

**HIGH COURT OF TRIPURA
AGARTALA**

Tr.P.(Crl.) No.01 of 2025

1. Kanika Bhattacharjee, wife of Late Narayan Chandra Bhattacharjee, resident of Pratapgarh, Jagat Palli, Agartala, West Tripura (Age-52 years)
2. Papiya Bhattacharjee, wife of Sri Pritom Das, resident of Pratapgarh, Jagat Palli, Agartala, West Tripura, (Age-28 years)

.....Petitioner(s);

Versus

1. The State of Tripura (*to be represented by*) the L'd Public Prosecutor, the Hon'ble High Court of Tripura, Agartala, West Tripura, Pin-799010
2. Smt. Namita Chakraborty, W/o Sri Sudharshan Chakraborty, resident of East Harina, P.O Harina Bazar, P.S Sabroom, South Tripura, PIN-799145

.....Respondent(s).

For Petitioner(s) : Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Raju Datta, Public Prosecutor,
Mr. Rajib Saha, Addl. Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

25/04/2025

Heard Mr. Kawsik Nath, learned counsel for the petitioners and Mr. Raju Datta, learned Public Prosecutor for the respondent-State. Respondent No.2 has appeared on notice and has taken time on 05.03.2025 to file objection, but no objection has been filed. No one appears for respondent No.2 even today.

2. This petition is under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS, *for short*] for transfer of PRC (SP) 18 of 2024 from the Court of learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala.

3. Petitioners are the mother and the sister of the wife who have been made accused in the instant FIR at the instance of respondent No.2, who is the mother of the husband. The marriage between the spouses namely Smt. Srabani Bhattacharjee and Sri Sushobhan Chakraborty was solemnized on 15.07.2022 as per the case pleaded by the petitioners. Then the alleged mental and physical torture on the wife started on grounds of additional dowry and her complexion. That compelled her to leave the matrimonial home to move to her parental house at Agartala where she is presently residing. She has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [Act of 2005, *for short*] against her husband, the respondent No.2 and the father-in-law. She has also filed an application under Section 20 read with Section 23 of the Act of 2005 against the same respondents being Misc.1319 of 2024 arose out of CR (DV) 66 of 2024. The said case was disposed of on 07.10.2024 by the learned Judicial Magistrate, 1st Class, West Tripura, Agartala which has been challenged before the learned District & Sessions Judge, West Tripura being Criminal Appeal 23 of 2024. She has also filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [Cr.P.C., *for short*] against her husband being Crl. Misc.159 of 2024 pending before the learned Family Court, Agartala, West Tripura. These petitioners being the mother and the sister of the wife alleged that respondent No.2, the mother of the husband, has only with an intention to harass the petitioners, lodged a complaint case being CR (CC) 20 of 2024 before the learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura on 26.06.2024. The learned Sub-Divisional Judicial Magistrate, Sabroom directed investigation under Section 156(3) of the

Cr.P.C and further to register the aforesaid complaint as FIR. As a result, Sabroom PS Case No.2024/SBM/029 has been registered on 09.07.2024 under Sections 447/323/34 of the Indian Penal Code, 1860 [IPC, *for short*]. Both the petitioners have been granted bail vide order dated 03.01.2025 passed by the learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura.

4. Petitioner No.1 contends that she is an unemployed aged lady suffering from various old age ailments and it is not physically and financially viable on her part to attend to the case before the learned Sub-Divisional Judicial Magistrate, Sabroom which is situated about 128 kilometers from her home at Agartala. Petitioner No.2 is a nurse at ILS Hospitals, Agartala. She also contends that it is not practically possible for her to take leave on every date and attend the proceedings before the learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura nor is it financially viable. She is maintaining her mother with the meager salary. She has a minor son who needs attention. Petitioners stay at Pratapgarh, Agartala, West Tripura. If PRC (SP) 18 of 2024 is tried before the learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura, petitioners won't be able to properly defend themselves. Therefore, they have prayed for transfer of the case to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala so that they can effectively and properly defend themselves.

5. Mr. Kawsik Nath, learned counsel for the petitioners, submits that petitioners have invoked the provisions of Section 447 of the BNSS which is *pari materia* to the provisions of Section 407 of the Cr.P.C. He prays that PRC

(SP) 18 of 2024 may be transferred from the Court of learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala.

6. Mr. Raju Datta, learned Public Prosecutor for the respondent-State, has opposed the prayer. He submits that the investigation of PRC (SP) 18 of 2024 has been conducted by the jurisdictional investigating officer in South Tripura. Most of the witnesses for the prosecution would also be from South Tripura who may face severe inconvenience in coming to West Tripura to depose if the case is transferred. There is no apprehension of lack of fair trial before the Court of learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura. The aggrieved wife has been pursuing case under Domestic Violence Act and also under Section 125 of the Cr.P.C. before the competent Court at Agartala. As such, there is no logic or reason to transfer instant case from the Court of learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala. The provisions under Section 447 of the BNSS do not contemplate of a situation presented by the petitioners requiring transfer of the case to a Court of another jurisdiction. Therefore, the prayer may be refused.

7. I have considered the submission of learned counsel for the parties and taken note of the materials placed from record. I have also taken note of the provisions of Section 447 of the BNSS which reads as under:

“447. Power of High Court to transfer cases and appeals.-(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 197 to 205 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond or bail bond for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of justice, order that, pending the disposal of the application the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 346.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of the Government under section 218."

Transfer of a criminal trial in exercise of the power of the High Court under Section 447 of the BNSS is to be ordered – (a) Whenever it appears that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or (b) that some question of law of unusual difficulty is likely to arise; or (c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties

or witnesses, or is expedient for the ends of justice. In light of the principles enshrined in Section 447 of the BNSS which is *pari materia* to Section 407 of the Cr.P.C, the prayer of the petitioners cannot be allowed as not only there is no apprehension of lack of fairness or impartiality in the trial being conducted before the learned Sub-Divisional Judicial Magistrate, Sabroom, South Tripura, nor it would be expedient or convenient for the prosecution or its witnesses to prosecute the case if it is transferred to a Court of another jurisdiction; in this case West Tripura.

8. Taking into account the circumstances and the principles of law, this Court is not inclined to allow the prayer. Accordingly, the instant petition is dismissed.

9. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

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