

Date: 9.8.2023

Court No: 4

Item No: 3

CALCUTTA HIGH COURT

IN THE CIRCUIT BENCH AT JALPAIGURI

CRR 2 OF 2023

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973

And

In the matter of: **Mithilesh Sha and ors.**

.....Petitioner

**Mr. Sudip Guha,
Mr. Sandip Guha Roy**

.....For the petitioner

**Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Abhijit Sarkar.**

.....For the State

This record is taken up for Orders.

This application under Section 482 of Code of Criminal Procedure is filed by the petitioners with a prayer to quash the proceedings of G.R. case No. 500 of 2022 arising out of Kalchini Police Station Case No. 24 of 2022 dated 08.03.2022 under Section 498 A of the Indian Penal Code 1860 read with Section 3 and 4 of the Dowry Prohibition Act. The petitioners in the said application has also prayed for an interim-order for transferring GR case No-

500 of 2022 pending before Learned Additional Chief Judicial Magistrate Alipurduar to Learned Chief Judicial Magistrate Court at Jalpaiguri, on the ground that the cause of action if any is sustainable to the said matrimonial house situated under the Malbazar Police Station under the jurisdiction of the said Court.

Inspite of service of notice none appeared for the opposite party no-2 defacto complainant to contest the case.

Heard Learned Advocate for the petitioners and Learned Advocate for opposite party no-1 state of West Bengal, perused the petition filed and materials on record. Although this application under Section 482 of the Code of Criminal Procedure is filed with a prayer for quashing G.R. Case No.500 of 2022 dated 03.03.2022 under Section 498 A of the Indian Penal Code 1860 read with Section 3 and 4 of the Dowry Prohibition Act pending before Learned Additional Chief Judicial Magistrate Alipurduar but Learned Advocate for the petitioners did not press the said relief at the time of argument but his only submission was that the interim prayer made for transfer of G.R. Case No. 500 of 2022 pending before Learned Additional Chief Judicial Magistrate Alipurduar to the Court of Learned Chief Judicial Magistrate Jalpaiguri be allowed and the petition be disposed. Learned Advocate for the

petitioners submits that two Matrimonial Suits between Petitioner no-1 and Defacto complainant are pending before Learned District Court at Jalpaiguri; and no prejudice will be caused to the defacto complainant opposite party no-2 if G.R. case No-500 of 2022 pending before Learned Additional Chief Judicial Alipurduar is transferred to Chief Judicial Magistrate Jalpaiguri. Learned Advocate for the opposite party no-1 state of West Bengal does not object such prayer. Upon perusing the petition and upon hearing the Learned Advocates this Court is of the view that although the petitioners have made prayer for transfer in an application under Section 482 Cr PC for quashing G.R. Case 500 of 2022 pending before Learned Additional Chief Judicial Magistrate Alipurduar without first moving an application before the Learned Sessions Judge under Section 408 CrPC but considering the provision under Section 407 (2) CrPC that the High Court on its own initiative may transfer a case pending in one Criminal Court to another Criminal Court where it is expedient for the ends of justice, necessary order should be passed in this application. Moreover as inherent powers exist under Section 482 CrPC to pass necessary orders in the interest of justice, such orders may be passed in an application under Section 482 CrPC. As this application is pending for more than seven months it would be

reasonable to take necessary decision regarding transfer of criminal case pending before Additional Chief Judicial Magistrate Alipurduar to Chief Judicial Magistrate Jalpaiguri instead of referring the petitioners to Learned Sessions Judge Jalpaiguri which will further delay the matter and cause hardship to the parties. As the charge sheet in the case concerned is submitted on 31/03/2022 and the trial could not be commenced till today there should not be any further delay.

Upon hearing the Learned Advocates and upon considering the facts of the case it appears that matrimonial dispute between petitioner no-1 and the defacto complainant have led to institution of both cases under the Hindu Marriage Act 1955 as well as case under Section 498 A IPC and Section 3 and 4 of the Dowry Prohibition Act. As suit for restitution of Conjugal Right and suit for Divorce between petitioner No-1 and opposite party no-2/Defacto Complainant are pending before District Court of Jalpaiguri prejudice will not be caused to the opposite party no-2/Defacto Complainant. As the defacto complainant is the main witness in a case under Section 498 A CrPC and is required to attend only one day when her evidence will be recorded and not on other days prejudice will not be caused to her when matrimonial suit between defacto complainant and petitioner is pending at

present at Jalpaiguri District Court. On the other hand petitioner no 1, 2 and 3 residing at Jalpaiguri will be required to attend Court at Alipurduar in the Criminal Case on all dates fixed causing some sort of hardship as they reside at Jalpaiguri. As the Learned Advocate appearing for opposite party no-1 state of West Bengal does not oppose such transfer this Court is of the view that G.R. Case No. 500 of 2022 relating to Kalchini P.S. Case No. 24 of 2022 dated 08.03.2022 pending before Learned Additional Chief Judicial Magistrate at Alipurduar should be transferred to Learned Chief Judicial Magistrate Jalpaiguri. Hence it is Ordered that G.R. Case No. 500 of 2022 arising out of Kalchini P.S. Case. No. 24 of 2022 dated 08.03.2022 pending before Learned Additional Chief Judicial Magistrate Alipurduar be transferred to Learned Chief Judicial Magistrate Jalpaiguri.

This application stands disposed.

Let a copy of this order be sent of Learned Additional Chief Judicial Magistrate Alipurduar for necessary steps and a copy be sent to the Sessions Judge Alipurduar.

(Biswaroop Chowdhury,J.)