

GAHC010280992023



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

Case No. : Tr.P.(Crl.)/43/2023

PARTHA PRATIM BASUMATARY
S/O SHRI ATUL BASUMATARY
R/O VILL- PAROWA PRAGATI NAGAR, P.O. NIKAMUL, P.S. TEZPUR,
SONITPUR, ASSAM

VERSUS

SRIMATI SHIBANI DAS
W/O SHRI PARTHA PRATIM BASUMATARY,
R/O VILL- BHITARHUTI, MILAN NAGAR, P.S. TEZPUR, DIST. TEZPUR,
SONITPUR, ASSAM

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : MR. A ALAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. K. Sarma, Advocate

For the Respondent : Mr. M Alam, Advocate

Date of Hearing : 31.05.2024

Date of Judgment : 31.05.2024

JUDGMENT AND ORDER(ORAL)

1. Heard Mr. K Sarma, learned counsel for the petitioner. Also heard Mr. M Alam, learned counsel for the respondent.
2. The present application under Section 407 of the Cr.P.C. is filed for transferring MR case No. 125/2022 filed by the respondent wife under Section 125 Cr.P.C., CR case No. 825/2022 filed by the respondent wife under Section 12 of the DV Act, 2005 and PRC case No. 2163/2022 pending for trial under Section 498(A)/406/420 IPC.
3. The basic ground seeking transfer, as urged by Mr. Sarma, as well as pleaded in the present petition, are to the effect that the father and uncle of the respondent wife are working as a Zarikarak, in the establishment of Chief Judicial Magistrate, Sonitpur and the brother of the respondent wife is working as a computer assistant in the said establishment. According to the petitioner, the sister-in-law is a Judicial Magistrate First Class and now posted at Karimganj and therefore in the aforesaid fact and circumstances, the petitioner apprehends that if the cases are tried and disposed of at Tezpur Court, they may not be able to get fair and impartial trial for the reason that there is every chance of the Magistrate being influenced by the aforesaid employees and the sister-in-law of the respondent wife.
4. It is the further contention that the apprehension expressed by the petitioner is genuine and reasonable and therefore, this court may exercise of its power under Section 407 Cr.P.C. to transfer the cases to any competent courts in the district nearby.
5. On the other hand, the learned counsel for the respondent wife has opposed such prayer and argues that though a statement has been made that there is reasonable apprehension, however, no any material has been brought on record

to have a satisfaction that such apprehension of not getting free, fair and impartial justice is genuine and reasonable and accordingly seeks that the petition should be dismissed.

6. I have given thoughtful consideration to the submission made by the learned counsel for both the parties.
7. The Hon'ble Apex Court in a catena of decisions laid down the basic principles of exercise of power under Section 407 Cr.P.C. when apprehension of bias is expressed and alleged. Some of such important decisions are ***Gurucharan Das Chadha Vs State of Rajasthan*** reported in ***AIR 1966 SC 1418***, ***Menaka Sanjay Gandhi vs. Rani Jethmalani*** reported in ***1979 (4) SCC 167***, ***Abdul Nazar Madani Vs State of Tamil Nadu*** reported in ***2000 (6) SCC 204***, ***Captain Amarinder Singh Vs Prakash Singh Badal*** reported in ***2009 (6) SCC 260*** and ***Nahar Singh Yadav Vs Union of India and Ors.*** reported in ***2011 (1) SCC 307***.
8. From the aforesaid judgments, the following principles for exercise of power under Section 407 Cr.P.C. can be culled out:
 - (I) A case can be transferred in exercise of power under Section 407 Cr.P.C., if there is a reasonable apprehension on the part of a party that justice will not be done. He is entitled for such a transfer, if he shows circumstances, from which it can be inferred that he entertains an apprehension which is reasonable in circumstances alleged.
 - (II) The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.
 - (III) 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.

(IV) 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.

9. From the discussion made hereinabove, it is clear that there is no rigid or inflexible rule or test that could be laid down to decide whether the power under Section 407 Cr.P.C. should be exercised. However, what this court can conclude is that the order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. Such power is to be exercised cautiously and in exceptional situation, when it becomes necessary to do so to provide credibility of the trial.
10. Now, let this court examine the present case in the backdrop of aforesaid settled principles of law. In the case in hand, though it is not disputed that some of the relatives/ family members of the respondent wife are working in different capacities under the establishment of the Chief Judicial Magistrate, Tezpur, however, there is no material to suggest that the learned Judge(s)/ Magistrate(s) will be influenced or have been influenced by such employees. There is no material to show that Magistrate(s)/ Judge(s), who are trying the cases is/ are bias towards the petitioner inasmuch as, if transfers are allowed on such an apprehension, it will be a scar upon the independence of the judicial

officers. The court must be more cautious when apprehension of bias is expressed against the officer that too when allegation is 'influence' by some employees under the establishment. In the case in hand, there is no material to show, except a statement of reasonable apprehension that the respondent wife or her relative is in a position to influence the Magistrate/ trial Judges. The pleading made in this petition leaves no hesitation in the mind of this court that the allegations levelled by the petitioner are vague and general in nature inasmuch as such statements are not supported by any material on record to suggest that these Computer Assistant / Zarikarak have been or in a position to influence a judicial officer exercising his judicial power.

11. This court cannot be unmindful of the fact that allowing a transfer petition on the basis such vague statements without any strong material will indirectly put a stigma upon the concerned Magistrate/ Presiding Officer which may in turn demoralise such officer.
12. Considering the above, this court finds no merit in the present application and accordingly, same stands dismissed. The interim order, passed earlier, stands vacated.
13. A copy of the order be sent to the concerned court.

JUDGE

Comparing Assistant