GAHC010122222024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(Crl.)/28/2024

JESMINA PARBIN
W/O ABDUS SATTAR, D/O ALHAJ ABDUS SATTAR, R/O VILL- NATUN BADLA, P.O.-TUPAMARI, P.S.-NAGARBERA, DIST- KAMRUP, ASSAM, PIN NO. 781 127. P/R/A C/O SUKHENDRA CHANDRA SEN, FLAT NO. 2 B, MANDAKINI APPARTMENT, 1ST FLOOR, LOKHRA ROAD, OPP DAS PETROL PUMP, KALAPAHAR, PAHARTOLI, BINOBANAGAR, KAMRUP (M), ASSAM

VERSUS

ABDUS SATTAR
S/O LATE ABDUL BAREK, R/O VILL- JAWKATADIYA, P.O.-DEKACHANG, P.S.-BOKO, DIST- KAMRUP, ASSAM, P/R/A HOUSE NO. 20, PRAGATI PATH, PANCHALI, NEAR MAZAR, SIJUBARI, HATIGAON, DIST- KAMRUP (M), ASSAM

Advocate for the Petitioner : MRS. A SAIKIA, MS. U SAUD

Advocate for the Respondent : MR. A K AHMED, MS. P KAKATI

Before
Hon'ble Mr. Justice ANJAN MONI KALITA

For the Petitioner: Mrs. A. Saikia, Advocate

For the Respondent: Mr. A.K. Ahmed, Advocate

Date of Hearing : 12.11.2025

Date of Judgment : 01.12.2025

Judgment and Order (CAV)

Heard Mrs. A. Saikia, learned counsel for the petitioner. Also heard Mr. A.K. Ahmed, learned counsel for the respondent.

2. The instant application has been filed under Section 407 of the Code of Criminal Procedure, 1973 for transfer of the proceeding of D.V. Case No. 106/2019 pending in the Court of the learned Judicial Magistrate, First Class, Kamrup at Boko to the Court of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati.

3. The facts as have been narrated in the instant petition are summarized herein below :

(i) The marriage of the petitioner and the respondent were solemnized on 24.03.2008 as per Islamic Rites and Rituals under Kazy Register and Mohar was fixed as Rs. 30,000/-. A girl child was born out of the wedlock.

(ii) The respondent started to the demand of dowry immediately after marriage from the petitioner and her family and started physical and mental torture on the petitioner. Due to the aforesaid demand of dowry and atrocities the petitioner and the respondent got separated and the respondent had taken the minor daughter from the petitioner by force.

(iii) Faced with the aforesaid situation the petitioner filed the D.V. Case No. 106/2019 against the respondent before the Judicial Magistrate, First Class, Kamrup at Boko which is pending before the aforesaid

Court. Vide an order passed by the learned Court, the minor daughter of the couple was restored to the mother and since then the daughter is staying with her.

4. From the affidavit filed by the respondent, it transpired that the respondent has filed an FIR against the petitioner before the Hatigaon Police Station on 19.09.2020 which was registered as Hatigaon PS Case No. 490/2020 under Section 380 IPC wherein the investigating officer has already submitted the charge-sheet against the petitioner. It is also found that another FIR against the petitioner was filed by the respondent before the Hatigaon Police Station on 01.06.2022 which has been registered as Hatigaon PS Case No. 261/2022 under Section 384/506 IPC read with Section 67, IT Act. Both the cases are pending against the petitioner.

5. The learned counsel for the petitioner submits that the petitioner is a single mother who has to look after her minor daughter while working in Guwahati, therefore, she had shifted her residence to Guwahati couple of years back. She submits that since 2 other cases are pending against her in Guwahati and she needs to attend those cases on a regular basis, it becomes very inconvenient for her to travel to Boko to attend the D.V. Case, which is pending before the Court of the learned Judicial Magistrate, First Class, Kamrup at Boko. She submits that the distance between Guwahati and Boko is almost 60 kms and travelling to and fro to Boko and Guwahati, becomes really difficult for her since she is working in Guwahati and she needs to attend her job also. Since the respondent is residing in Guwahati if the aforesaid D.V. Case is transferred from the Court of the learned Judicial Magistrate, First Class, Kamrup at Boko to the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati will not cause

any problem for the respondent to attend the case as he is staying in Guwahati.

6. In view of the aforesaid submissions, she submits that the transfer of the aforesaid D.V. Case pending before the Court of learned Judicial Magistrate, First Class, Kamrup at Boko to the Court of learned Chief Judicial Magistrate, Kamrup (M) at Guwahati should be allowed. She submits that in similar circumstances, the Hon'ble Apex Court as well as the Gauhati High Court have allowed transfer of cases from respective Court to a different Court for the reasons of inconvenience of attending the Court proceedings. In this regard, she relied on the case of *Ritu Mishra and Another vs Ratna Srivastava and Another,* reported in *(2011) 15 SCC 578* and *Anjali Das vs Swapan Kumar Das and Another,* reported in *2015(1) GLT 671*.

7. Per contra, the learned counsel appearing for the respondent submits that the respondent is a resident of a village near Boko and it will be difficult for him to attend the case in Guwahati if the aforesaid D.V. Case is allowed to be transferred to Guwahati by this Court. He submits that the aforesaid D.V. Case was, infact filed by the petitioner in Boko and therefore, she cannot take the plea at this stage that she is unable to attend the Court in Boko. He further submits that inconvenience of the petitioner should not be a ground to transfer a pending case from one court to another court wherein the respondent will face similar problems.

8. This Court has perused the materials brought before this Court as well as heard the submissions of the respective counsel appearing for the parties. It is seen from the records that though the D.V. Case was initially filed before the Court in Boko when the petitioner was staying in Boko, subsequently, she had

shifted to Guwahati for survival and to give proper education to her minor daughter who has been living with her. It is also submitted by the learned counsel for the petitioner that the minor girl is a present studying in Hojai and she has to visit her on weekends as the girl is pursuing her education in Hojai. It is also seen that 2 of the cases filed against the petitioner are still pending in Guwahati and she needs to attend those cases in Guwahati.

9. The learned counsel for the petitioner has submitted a document issued by one Rita Sen, the owner of the Mandakini Apartment, A.K. Azad Road, Binovanagar, Guwahati, Assam who says that the petitioner is staying as a tenant in her flat. The said document is marked as X and kept on records.

10. This Court has also taken note of the fact that the respondent has filed two FIRs against the petitioner in Guwahati itself.

11. From the aforesaid facts, it is apparent that the petitioner being a single mother staying and working in Guwahati has to face hardship and inconvenience in travelling to Boko to attend the Court proceedings in the aforementioned D.V. Case. Therefore, taking into account whole facts and the distance needs to be travelled by the petitioner to attend the Court in Boko and also relying on the ratio laid down in the aforesaid two cases by the Hon'ble Apex Court and the Gauhati High Court respectively, this Court is of considered opinion that the instant case merits interference by this Court, accordingly, this Court allows this Transfer Petition and transfer of the D.V. Case No. 106/2019 presently pending before the Court of learned Judicial Magistrate, First Class, Kamrup at Boko to the Court of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati for further adjudication of the matter.

12. On receipt of the case records, the learned Chief Judicial Magistrate,

Kamrup (M) shall issue summons to both the parties and on their appearance, he would proceed with the case in accordance with law. In view of the aforesaid directions, the instant Transfer Petition is disposed of as allowed.

JUDGE

Comparing Assistant