



GAHC010149422017

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

Case No. : Tr.P.(Crl.)/35/2017

SYEEDA FARHANA YASMIN and ANR
W/O MD. AINUL HAQUE MAZUMDAR

2: MD. AINUL HAQUE MAZUMDAR
S/O LATE SAMSUL HAQUE BOTH ARE RESIDENT OF DEVDARU PATH
NEAR DISPUR MASJID DISPUR
GUWAHATI-78100

VERSUS

THE STATE OF ASSAM and ANR

2:SRI PHAILNDRA GOSWAMI
S/O LATE NAGENDRA NATH GOSWAMI
R/O RAJA ALI ROAD
NEAR RAILWAY CLUB
TINSUKIA TOWN
PO and PS- TINSUKIA
DIST. TINSUKIA
ASSA

Advocate for the Petitioner : MR.A BARUA

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

For the petitioners : Mr. P.P. Dutta, Advocate

For the respondents : Mr. R.J. Baruah, Addl. P.P.,



Assam.
Mr. A.K. Gupta, Advocate.

Date of hearing : 18.05.2022

Date of Judgment/Order : 28.07.2022

JUDGMENT & ORDER

Heard Mr. P.P. Dutta, learned counsel for the petitioners as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent No. 1. Also heard Mr. A.K. Gupta, learned counsel for the respondent No. 2.

2. By this petition under Section 407 Cr.P.C. the petitioner has prayed for transfer of C.R. Case No. 318^C/2008, pending in the Court of learned Judicial Magistrate, First Class, Tinsukia, to any competent Court within the jurisdiction of Chief Judicial Magistrate, Kamrup (M), Guwahati.

3. The petitioner's case precisely is that based on a complaint filed by the respondent No. 2, who is a retired Head Assistant of the Office of the Chief Judicial Magistrate, Tinsukia, a case being Complaint Case No. 318^C/2008 under Section 500 of the IPC was registered against both the petitioners, who are husband and wife respectively. Accordingly, after due inquiry under Sections 200 and 202 Cr.P.C., on being satisfied that there was prima facie case, took cognizance of the offence under Section 500 of the IPC and issued summons for appearance of the accused petitioners vide order, dated 03.12.2008 passed by the learned Judicial Magistrate, 1st Class, Tinsukia. Being aggrieved by the aforesaid order, dated 03.12.2008, the petitioners approached this Court by filing a petition under Section 482 Cr.P.C. praying for quashing the aforesaid complaint case, but was dismissed vide order, dated 20.01.2015 passed in Crl. Pet. No. 43/2009. Against the aforesaid order, dated 20.01.2015, the petitioners moved the Hon'ble Supreme Court by filing S.L.P. (Crl.) No.

2818/2015, but the same was dismissed by order, dated 13.04.2015. Again the petitioners filed Review Petition (Crl.) No. 436/2015 for review of the order, dated 13.04.2015, but the same was also dismissed by an order, dated 12.08.2015. Thereafter, the learned Judicial Magistrate, 1st Class, Tinsukia, issued summons to the petitioners, on 15.07.2017, directing for their appearance in the case, which they received, but they have not appeared in response thereto.

4. The petitioners have contended that in the aforesaid complaint case, the complainant and the cited witnesses are the employee of the Court of learned Chief Judicial Magistrate, Tinsukia and on the other hand, the petitioners had lodged a complaint against the complainant/respondent No. 2 and one of the witness namely, Smti. Kuntala Bora demanded money to deliver certified copy of the documents of G.R. Case No. 05/2007, as such, they are apprehending that they may not be able to defend their case in a fair and congenial manner. Hence, the instant petition is filed praying for transfer of the case as stated above.

5. It may be pointed out that in a petition for transfer of case under Section 407 Cr.P.C., the primary consideration is whether there is a reasonable apprehension in the mind of a party that he would not get fair justice in trial of the case. In *Umesh Kumar Sharma Vs. State of Uttarakhand & Ors.*, reported in *AIR 2020 Supreme Court 5488*, it has been held that 'only when fair justice is in peril, a plea for transfer might be considered. The Court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.' Justice is administered by Court, not by employees of its office. Here is the case, where the complainant, as stated by the learned counsel for the petitioners, is now retired as the Head Assistant of the office of the Chief Judicial Magistrate, Tinsukia and as such, he cannot be said to have any influence or dominion over the said office employees. On the other hand, there is no evidence to show that the



petitioners had complained to the competent authority against the employee namely Kuntala Bora who allegedly demanded money to provide certified copy of the documents of G.R. Case No.5/2007.

6. Therefore, this Court is of the opinion that the apprehension of the accused petitioners that they may likely to be deprived of a fair and impartial justice in the case from the learned trial court is nothing but imaginary and unreasonable.

7. For the above stated reasons, the petition being devoid of merits, the same stands dismissed.

8. The interim order, dated 23.11.2017 stands vacated.

The petition is disposed of accordingly.

JUDGE

Comparing Assistant