

(2023) 10 GAU CK 0016

In the Gauhati High Court

Case No : Transfer Petition (Crl.) No. 25 Of 2022

Gias Uddin Ahmed

APPELLANT

Vs

E State Of Assam

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Indian Penal Code, 1860 — Section 307, 325

Code Of Criminal Procedure, 1973 — Section 407

Protection of Women from Domestic Violence Act, 2005 — Section 27, 27(1)(a)

Citation : (2023) 10 GAU CK 0016

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : M.J. Quadir, M. Sarma, D. Das

Final Decision : Allowed

Judgement

1. Heard Mr. M.J. Quadir, learned counsel for the petitioners. Also heard Mr. M. Sarma, learned counsel for the respondent Nos.2 and 3 and Mr. D. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. This petition, under Section 407 of the Code of Criminal Procedure, 1973, is preferred by four petitioners, namely, Gias Uddin Ahmed, Begum Firoza Ahmed, Semim Imtiaz Ahmed and Rojee Begum @ Roji Begum, for transferring the Misc. (DV) Case No.03/2022 filed by the respondent No.2 against the petitioners and the respondent No.3, pending in the Court of learned Judicial Magistrate First Class, Lakhimpur, North Lakhimpur, to the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati. It is to be noted here that the Misc.(DV) Case No.03/2022, is filed by the respondent No.2 against the petitioners and also against the respondent No.3.

THE FACTUAL BACKGROUND:-

3. The background facts leading to filing of the present petition is briefly stated as under:-

"The respondent No.2 got married to respondent No.3 on 11.09.2015 and thereafter, they lived together as husband and wife in the house of the respondent No.3 and petitioner Nos.1, 2, 3 and 4, situated at Kumarpara, Panchali, Bharalumukh. After some years, discord surfaced between the petitioners and the respondent Nos.2 and 3. Thereafter, the respondent No.2, who hails from North Lakhimpur, left the matrimonial home and there she had lodged one case under the Domestic Violence Act before the learned Chief Judicial Magistrate, North Lakhimpur, alleging that she was subjected to immense physical and mental harassment by the petitioners. Upon the said case, the learned Judicial Magistrate, First Class, North Lakhimpur, issued process to the petitioners and the petitioners have been appearing therein from Guwahati."

4. The petitioners case is that the allegation made in the said domestic violence case is false and that the respondent No.2 is living in Guwahati and her daughter is also pursuing studies in Guwahati and that she has falsely shown in the case filed before the Court of learned Judicial Magistrate First Class, North Lakhimpur that she has been residing in her parental abode at North Lakhimpur. Further, the case of the petitioners is that only with a view to harass the petitioners, the respondent No.2 has lodged the case against them and that there are four cases between the respondent No.2 and the petitioners and all of them are pending in the Court at Guwahati and that the petitioner Nos.1 and 2 are old and ailing persons of 71 years and 70 years, respectively, and the petitioner No.1 is suffering from ailments of heart and they are not in a position to undertake journey from Guwahati to North Lakhimpur on account ill health and therefore, it is contended to transfer the Misc.(DV) Case No.03/2022 from the Court of Judicial Magistrate First Class, North Lakhimpur to the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati.

5. The respondent No.2 had filed Affidavit-in-Opposition denying the averments made in the transfer petition. It is stated that her permanent address is Bharalumukh as she married to respondent No.3 and that she was subjected to both physical and mental harassment by the petitioners in the matrimonial home and she was forced to leave the matrimonial home and also to resign from her job in a private Firm where she was working as a Business Development Manager, and thereafter, she left for her parental abode at North Lakhimpur. It is further stated that she had opened one Insurance Policy in the name of her daughter and there it is indicated that she resides at Lakhimpur, and that the Protection Officer had also prepared one Domestic Incidence Report wherein also her present address is indicated as Lakhimpur. Therefore, it is contended to dismiss the petition.

6. It is to be noted here that the petitioners have filed one additional affidavit and brought on record the complaint of Domestic Violence Act before the Court of learned Judicial Magistrate First Class, North Lakhimpur and also the copy of deposition respondent No.2 in PRC Case No.1203/2018, where she has stated that she has been residing at Kumarpara, Bharalumukh and she is an employee

of a private organization. The petitioners have also filed another additional affidavit, wherein it is stated that the respondent Nos.2 and 3 have been working as a Salesman in the Chamber and Pharmacy of Dr. Nasiur Rahman, Dermatologist, situated at 1st Floor, Rahman Residency, House No.7, Railway Gate No.4, Tokobari, Athgaon, Guwahati.

7. Notably, the respondent No.2 had not filed any reply to the additional Affidavits filed by the petitioners. And as such, the averments made in the additional Affidavit, remained uncontroverted.

THE SUBMISSIONS:-

8. Mr. Quadir, learned counsel for the petitioners submits that the petitioner Nos.1 and 2 are the father-in-law and mother-in-law of the respondent No.2 and petitioner No.3 and 4 are the brother-in-law and sister-in-law of respondent No.2 and respondent No.3 is the husband of respondent No.2 and that after the marriage, they lived together in the house constructed by the petitioner No.1 at Kumarpara, Panchali, Bharalumukh and thereafter, some dispute arose between the parties and thereafter, the respondent Nos.2 and 3 have started living separately. Thereafter, the respondent No.2 has instituted several cases against the petitioners and altogether four cases are pending between them and with a view to harass the petitioners, the respondent No.2 lodged the domestic violence case against petitioners, in the Court of North Lakhimpur.

9. Mr. Quadir further submits that the petitioner Nos.1 and 2 are old and ailing persons of 71 and 70 years old and petitioner No.2 is a heart patient and they are unable to undertake journey from Guwahati to North Lakhimpur to appear before the court at Lakhimpur on each and every date and therefore, they have approached this Court by filing the present petition to transfer the Misc.(DV) Case No.03/2022 from the Court of Judicial Magistrate First Class, North Lakhimpur to the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati. Mr. Qadir also submits that the petitioner is residing at Guwahati with the respondent No.3 and both of them are serving in a Chamber and Pharmacy of a Doctor and her permanent address is at Bharalumukh, Guwahati and though she had shown her temporary address at Lakhimpur, yet she in fact resides at Guwahati.

10. On the other hand, Mr. Sarma, learned counsel for the respondent Nos.2 and 3, submits that the respondent No.2 was subjected to domestic violence by the petitioners and therefore, she left her matrimonial home and currently she has been residing in her parental abode at North Lakhimpur and therefore, she has lodged the case against the petitioners before the Court of learned Judicial Magistrate First Class, North Lakhimpur. Mr. Sarma further submits that the Domestic Incidence Report, submitted by the Protection Officer and the Insurance Plan opened by the respondent No.2 also indicates that she has been residing at Lakhimpur. Further Mr. Sarma submits that there is no ground for transferring the case to Guwahati as the respondent No.2 and her daughter are

staying in her parent abode at North Lakhimpur and therefore, it is contended to dismiss the petition.

11. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

AN OVER VIEW OF THE STATUTORY PROVISIONS:-

12. Before directing a discussion into the point, it would be beneficial to have an overview of the statutory provision. Section 27 of the D.V. Act is relevant here in this case and the same reads as follows:-

"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."

13. Thus, it appears that as per Section 27 of the D.V. Act in following three places a case under Domestic Violence Act can be instituted:-

(1) Where the aggrieved person resides permanently or temporarily or carries on business or is employed; or

(2) Where the respondent resides or carries on business or is employed; or

(3) Where the cause of action arises.

14. Another legal provision is Section 407 of the Cr.P.C., which deals with the power of the High Court to transfer cases and appeals. Section 407 of the Cr.P.C. reads as under:-

"407. 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 Code, 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 177 to 185 (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.

.....”

DISCUSSIONS:-

15. Here in this case, it appears from the pleadings of the parties that the petitioners and the respondent No.3 are residing in Bharalumukh at Guwahati. It also appears that the incidence of domestic violence took place at the residence of the petitioners at Bharalumukh at Guwahati. The respondent No.2 had instituted the proceeding under Domestic Violence Act at North Lakhimpur showing her address at there as per provision of section 27(1)(a) of the Domestic Violence Act. From the Additional Affidavit, dated 19th May, 2023 that it also appears that after filing of the case at Lakhimpur, the respondent No.2 returned to the matrimonial home at Guwahati and on different dates she attended the court at Lakhimpur from Guwahati and on her instigation respondent No.3 had attack the petitioner No.1 and injured him seriously for which the petitioner had lodged one case, being Bharalumukh P.S. Case No. 104/2023, under section 325/307 IPC.

16. It also appears from the Additional Affidavit, dated 25th August 2023, and submitted by the petitioners that the petitioner No.1 Gias Uddin Ahmed becomes 70 years old at the time of filing the Affidavit. Further, it appears that the petitioner No.2 Begum Firoza Ahmed is 69 years old and they are the father-in-law and mother-in-law of the respondent No.2 and parents of the respondent No.3 and petitioner Nos.3 and 4 are the son and daughter-in-law of the petitioner Nos.1 and 2. They are residing in their own house situated at Kumarpara, Panchali, Bharalumukh. The additional affidavit submitted by the petitioners, also reveals that the respondent Nos.2 and 3 are working as Salesman in the Chamber and Pharmacy of Dr. Nasiur Rahman, Dermatologist, situated at 1st Floor, Rahman Residency, House No.7, Railway Gate No.4, Tokobari, Athgaon, Guwahati. As stated earlier, the averments made in the aforesaid affidavit have not been disputed by the respondent No.2. Further, it appears from the Additional Affidavit, dated 7th January, 2023 specially from the Annexure-1, that the daughter of the respondent No.2 got admitted in a nursery standard School at Guwahati and it also appears from the evidence adduced by the respondent No.2 before the Court of learned S.D.J.M.(S) No.1, Kamrup(M), Guwahati, which is annexed with the Additional Affidavit dated 7th January, 2023, as Annexure-2 that the respondent No.2 is working as an employee in a

private organization.

17. Though the learned counsel for the respondent No.2 submits that respondent No.2 had filed one resignation letter which is annexed with the affidavit-in-opposition as Annexure-A1 that she has resigned from the post on 16.04.2021, yet, from her deposition dated 25.08.2022 shows that she has been working in a private organization and staying at Kumarpara, Bharalumukh. Thus, it appears that the respondent No.2 is staying at Guwahati and her daughter has also been pursuing studies at Guwahati.

18. It is to be noted here that general convenience of the parties and witnesses are to be taken into account while considering the prayer of transfer of a case. Bearing this principle in mind while the facts and circumstances of the case in hand is examined I find the followings:-

(i) The petitioner No.1 and 2 are ailing persons of 70 and 69 years old and on account of the it becomes inconvenient for them to attend the court at North Lakhimpur, which is situated at 344 KM from Guwahati.

(ii) They are residing at Bharalumukh, Guwahati along with petitioner No. 3 and 4;

(iii) There are several cases between the petitioners and the respondents and the same are pending at the courts at Guwahati;

(iv) The incidence of alleged domestic violence took place at Guwahati and at no point of time the same the same took place at Lakhimpur, where the case has been instituted;

(v) Though, the case had been filed at Lakhimpur, showing that the respondent No.2 is residing at Lakhimpur, yet from the Additional Affidavits filed by the petitioners reveals that after filing the case at Lakhimpur, the respondent No. 2 returned to matrimonial home at Guwahati and now respondent No.2 and 3 are serving as Salesman in the Chamber and Pharmacy of Dr. Nasiur Rahman, Dermatologist, situated at 1st Floor, Rahman Residency, House No.7, Railway Gate No.4, Tokobari, Athgaon, Guwahati.

(vi) Though the respondent No.2 contended that she has been residing in her parental abode at Lakhimpur, and produced LIC Policy and Domestic Incidence report, yet it is apparent from the Additional Affidavit of the petitioner that she residing at Guwahati and working in Chamber and Pharmacy stated above;

19. Having considered above, this Court is of the view that the petitioners have succeeded in making out a case for transferring the Misc.(DV) Case No.03/2022 pending in the Court of learned Judicial Magistrate First Class, North Lakhimpur, which appears to have been filed at North Lakhimpur only to harass the petitioners.

FINDINGS:-

20. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. It is provided that the Misc.(DV) Case No.03/2022 pending before the Court of learned Judicial Magistrate First Class, North Lakhimpur, stands transferred to the Court of learned Chief Judicial Magistrate, Kamrup(M), Guwahati.

21. The parties have to bear their own costs.