioner that she is a government servant by profession and presently holding the post of Assistant Accountant at Naradkumar MPHC under the Additional Chief Medical and Health Officer (FW) Chariadeo. The respondent lodged a case under Section 138 of N. I. Act on 09.09.2021 alleging dishonour of a cheque amounting to Rs.1,65,000/-(Rupees One lakh and sixty-fifty thousand) only which is alleged to be issued by the petitioner in favour of the said respondent/complainant. Thereafter, the learned Trial Court took cognizance of the offence and issued summon to the petitioner in her official address. After receipt of summon, she appeared before the learned Trial Court and she was also allowed to go on bail.

**4.** It is submitted by the learned counsel for the petitioner, Mr. Islam that the petitioner is presently posted at Charaideo District and hence, it is difficult for

her to appear before the learned Trial Court at Lakhimpur. More so, the complainant/respondent being a local person is threatening the petitioner to pay the money otherwise she will have to face dire consequences. The complainant/respondent and his associates also used to rebuke the petitioner with slang languages and threatened her not to appear before the Trial Court. Thus, the petitioner is not in a position to appear before the Id. Addl. CJM, Lakhimpur, as she is being threatened by the respondent side and thus, finding no other alternative she filed this petition seeking transfer of this case from the Court of Id. Addl. CJM, Lakhimpur to the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh.

**5.** He further submits that the petitioner is a lady and she is staying with her old ailing parents and there is no other person in her family members' to accompany her to the Court of Id. Addl. CJM, Lakhimpur in connection with this case. The petitioner is a law abiding person and she is ready and willing to contest the case, but due to above referred situation, she is not in a position to appear before the Id. Addl. CJM, Lakhimpur. Thus, on behalf of the petitioner, he prays to transfer the case from the Court of Id. Addl. CJM, Lakhimpur to the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh.

**6.** In this contest, Mr. Saikia, learned senior counsel for the respondent has submitted that two other similar natures of cases are also pending against the petitioner with the same allegations of dishonor of a cheques. Even after receipt of the notice she did not appear before the learned Trial Court and only after issuance of the NBWA, she appeared, and accordingly, she was allowed to go on bail. The evidence of the complainant has already been recorded and the complainant of the other two cases are also the witnesses in the present case

and that apart other witnesses are yet to be examine in connection with this case and they all hails from Lakhimpur. In such a situation, if the case is transferred to the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh, there will be inconvenience on the part of the witnesses who hails from Lakhimpur District.

**7.** In addition to his submission, the learned Senior counsel relies on the decision passed by the Hon'ble Apex Court reported in **2022 LiveLaw (SC) 880 [S. Nalini Jayanthi vs. M. Ramasubba Reddy]** wherein, it has been held by the Hon'ble Apex Court that "*a complaint under Section 138 cannot be transferred as per the convenience of the accused. However, the petitioner is a woman and a senior citizen, therefore, she can always seek exemption from personal appearance. If an application is made by the petitioner for grant of exemption, the learned trial Judge shall favorably consider the same. The Trial Judge shall compel the petitioner to appear only when her presence is absolutely mandatory for the conduct of the trial.*"

**8.** Citing the above referred judgment, it is submitted by the learned Senior counsel for the respondent, Mr. Saikia that if the petitioner is facing inconvenience for appearance in each and every date fixed by the Court of Id. Addl. CJM, Lakhimpur, then, she may file an application regarding grant of exemption from her personal appearance. He also submits that the case is at the stage of evidence and hence, cross examination can be done through her engaged counsel, if her prayer is allowed by the Trial Court. Thus, he raised objection and accordingly, he submits that, this is not at all a fit case to transfer the N. I. Case No. 39/2021 from the Court of Id. Addl. CJM, Lakhimpur to the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh.

**9.** Considering the entire submissions made by the learned counsels of both sides, it is seen that the two other complainants have also instituted a complaint cases against the present petitioner with same kind of allegations i.e. cheque bounce. Further, it cannot be denied that the complainant as well as his witnesses hails from North Lakhimpur and hence, they may face inconvenience to appear afore the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh. Also, as per the view of the Hon'ble Apex Court, as well as the case's under the N. I. Act, it has been observed that, day to day presence of the petitioner is not required, if, the petitioner files any representation/application mentioning the ground of exemption of appearance before the learned Trial Court. Further, for cross examination of any witnesses the personal presence of the petitioner may not be required or she can very well instruct her engaged counsel to cross examine the witnesses, if she has any personal difficulty to appear before the Court of Id. Addl. CJM, Lakhimpur in each and every date fixed.

**10.** Accordingly, I do not find it justified to transfer the N. I. Case No. 39/2021 from the Court of Id. Addl. CJM, Lakhimpur to the Court of Id. CJM, Charaideo or Id. CJM, Dibrugarh as prayed for by the learned counsel for the petitioner. However, the petitioner is at liberty to file an application/representation mentioning her ground for exemption from her personal appearance on each and every date fixed before the learned Trial Court and the said Trial Court shall consider the same in accordance with law.

**11.** With above observations this, transfer petition stands disposed of.

**JUDGE**

**Comparing Assistant**