

GAHC010149452022



In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Tr. P (Crl.) No. 20 of 2022

Sh. Prabhat Rajkhowa (age 65 years)
S/o Late Bholanath Rajkhowa,
Resident of House No. 122,
Ward No. 12 of Jorhat Municipal Board,
RB Road, Tarajan Pool,
Near Amar Enclove, Jorhat
Under Jorhat Post Office and Police Station,
Pin 785001 in the district of Jorhat, Assam.

.....**Petitioner**

VERSUS

1. The State of Assam
Represented by A.P.P., Assam.
2. Pawan Rajkhowa.
3. Barun @ Ajoy Rajkhowa.
4. Nirupama Rajkhowa.

All are the children of Late Bholanath
Rajkhowa and resident of Nazira Lakhimi
Pukhuri Gaon, Post Officer and
Police Station Nazira, Pin-785685
in the district of Sivsagar, Assam.

..... **Respondents**

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Advocate for the petitioner : Mr. D. Goswami.
Advocates for the Respondent : Mr. A. Sahad, for respondent
Nos. 2, 3 and 4.
Mr. P. Borthakur, A.P.P. Assam.
Date of Hearing : **27.03.2024**
Date of Judgment : **27.03.2024**

JUDGMENT & ORDER (Oral)

Heard Mr. D. Goswami, learned counsel for the petitioner. Also heard Mr. A. Sahad, learned counsel for respondent No. 2, 3 and 4 and Mr. P Borthakur, learned APP for the State respondent.

2. By filing this petition under Section 407 of the CrPC, 1973, the petitioner is seeking transfer of CR Case No. 34/2021 from the Court of Sub Divisional

Judicial Magistrate (M), Nazira, Sivasagar, Assam to a Court of competent jurisdiction at Jorhat.

3. The facts of the case is that the petitioner as complainant filed a complaint case at the Nazira Sub Divisional Court and the same is pending trial before the Sub Divisional Judicial Magistrate (M), Nazira, Sivasagar. The petitioner is suffering from syncope and bifascicular block and accordingly a pacemaker was implanted in him on 09.05.2019. It is the case of the petitioner that after filing of the complaint case, the health of the petitioner has further deteriorated and due to his health condition, the petitioner has not been able to regularly attend the learned Trial Court at Nazira from Jorhat and participate in the proceedings.

4. It is the further case of the petitioner that the petitioner went for his check up at Sir Ganga Ram Hospital at New Delhi and after evaluating his health, he has been strictly advised not to undertake strenuous journey. It is the further case of the petitioner that the petitioner who resides at Jorhat has to travel by road to Nazira to attend the trial of the complaint case and since the road condition from Jorhat to Nazira is being in a dilapidated condition, it will be difficult for him to undergo such journey. As such, the instant transfer petition has been filed on 28.07.2022.

5. Mr. D. Goswami learned counsel for the petitioner submits that due to the petitioner's deteriorating health condition he could not personally appear before the Trial Court on each and every day when the case was filed. He further submits that during his health check up at Sir Ganga Ram Hospital in July 2022, the Doctor advised him not to undertake strenuous journey to Nazira. He accordingly prays that the proceedings of the subject complaint case be transferred from the Court of Nazira to Jorhat.

6. Mr. A. Sahad, learned counsel for the respondent submits that the petitioner is a resident of Nazira and as such, the grounds for transfer in the instant petition are totally frivolous and abuse of the Court process. He further submits that it is evident from the affidavit accompanying the transfer petition that the petitioner had travelled to Guwahati for swearing the affidavit. He accordingly submits that the petitioner therefore is in a condition to travel to Nazira, which is situated near to Jorhat, where allegedly he is currently residing.

7. I have heard the submissions made at the bar and I have perused the materials available on record.

8. It appears that the petitioner and the respondent accused Nos. 2, 3 and 4 are brothers and they lived together at their ancestral house at Nazira. It appears that when the petitioner wanted to construct a house near the said ancestral house, accused respondents threatened the petitioner and tried to assault him with weapon.

9. Accordingly, the petitioner filed the complaint case on 30.12.2021 before the Court of SDJM (M), Nazira, Sivasagar, Assam which was registered and numbered as CR Case No. 34/2021 registered under Sections 307/506/427/341/447/34 of the IPC.

10. It is the specific case of the petitioner that due to his heart problem, he cannot travel to Nazira, Sivasagar and hence the proceedings of the complaint case be transferred to Jorhat for further trial.

11. It appears that the petitioner had sworn the accompanying affidavit of the transfer petition at Guwahati on 28.07.2022. It further appears that the petitioner in paragraph 4 of the complaint petition has stated that after the

alleged incident on 15.11.2021, he has shifted permanently to his residence at Jorhat. However, it appears that on 02.01.2023 the petitioner alongwith his brothers filed an FIR before the Nazira Police Station wherein he has disclosed his address as “*Lakhami Pukhuri, PS Nazira District Sivasagar*”. The said FIR is enclosed as Annexure-1 to the additional affidavit filed on 08.06.2023 by the petitioner. Pertinently, it is also evident that the petitioner has sworn the said additional affidavit at Guwahati on 08.06.2023.

It is thus evident that the petitioner has been regularly travelling to Guwahati in connection with the current transfer proceedings.

12. The Certificate given by the Consultant Cardiologist on 14.07.2022 which is being relied by the petitioner to indicate that the petitioner is advised not to undertake strenuous journey to Nazira is reproduced hereunder for ready reference:-

“To Whom it May Concern

Patient name : Mr. PRABHAT RAJKHOWA

UHIDNO : 2537268

This is to certify that Sri Prabhat Rajkhowa age 65 years of Jorhat (Assam) was Permanent Pacemaker implantation, Extra thoracic Left Pre Pectoral Pocket Punctured was done at Sir Gangaram Hospital Rajindra Nagar, New Delhi on 09/05/2019. Now for further continuous attend to Court he has to undertake journey to Sivsagar/Nazira for which his health may further deteriorate and his health condition shall not permit any longer.

Dr. Aman Makhija

Consultant Cardiologist”

13. A perusal of the aforesaid Certificate dated 14.07.2022 indicates that the Consultant Cardiologist has certified that the petitioner who on 09.05.2019 has been implanted with pacemaker, if now travels to Sivasagar/Nazira, his health will be deteriorated.

14. The aforesaid Certificate does not inspire confidence of this Court as though the implantation was done way back on 09.05.2019 after which the petitioner has been constantly travelling to and fro from Jorhat to Nazira and Jorhat to Guwahati as evident from the materials available on record, he is certified before filing the transfer petition as unfit to undertake journey only to the place where the trial is pending.

15. It appears that the pacemaker was implanted on 09.05.2019 and on 14.07.2022, after about 3 years and 2 months, the Consultant Doctor has issued the said Certificate. In fact, it appears that the petitioner has been traveling to Guwahati even after the said Certificate was issued in connection with the present case. Thus, the reason for transfer does not appear to be bonafide.

16. Pertinent to mention that an additional affidavit was filed on 12.03.2024 stating that on 06.03.2024, he felt unconscious and upon consultation, the Doctor advised him to avoid road journey. Paragraph 3 of the said affidavit is reproduced hereunder for ready reference:-

“3. That, I respectfully state that I am not keeping well and frequently feel uneasiness and get fainted. I got myself checked up by one Dr. B. Sharma, Professor and Head of the Department of Cardiology, Jorhat Medical College, Jorhat, Assam on 07.02.2024 and he advised me to avoid long journey. On 06.03.2024, I felt uneasiness again and due to the non-availability of Dr. B.

Sharma, I consulted another Dr. A.J. Malakar of Jorhat and he advised me to avoid road journey.”

17. The aforesaid affidavit appears to be doubtful inasmuch as it was only after this Court had taken up the matter on 05.03.2024 wherein this Court observed that up to date status of the petitioner’s health is not available before this Court, the petitioner appears to have fallen unwell on the very next date. On the contrary, there are sufficient materials on record indicating that the petitioner has been regularly undertaking road journeys. Be that as it may, the additional affidavit filed is not sufficient enough to come to a conclusion that the petitioner is unfit to undertake road journeys in as much as it is evident from the additional affidavit, that the petitioner has travelled to Guwahati to swear the said affidavit on 12.03.2024.

18. Further, it appears that the witnesses and the accused persons are all residing within the territorial limit of the Court of Sub Divisional Judicial Magistrate (M), Nazira, Sivasagar, Assam.

19. It is a settled law that convenience of all parties has to be considered for deciding the transfer petition. Reference is made to the decision of the Apex Court in ***Abdul Nazar Madani Vs. State of Tamil Nadu*** reported in **(2000) 6 SCC 204**. Paragraph 7 of the aforesaid judgment is quoted herein for ready reference:-

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under [Section 406](#) Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not

imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

20. Similarly in ***Shree Baidyanath Ayurved Bhawan Pvt. Limited Vs. State of Punjab & Others*** reported in **(2009) 9 SCC 414**, the Apex Court held that the convenience of the parties including the witnesses to be produced at the trial is a relevant consideration while directing transfer of criminal case from one place to another.

21. In the present case, it is submitted at the bar that the accused and the witnesses are all residing at Nazira, Sivasagar where the trial is going on. In fact, the complainant/petitioner also appear to have a residence at Nazira, Sivasagar, Assam.

22. The decision of the Apex Court relied by learned counsel for the petitioner in the case of ***Urvashi Govind Advani Vs. State of Karnataka & Ors*** reported in **(2004) 12 SCC 110** in the context of the facts of the present transfer petition, is of no relevance. In that case, since the petitioner who was a widow aged 80 years and was suffering from cancer, the Apex Court transferred the proceedings from Bangalore to the competent Court at Bombay. In the

present case as discussed above, the Certificate issued by the Consultant Doctor is doubtful.

23. Further, there are sufficient materials available on record, abundantly demonstrating that the petitioner is being regularly travelling after the implantation till date.

24. That being so, the transfer petition is not bonafide and is gross abuse of the Court process.

25. As such, the transfer petition is rejected and stands dismissed.

JUDGE

Comparing Assistant