

08.04.2021
Mithun
Sl. No.12.
D/L.
Ct.No.30.

CRR/250/2021

In re: An application under Section 407 read with Section 482 of the Code of Criminal Procedure.

In the matter of : Snehasis Ganguly.

...the petitioner.

Mr Soumak Bera, Adv.,

...for the petitioner.

Mr.Jaydeep Biswas., Adv.,
Mr.Soumyadeep Das, Adv.
Mr.Kaushik Ghosh, Adv.

...for the opposite party .

This is an application under Section 407 of the Code of Criminal Procedure filed by the respondent/husband against the aggrieved person/opposite party praying for transfer of a case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 hereinafter described as the said Act) which was registered as AC-1916 of 2020 from the Court of the learned Judicial Magistrate at Alipore to the Court of the learned Chief Judicial Magistrate at Paschim Medinipur.

Marital relationship between the parties are not disputed. It is also not disputed that subsequently as a result of marital

discord, the parties are living separately. There are several litigation between the parties pending in various courts.

It is submitted by the petitioner that the opposite party is the residence of Medinipur in the district of Paschim Medinipur. Her marriage was solemnized at Paschim Medinipur. On the basis of a written complaint submitted by the opposite party, a case under Section 498A/323/406/327 of the Indian Penal Code read with Section 3 & 4 of the Dowry Prohibition Act was registered against the petitioner and other matrimonial relations of the petitioner at Police Station Kotwali at Paschim Medinipur. In the formal F.I.R., her residential address has shown at Medinipur in the district of Paschim Medinipur. The petitioner filed a suit for dissolution of marriage which was registered as Matrimonial Suit No.97 of 2015 before the learned Additional District Judge, 13th Court at Alipore and on the prayer of the petitioner the said suit was transferred to the Court of the learned District Judge at Medinipur on the ground that the opposite party did not raise any objection against the said prayer. Thus, except an application under Section 12 of the said Act, all other litigations are pending in Medinipur.

It is alleged by the husband/petitioner that the opposite party has filed the application under Section 12 read with other coordinate provisions of the said Act at Alipore only to harass the petitioner. Since both the parties are permanent residents

of Medinipur, the petitioner has prayed for transfer the said case to a Court of competent jurisdiction at Medinipur.

Learned Advocate for the petitioner submits to the tune of the averment made in the revisional application. He has also drawn my attention to the relevant documents of other cases pending between the parties at Medinipur.

Learned Advocate for the opposite party/wife, on the other hand, submits that the paternal home of the opposite party is at Medinipur. Both the parents of the opposite party have expired and the said house at Medinipur is now vacated. As per law of inheritance, the opposite party has inherited the said house but she does not stay there. After marriage both the parties jointly purchased a flat at Naktala in Kolkata and used to stay in the said flat. Subsequently, the petitioner left the said flat and the opposite party has been residing there. According to the learned Advocate for the opposite party, the said flat was purchased jointly by the petitioner and the opposite party. After matrimonial dispute, the petitioner not only left the said flat but also stopped payment of E.M.I. for the loan taken by him to purchase the said flat. The petitioner has filed the application under Section 12 of the said Act claiming her right of residence in the flat at Naktala. Therefore, the proceeding under Section 12 of the said Act was filed at Alipore and it is pending for hearing.

According to the learned Advocate for the opposite party, the application under Section 12 of the said Act was rightly filed by her for protecting her right of residence in the said flat jointly purchased in both the names of the petitioner and the opposite party. Since the opposite party has been residing at Naktala and she does not reside at Medinipur, there is no reason to transfer the case being No.AC-1916 of 2020 to Medinipur.

It is further submitted by the learned Advocate for the opposite party that in order to apply the provision of Section 407 of the Code of Criminal Procedure, there must be a reasonable apprehension on the part of the party to a case that he/she will not get justice in the Court where the case is pending. In support of his contention he refers to the case of ***Captain Amarinder Singh Vs. Parkash Singh Badal and Others*** reported in ***(2009) 6 Supreme Court Cases 260*** and in the case of ***Ashish Chadha Vs. Asha Kumari and another*** reported in ***(2012) 1 Supreme Court Cases 680***.

Having heard the learned Counsels for the parties and on perusal of the materials on record as well as the provision under Section 407 of the Code of Criminal Procedure as well as the decisions of the Hon'ble Supreme Court relied on by the learned Advocate for the opposite party, I like to state that Section 407 (1)(a) stipulates the ground that if it appears to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, the High Court can transfer

the case from one Court to another. Pendency of other litigations between the parties in one Court cannot be a ground for transfer of a proceeding to the said Court. The petitioner has not made any allegation that he was not got impartial inquiry or trial in the Court of the learned Judicial Magistrate at Alipore.

On the other hand, the opposite party is residing within the jurisdiction of the Court at learned Judicial Magistrate at Alipore. She has claimed the right of residence of the said house at Naktala which was allegedly purchased jointly by her and the petitioner.

Section 27 of the said Act states the jurisdiction where an application under Section 12 read with other provisions of the said Act can be filed. It runs thus:-

27.Jurisdiction.-(1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen,

shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this act.

(2) Any order made under this Act shall be enforceable throughout India.

Thus, it is found from the submission made by the learned Advocate for the opposite party who is the aggrieved person that she resides at present at Naktala and the cause of action has arisen at Naktala because the opposite party has claimed right of residence in the said house.

In the light of the discussion made hereinabove, I do not find any reason to transfer the case under the provisions of Protection of Women from Domestic Violence Act from the Court of the learned Judicial Magistrate at Alipore.

The application is, therefore, dismissed on contest however without costs.

(Bibek Chaudhuri, J)