

(2022) 11 GAU CK 0011

In the Gauhati High Court

Case No : Transfer Petition (Criminal) No. 1 Of 2022

Syed Raju Ali And 2 Ors.

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 21

Code Of Criminal Procedure, 1973 — Section 407

Protection of Women from Domestic Violence Act, 2005 — Section 12, 27

Citation : (2022) 11 GAU CK 0011

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : R Dhar

Final Decision : Dismissed

Judgement

1. Heard Mr. N.N. Upadhyaya, learned counsel appearing for the petitioners. Also heard Ms. S. Jahan, learned Addl. P.P., Assam, appearing for the State/respondent No.1 and Mr. S. Dutta, learned counsel appearing for the respondent No.2.

2. This application under Section 407 of the CrPC is preferred by three petitioners, namely, Syed Raju Ali, Syed Safir Ali and Syeda Asma Begum, for transferring of M.C. Case No.195/2021, filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 (here-in-after referred to as 'the D.V. Act'), from the Court of learned CJM, Darrang at Mangaldoi to the Court of learned CJM, Kamrup at Amingaon or to the Court of learned SDJM, Rangia.

3. The factual background leading to filing of the present petition is adumbrated herein below :-

"The respondent No.2, as a complainant has filed an application under Section 12 of the D.V. Act, before the Court of learned CJM, Darrang at Mangaldoi, alleging inter alia, amongst others, that she got married with the petitioner No.1 Syed

Raju Ali as per the Mohammadan Law and as she is the cousin sister of the petitioner No.1, the family members of the petitioner No.1 had not consented to their marriage and therefore, after the marriage, they stayed for a period of six months at her father's house. Thereafter, the petitioner No.1 started living with her in a rented house at Kendukona, under Baihata Chariali Police Station. While they were staying at Kendukona, one child, namely, Sayed Irfan Ali born to them and now he is 11 years old. Thereafter, the family members of the petitioner No.1 brought her to their house at Barigog village and stayed there for three years. There were blessed with another child namely, Sayed Shahid Alam, who is now four years old. During the period of her staying in the house of the petitioner No.1, he along with his family members, tortured her both physically and mentally, demanding dowry and cash amount. She was driven out from the matrimonial home. She then started to stay in the house of her parents. Thereafter, the petitioner No.1 taken her back to the matrimonial home again, where she stayed for one and half years and during this period also the petitioner No.1 always used to subject her to both physical and mental torture, alleging extra marital affairs with other persons. She then left the house of the petitioners and started to stay in her parental abode and there also, the petitioner No.1 used to subject her to torture, alleging extra marital affairs with her brother-in-law and some other relatives. After retirement of her father, the petitioner No.1 demanded a sum of Rs.1 lac and her father paid the said amount and the petitioner No.1 had took away all her gold ornaments given by her parents and the family members of the petitioner No.1 used to threaten her that they will arrange another wife for the petitioner No.1. Thereafter, to maintain herself and her minor children, she started doing the work of maidservant at Sipajhar, and she started residing at there in a rented house. Thereafter, she filed a complaint under the D.V. Act, in the Court of learned Chief Judicial Magistrate (CJM), Darrang at Mangaldai, seeking an order prohibiting the petitioners from committing any act of domestic violence, aiding and abetting the act of domestic violence and protection and safety and seeking maintenance @ Rs.20,000/- per month and compensation amounting to Rs.15 lacs. While the case was pending before the Court of learned CJM, Darrang at Mangaldoi, the petitioners have preferred the present application for transferring the M.C. Case No.195/2021, to the Court of learned CJM, Kamrup at Amingaon or to the Court of learned SDJM, Rangia, on the ground of territorial jurisdiction, as the offences, if any, had taken place within the jurisdiction of learned CJM, Kamrup at Amingaon".

4. Mr. N.N. Upadhyaya, learned counsel for the petitioners submits that the respondent No.2 hails from Jatiya Bhangora village, under Baihata Chariali Police Station, and she resides with her parents there and she has shown her address falsely at Sipajhar, where she occasionally used to visit as she has illicit relation with one person there. Mr. Upadhyaya further submits that there is also apprehension in the mind of the petitioners that fair and impartial enquiry or trial cannot be held in the Court at Mangaldoi and the same has duly been reflected in the additional affidavit submitted by the petitioners. Mr. Upadhyaya further

submits that since the petitioners reside at Niz Borigog, under Rangia Police Station and since the case for guardianship of the minor children is also pending before the Court of learned SDJM, Rangia between the same parties, the present case is required to be transferred to the Court of learned SDJM, Rangia or to the Court of learned CJM, Kamrup at Amingaon and therefore it is contended to allow the petition. Mr. Upadhyaya, has referred to two case laws i.e. (1) Mrs. Afia Rasheed Khan vs. Mr. Dr. Mazharuddin Ali Khan and another, Writ Petition No.4184/2021 of Bombay High Court and (2) Mst. Jagir Kaur and another vs. Jaswant Singh, reported in AIR 1963 SC 1521, in support of his submission.

5. Per contra, Mr. S. Dutta, learned counsel for the respondent, submits that in respect of territorial jurisdiction of courts, Section 27 of the D.V. Act is clear. Mr. Dutta submits that the respondent No.2 has been residing at Sipajhar, where she has been working as maidservant, staying in a rented house and she has submitted one tenancy agreement between the landlord and her, in support of the same. Mr. Dutta further submits that the petitioners have not denied that the respondent No.2 has been residing at Sipajhar. Mr. Dutta also submits that the D.V. Act has been enacted with an object of protecting a woman from being subjected to domestic violence, any provision of the Act has to be read to advance such an object, and as the respondent No.2 is residing in Sipajhar in connection with her avocation, she has lodged the complaint in the court at Mangaldoi, which is the nearest place of Sipajhar, and it is also convenient to her, and as no case could be made out by the petitioners, Mr. Dutta contended to dismiss the petition. Mr. Dutta, also referred two case laws: (1) Gopi vs. Rajalakshmi, reported in 1996 STPL 6269 Kerala and (2) Deepti Bhandari vs. Nitin Bhandari and another, reported in 2011 STPL 33967 SC, in support of his submission.

6. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the document placed on record and also perused the affidavit-in-opposition and the reply submitted by the petitioners. And I find substance in the submission so advanced by Mr. S. Dutta, learned counsel for the respondent No.2 that while deciding the petition, this Court has to bear in mind the statement, object and reason behind enacting the D.V. Act. It is to be noted here that Protection of Women from Domestic Violence Act, 2005, was enacted with the objective of providing more effective protection of the rights of those women, who are victims of violence of any kind, specially occurring within the family, keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution of India, guaranteed under the Constitution, and also to provide for a remedy.

7. The present petition is filed under Section 407 of the Cr.P.C. This section deals with the power of the High Court to transfer cases and appeals. The High Court has the authority to transfer the cases when it is satisfied that:-

(i) The right to a fair and impartial trial, which is guaranteed under Article 21 of the Constitution of India cannot be exercised by any of the party to the suit if the

case is tried by any of the courts which is subordinate to it;

(ii) Certain questions pertaining to the present matter in the court are of unusual difficulty;

(iii) The transfer of the appeal or the case is made inevitable by any of the provisions under the Code;

(iv) The order of transfer will be in the interest of the general convenience of the parties or witnesses involved in the suit.

8. Section 27 of the D.V. Act is also relevant here, and this provision has to be read together with that of section 407 of the Code of Criminal procedure. Section 27 of the D.V. Act provides for jurisdiction and it read as under:

"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."

9. Thus, it appears that as per Section 27 of the D.V. Act, in three places the cases can be instituted: (1) where the aggrieved person aggrieved 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.

10. In the present case, the respondent No.2 was allegedly subjected to domestic violence in the house of the petitioners, and also at the house of her parents. Both the places are within the jurisdiction of Sub-Divisional Judicial Magistrate, Rangia. And as such the court of learned Sub-Divisional Judicial Magistrate, Rangia has the jurisdiction to try the same. However, it appears from the affidavit-in-opposition that the respondent No. 2 has been staying temporarily at Sipajhar and the Court of learned CJM, Darrang at Mangaldai is nearer to Sipajhar than the Court of learned SDJM, Rangia or the Court of learned CJM, Kamrup, Amingaon.

11. Mr. N.N. Upadhyaya, learned counsel for the petitioners, in his reply, submitted that the tenancy agreement, enclosed with the affidavit-in-opposition by the respondent No.2, is backdated and she had falsely stated that she has been residing at Sipajhar. But, Mr. Upadhyaya has failed to substantiate the same. Mr. Upadhyaya also failed to show as to how the petitioners will not get justice or fair trial in the Court of learned CJM, Darrang at Mangaldai. Mere omnibus statement in the additional affidavit or in reply in respect of not getting fair trial/

justice is not sufficient to substantiate such an allegation, as held in the case of Gopi (Supra), by the Kerala High Court, wherein it has been held that mere apprehension of the petitioner that he may not get justice is not enough for transferring a case. Though, in the additional affidavit it is stated that the petitioner No.1 has filed one case against the respondent No.2 and against the person with whom she has illicit relationship and who had threatened him, and enclosed the FIR with the affidavit, yet, it appears that the same was filed much after filing of the complaint by the respondent No.2.

12. I have carefully gone through the case laws, referred by Mr. N.N. Upadhyaya, learned counsel for the petitioners and I find that the ratio laid down therein has to be treated to be restricted to its own facts and not applicable in all forces to the facts and circumstances here-in-this case. On the other hand, I find substance in the submission of Mr. S. Dutta, learned counsel for the respondent No.2 and the case laws relied upon by him also strengthen his submission. The ratio laid down in the other case i.e. Deepti Bhandari (Supra), also fortified his submission.

13. As discussed herein above, the petitioners have failed to establish as to how fair or impartial inquiry or trial is not possible in the Court of learned CJM, Darrang at Mangaldai, and no question of law of unusual difficulty is also shown to have arisen there, and as regards the general convenience of the parties, here priorities have to be extended to the aggrieved person, i.e. the respondent No.2, while the prayer is considered, keeping in mind the object behind enacting the Act on Protection of Women from Domestic Violence Act, 2005.

14. It is to be noted here that Mangaldoi is nearer to Sipajhar, where the respondent No.2 is residing and if the prayer of the petitioners are allowed, then it will cause difficulty to her in attending the Court, either at Amingaon or at Rangia, from her place of abode i.e. Sipajhar. It is also to be noted here that Mangaldai also not far away from the place of residence of the petitioners.

15. In the result, I find no merit in this petition, and accordingly, the same stands dismissed.