

Gauhati High Court

Sanjay Jalan vs Sunita Jalan on 6 May, 2004

Equivalent citations: (2006) 2 GLR 272

Author: A Roy

Bench: A Roy

JUDGMENT Amitava Roy, J.

1. This batch of petitions sadly demonstrates how stray episodes of martial discord not resolved in time may lead to wasteful litigations. The parties bitterly posed with their steeled stances seek transfer of each other's proceedings to the place of their convenience. The husband's father has also joined the fray, praying for quashment of the criminal prosecution launched against him. The matters were heard analogously and are being disposed of by this common judgment and order.

2. I have heard Mr. GN Sahewala, Sr. Advocate assisted by Mr. AK Goswami, Mr. P Bora, Mr. M. Aslam, Advocates for Shri Sanjay Jalan the husband and his father Shri Biswanath Jalan as well as Mr. K Agarwal, Advocate assisted by Ms M Buzarbaruah, Mr. R.J. Barua, Mr. A Goswami, Advocates for the wife Mrs. Sunita Jalan.

3. The prefatory facts would be necessary to comprehend better the issues involved and the rival contentions. The marriage between the parties was solemnised on 28.1.2000 at Gauhati and a son out of the wedlock was, born on 12.9.2001. The wife has alleged-cruelty, both physical and mental by the husband and his family members. She was subjected to dowry demands for non-fulfillment of which had to face ill treatment. She has also alleged an attempt on her life by administering poison pointing out the accusing finger towards the husband. According to her, on 26.4.2002, she was driven out of her matrimonial home; de hors her belongings as well as the stridhan, which were illegally retained by the husband and his family members. The wife, in the circumstances, claims, is lodging with her parents at Dikom in the District of Dibrugarh. These allegations, however, have been stoutly denied by the husband and his father Shri B. Jalan. But it is admitted that the parties are living separately on and from 26.4.2002 and that the wife is presently residing with her parents at Dikom.

4. Before the parties embarked on their litigious trail, an advocate's notice was issued on 13.8.2002, on behalf of the husband, requiring the wife to return the jewellery, cash etc. and also the child. It was alleged, therein, that the wife from the very inception of marriage had displayed incompatible nature and non-cooperative attitude, was disrespectful to her parents-in-law and quarreled with them and other family members without any rhyme or reason. She attempted to commit suicide by consuming insecticide with the nefarious design of inculcating the husband and his family members in criminal actions. It was further alleged that she left her matrimonial home for good taking with her huge amount of cash and jewellery.

5. This notice was duly replied to by the wife on 6.9.2002. While reiterating her allegations against the husband and his family members, it was asserted that she was turned out of the nuptial home following severe assaults on 26.4.2002 and that her belongings and stridhan given to her in marriage by her parents were retained by her husband and his family members illegally. A demand

was made in the notice to preserve the said properties lest she be compelled to initiate appropriate legal actions as the husband was attempting to dispose of the same for wrongful gain.

6. In this background, the husband took the first plunge on 7.9.2002. He filed a petition before the Principal Judge, Family Court, Guwahati, under Section 13 of the Hindu Marriage Act, 1956 (herein after referred to as the Marriage Act) seeking dissolution of the marriage, primarily on the ground of cruelty. The allegations made in the notice dated 13.8.2002, were recited afresh. The proceeding was registered as FC (Civil) 229/02 and notice was issued therein.

7. On 1/10/2002, the wife filed a petition under Section 125 CrPC in the Court of the Chief Judicial Magistrate, Dibrugarh, claiming monthly maintainers of Rs. 10,000 for her and the minor son. Notice was also issued, in this proceeding. It was registered as case No. 38M/2002.

On the very same date the wife also lodged a complaint against the husband and his father Shri B Jalan in the Court of the Chief Judicial Magistrate, First Class, Dibrugarh under Section 498A and 506 IPC. The proceeding was registered as case No. 297C/02. The learned Magistrate after recording the initial deposition of the complainant and her witnesses took cognizance under the above mentioned provisions of law and issued process against the accused persons.

8. A week thereafter on 8.10.2002, the wife filed another complaint against the husband and his father in the Court of the Chief Judicial Magistrate, Dibrugarh, this time under Section 406 IPC. The learned Magistrate after recording the initial deposition of the complainant and her witnesses in the proceeding registered as case No. 301C/02 took cognizance under the aforementioned provisions of law and issued process against the accused persons.

9. The husband and his father have reacted by filing petitions before this Court for transfer of the criminal proceedings from Dibrugarh to Guwahati. In addition, the father of the husband, has filed an application under Section 482 Cr.P.C read with Article 227 of the Constitution of India for quashing of the case 297C/02 in so far as he is concerned. In the meantime, by an order, dated 30.11.2002, passed in the case No. 301C/02, the house and premises of the husband were searched on the strength of a search warrant and some article's were recovered. The wife also having been served with the notice of the divorce proceeding in the meantime has approached this, Court for transfer thereof to Dibrugarh. This Court by passing separate orders has stayed further proceedings in the maintenance case No. 301C/2002 and the divorce case. For the sake of convenience, the petitions would be taken up separately for disposal.

TRANSFER PETITION (CRL) 18/02

10. Shri S. Jalan, the husband, by this petition seeks transfer of the case No. 297C/2002 under Section 498A/506 IPC pending before the learned Magistrate, First Class, Dibrugarh to Guwahati on the ground that the complaint petition does not disclose commission of any offence within the jurisdiction of the Court at Dibrugarh and, therefore, the cognizance taken by the said Court is illegal and without jurisdiction.

11. Mr. Sahewala, learned Counsel, has argued that the allegations levelled in the complaint, even if accepted in their entirety, distinctly relate to the period of the wife's stay at Guwahati and, therefore, assuming that the offences, as alleged, have been committed at Guwahati, the Court here has the exclusive jurisdiction to try the same. According to him, the Court at Dibrugarh, therefore, has no jurisdiction and the continuance of the proceedings before it is an abuse of the process of Court. Refuting this stand, Mr. Agarwal has argued that both the complaint petition as well as the testimony of the complainant as well as her witnesses disclose that both the husband and his father had tortured the wife and has subjected her to continuous demands for dowry. The demands and consequential treats were extended by them to the wife at Dikom over telephone as well and, therefore, the offences alleged had also been committed at Dikom within the jurisdiction of the Dibrugarh Court. Mr. Agarwal, in support of his submissions, placed reliance on Clause (b) and (c) of Section 178 as well as 179 Cr.P.C. He sought to sustain his arguments by referring to the following decisions as well.

Smt. Sujata Mukherjee v. Prashant Kumar Mukherjee AIR 1997 SCC 2465.

Bina Dey and Ors. v. Pratibha Dey (Baidya) (2003) 3 GLT 659.

Bhudeb Chandra Karmakar Anr. v. State of West Bengal .

Rajesh Bajaj v. State NCT of Delhi and Ors. .

12. Bearing in mind that the prayer made is only for transfer of the criminal proceeding in hand and not for quashing thereof, the contentions are to be weighed in the context of the prayer made. To save the jurisdiction of a Court of law is the rule and ouster thereof is an exception. The scheme of chapter XIII of the Cr.P.C. manifests the said intention of the legislature to which I would advert a little later. A perusal of the complaint discloses that from the very beginning the husband started making demands for dowry and on her failure to fulfill the same he and his father tortured her with extreme cruelty. The clear and categorical allegation is that the husband's father supported and encouraged the dowry demands. The wife in the complaint further alleged that after her ouster from the matrimonial home, the husband continued to make dowry demands to her over telephone at Dikom as well and threatened her of dire consequences including threats to kill. Threats were also extended to her by his family members over telephone at Dikom. The allegations made in the complaint as noted herein above have been substantiated by the complaint wife and her brother in their deposition before issuance of process. It is, therefore, not a case where either the complaint does not *prima facie* disclose commission of the offences alleged or the deposition has failed to support the same.

13. Section 177 Cr.P.C. mandates that a criminal offence ordinarily should be enquired into and tried by the Court within whose local jurisdiction it was committed. Section following it in the same chapter provide for other contingencies as well. Under Section 178 Cr.P.C an offence may be enquired into or tried by the Court having jurisdiction over a local area where it is committed partly or where an offence being a continuing one, is also committed in that area. Section 179 envisages a situation where an act is an offence for it being done, and for the consequence which is ensued. In

such a case, the offence can be enquired into or tried by a Court within whose local jurisdiction such act has been done or such consequence has ensued. The above provisions unequivocally demonstrate the concern of the legislature to provide against annulment of a criminal prosecution on the plea of want of jurisdiction. All Courts in cases of uncertainty of the places of commission of the offence having jurisdictions over the areas where part of the offending acts are perpetrated or consequences thereof follow have been clothed with the jurisdiction to try the same.

14. In order to test the competing arguments, having regard to the nature of the proceedings, one has to proceed on the premise that the allegations leveled in the complaint as well as in the deposition in support thereof are correct. The offences alleged are of cruelty to women by her husband or his relatives and criminal intimidation under Section 498A and 500 IPC respectively. Explanation to 498A defines cruelty to mean and include harassment to the woman with a view to coercing her or any person related to her to meet any demand for any properly or valuable security or on account of failure by her or any person related to her to meet such demands. Criminal intimidation under Section 503 IPC, is the act of threatening another with any injury to his personal reputation or property or to that of a person or to that of any one in whom that person is interested, with the intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do or omit to do any act which that person is legally entitled to do.

15. The statements made in the complaint as well as the evidence in support thereof till this stage of the proceeding prima facie disclose the ingredients of the offences under the above mentioned provisions of IPC, The demand for dowry and the threat of dire consequence on the failure to meet the same have been extended over telephone by the husband and the family members to the wife at Dikom. The harassment, which is an integral part of cruelty under Section 498A and the alarm which is that of criminal intimidation has in my view been caused to the wife at Dikom. In other words, the consequence of the dowry demand and the criminal intimidation as extended over the telephone had ensued at Dikom. Keeping in view the ingredients of the two offences and the manner in which the same have been allegedly executed, I am inclined to concur with Mr. Agarwal.

16. In Smt. Sujata Mukherjee (supra), the allegations levelled by the appellant was that on account of dowry demands, she had been maltreated and humiliated not only in the house of the in-laws at Raigarh but as a consequence of such events her husband had also come to her parents house at Raipur (where the prosecution was launched) and had assaulted her. It was contended on behalf of the respondents that the learned Judicial Magistrate, Raipur, had no territorial jurisdiction to try the offence as because the cause of action had arisen only at Raigarh. The Apex Court after noticing Section 178(b) and (c) was of the view that the complaint revealed continuing offence of maltreatment and humiliation to the appellant by all the accused respondents and in such continued offence on some occasions all the respondents have taken part and on several occasions one of the respondents, i.e., the husband participated. Holding that, in the facts of the case, 178, Cr.P.C was attracted the Apex Court set aside the order of the High Court to the effect that the criminal case on the basis of the complaint made by the appellant against the other respondents (except the husband) at Raipur was not maintainable.

17. The Apex Court in *Hudal Ch. Karmakar and another*, in the facts of that case was of the view that the wife's complaint even if filed in the wrong Court ought not to be dismissed on the ground of jurisdictional impropriety noticing her pitiable financial position.

18. In *Rajesh Bajaj (supra)*, the Apex Court observed that it was not necessary that a complainant should in verbatim reproduce in the body of his complaint all the ingredients of the offence he alleges and it is not necessary as well that he should state in so many words that the intention of the accused was dishonest or fraudulent. If the factual foundation for the offence is laid in the complaint the Court should not hasten to close the criminal proceeding during the investigation stage merely on the premises that one or two ingredients have not been stated with details.

19. This Court in *Bina Dey and Others, (supra)*, has held in emphatic terms that an offence under Section 498A is a continuing one and if the wife being unable to bear the alleged cruelty or torture has to take shelter at her parents house, it would be a denial of her right to prosecute if it is insisted that the criminal prosecution should invariably be lodged in a Court having jurisdiction over the area where her matrimonial home is situated. It was held that for an offence under Section 498A IPC, the Court at the place where the wife is forced to take shelter has jurisdiction to try the said offence.

20. Sections 498A and 506 do not prescribe any particular mode, of committing cruelty or extending threat or intimidation. To precipitate, cruelty, as defined under Section 498A continued intimidating conduct and behaviour is essential. It is quite comprehensible that in a given fact/situation, demands, harassments and intimidations may be caused by phone or letters or other modes of communication.

21. Considering the materials on record and the state of law as mentioned above, I am of the considered opinion that the offences alleged were of continuing nature at the relevant point of time and, therefore, the Court to the learned Magistrate at Dibrugarh has the jurisdiction to try the same. The prayer for transfer therefore stands rejected.

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22. Shri Biswanath Jalan, the husband's father seeks to quash the Criminal Proceeding, being case No. 297C/02 Under Section 498A and 506 IPC so far as he is concerned. Submissions in support of the said prayer as advanced by Mr. Sahewala are that there is no direct allegation in the complaint as well as in the deposition of the complainant and her witness against his client and that the complaint is a false and malicious one lodged only to harass the family members. The learned Sr. Counsel has contended that had the approach of the wife been bona fide, she would not have pursued the luxury of filing two criminal cases and could, have filed one case combining all her allegations. The complaint being a lame prosecution und mala fide, is liable to be quashed, he urged. He placed reliance on the decision of the Apex Court in the *State of Haryana v. Bhajan Lal*.

23. Also relying on the said authority, Mr. Agarwal, has submitted that the complaint as well as initial deposition of the wife and her witnesses clearly disclose the ingredients of the alleged offences

against the petitioner and the husband and, therefore, the learned Court below rightly took cognizance thereof and issued process against the accused persons.

24. The contents of the complaint have already been noted herein above. The wife in her evidence has stated on oath that her husband and her father in law tortured her on the demands of dowry. After taking shelter at her father's house at Dikom, the accused persons continued to threaten her over telephone and also demanded dowry. She has categorically stated that her husband's father has also encouraged in making the un-lawful demands.

25. Her brother has duly corroborated her in his testimony on oath. Having regard to the materials in the complaint as well as the initial deposition and bearing in mind the scope and ambit of power Under Section 482 Cr.P.C in the matter of quashing a criminal proceeding at the stage of investigation, enquiry or trial, I do not consider it to be a fit case for interference at this stage in exercise of the inherent powers of this Court.

26. The list of contingencies set out in the State of Haryana v. Bhajan Lal, (supra), relied upon by the learned Counsels for the parties is not of any assistance to the petitioner in the facts and circumstances of the present case. In, my view the present case is not covered by any one of the categories of cases enlisted there in.

27. The Apex Court in the State of Karnataka v. M. Devender and Anr. has under lined the role of the High Court in entertaining an application under 482 Cr.P.C. for quashing of a criminal proceeding. The following extracts from the decision in my view set the present controversy at rest.

When a complaint is sought to be quashed, it is permissible to look into the materials to asses what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In dealing with the last case, it is important to hear in mind the distinction between a case where there is no legal evidence of where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

28. In view of the attending facts and circumstances and the law noticed herein above, the petition fails.

Transfer Petition (Criminal) 1/2003

29. Transfer of criminal proceeding being case No. 301C/2002 under Section 406 IPC pending in the Court of Judicial Magistrate First class at Dibrugarh to Guwahati is sought for in the instant petition. According to learned Sr. Counsel for the petitioners, the complaint does not disclose any offence against them. In the alternative, it has been argued that assuming that the offence as alleged has been made out, the same having been committal at Guwahati, the Court at Dibrugarh has no jurisdiction to try the same and to prevent the abuse of the process of Court, the proceeding, needs to be transferred to Guwahati. According to Mr. Sahewala, accepting allegations on their face value, the offence of breach of trust and the act of mis-appropriation, which is an essential ingredient of the said offence, having been committed at Guwahati, no cause of action for the criminal prosecution arose within the territorial limits of the Dibrugarh Court and continuance of the proceeding there would lead to unnecessary harassment and miscarriage of justice. Learned Sr. Counsel in support of his submission has placed reliance on the decision of the Punjab and Haryana High Court rendered *Harjeet Singh Ahluwalia v. the State of Punjab* and *Anr.* 1986 Criminal Law Journal 2070.

30. Per Contra, Mr. Agarwal, while referring to the complaint as well as the initial depositions has strongly contended that the same vividly disclose the commission of the breach of trust at Dikom as well, and, therefore, the learned Court below was justified in taking cognizance thereof and issuing process against the accused persons. In addition to Section 178 (b) and (c) and 179 Cr.P.C., Mr. Agarwal has additionally relied on Section 181(4) of the Code to drive home his point.

31. To appreciate the rival contentions, the complaint, which is the foundation of the criminal prosecution, needs to be examined. It discloses that some articles in marriage were given to the wife as stridhan, which were taken to her in laws house at Guwahati. On 26.4.2002, the husband drove her out by retaining all her belongings as well as the stridhan. Further allegation is that the accused persons, i.e., the husband and his father while using her belongings/stridhan deprived her of use and enjoyment thereof. They have refused to return the same in spite of requests made by her and are instead preparing to dispose of the same. Incidentally some of the articles, pursuant to search warrant, had been retrieved from the house of the accused persons. As marked above, the wife in high reply notice had made a request to the husband to preserve her belongings and her stridhan

and to refrain from disposing of the same for unlawful gain. The complaint wife and her witness have supported the allegation and the allegation made in the complaint. They have categorically stated that not only her belonging and the stridhan have been retained by the accused persons, thus, depriving her of the use and enjoyment thereof but also are preparing to dispose of those as well.

32. Prima facie, therefore, the offence of criminal breach of trust surfaces from the complaint as well as the initial deposition. Under Sub-section 4 of Section 181 Cr.P.C., an offence of criminal breach of trust may be enquired into or tried by Court within whose local jurisdiction the offence was committed or any part of the property which is subject matter of the offence was received or retained or was required to be returned or accounted for by the accused persons. Under the scheme outlined in Chapter III of the Criminal Procedure Code, while an offence is ordinarily to be enquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 to 189 contemplates situations where an offence can be tried or enquired into by a Court at other place as well. The purpose in my view is to provide against a plea to scuttle and otherwise permissible criminal prosecution on the objection regarding jurisdiction of the Court. The expression was required "to be returned or accounted for" had come up for consideration in Harjeet Singh Ahluwalia (supra) in the context of a proceeding for the offence of Criminal Breach of trust launched by the wife against the husband relating to the marriage and dowry items. It was held therein that in absence of a stipulation between the parties, the place of prosecution for the offence of Criminal Breach of trust would be one where the goods in question were kept in trust and a breach in respect thereof was committed. The plea raised on behalf of the wife that prosecution can be launched at the place of her residence and not where the matrimonial home is located was negated.

33. With utmost respect it is not possible to lend concurrence to the above view. Such an interpretation would in my opinion restrict the scope and ambit of Section 181(4) as intended by the lawmakers and defeat the underlying purpose and object thereof. Section 181(4) of the Cr.P.C makes special provision regarding the jurisdiction of a Court for trial of Offence of Criminal misappropriation or criminal breach of trust. This provision is an integral part of the scheme adumbrated under Chapter XIII and is by way of an exception to Section 177 which lays down that ordinarily an offence is to be enquired into and tried by a Court within whose local jurisdiction the same had been committed. If a stipulation between the parties is insisted upon to confer and recognize the jurisdiction of a Court, to try an offence of criminal breach of trust, it would in my view amount to stretching the essentials of the Section beyond that intended. An express stipulation under all circumstances may not be feasible and, therefore, insistence for the same would render the legal remedy sought to be extended by Section 181(4) of the Cr.P.C illusory. This would then be subversive of the purpose of the said provision, which in my view has been enacted for widening the jurisdiction of Courts for trying the offence of criminal misappropriation or criminal breach of trust. For an interpretation of a legal provision to be valid and acceptable, it has to withstand judicial scrutiny in all conceivable fact situations.

34. If a wife is compelled to leave her matrimonial home by her husband or his family members and is forced under the circumstances to take shelter with her parents at any other place, to insist, in absence of any stipulation to the contrary, that she would have to launch the prosecution for the offence of criminal breach of trust only in a Court at a place where the matrimonial home is located,

as the property in question is retained there, would amount to denying her the legal remedy provided under the law. A realistic and pragmatic approach, therefore, has to be adopted in the touchstone of the attending facts and circumstances. The intention and arrangement between the parties would have to be culled out from the materials on record and no particular stipulation or arrangement ought to be insisted upon to invoke the said provision of the Code.

35. The complaint as well as the deposition of the complainant and her witness disclose that the wife had requested the accused persons to return her belongings but they had refused to do so. It is not the stand of the husband and his family members that the properties claimed by the wife were not given to her as stridhan in marriage. The allegations made in the complaint and in the deposition if correct, the husband and his family members are prima facie under a legal obligation in the prevailing circumstances to return her belongings and stridhan to her at Dikom. There is no material on record to suggest that any step has been taken on their behalf offering the wife to collect the property from her matrimonial home at Guwahati. In view of 181(4) Cr.P.C, read with contents of the complaint and the deposition of the wife and her witnesses, I am inclined to hold that the Court at Dibrugarh has the jurisdiction to try the offence as the husband and her family members are under a legal obligation to return the properties at Dikom or account for same at that place. The prayer for transfer, therefore, cannot be entertained.

Transfer Petition (C) 14/2003 and Transfer Petition (Crl) 18/2002

36. The first petition is one made by the wife for transfer of the matrimonial proceeding FC(Civil) 229/02 from the Family Court at Guwahati to Dibrugarh. The second petition is by the husband for transfer of the maintenance case 38M/2002 from Dibrugarh to Guwahati to be tried by the Family Court here.

37. The wife contends that she does not have any independent income and depends with her minor son on her parents for their subsistence. She has no relatives in Guwahati to put up with and if she is required to attend the proceedings at Guwahati, not only she would be undone to meet the incidental expenses, it would also be seriously inconvenient for her to make journeys and arrange for her stay with her minor son. Further, there would be none except her old parents to accompany her.

38. The husband has resisted the move by contending that the wife has a host of relatives in Guwahati where she can conveniently stay during her visits for the proceeding. While denying the inconvenience expressed by the wife, the husband has in turn expressed apprehension about his safety if he visits Dibrugarh in case the divorce proceeding is transferred there as prayed for.

39. In support of his prayer for transfer of the maintenance proceeding at Guwahati, it has been urged that the Court at Dibrugarh has no jurisdiction to entertain such claim and it is the exclusive jurisdiction of the Family Court at Guwahati to examine the wife's prayer for maintenance. Convenience of the parties to have both the proceedings tried in the Family Court at Guwahati has also been pleaded as a ground in support of the transfer.

40. While reiterating the grounds narrated in support other transfer of divorce proceedings at Guwahati, the wife in reply has contended that under the Cr.P.C., the learned Court at Dibrugarh has the jurisdiction to decide the claim for maintenance.

41. Mr. Sahewala has maintained that the Family Court at Guwahati having been set up under the Family Court's Act, 1984 to exclusively try suits and proceedings including those for dissolution of marriage and maintenance, it would be expedient if both the proceedings are tried by the Family Court at Guwahati, more particularly, to avoid conflict of judicial decisions. Having regard to the business of the Family Court and the simple procedure adopted for disposal of the proceedings both the cases are likely; to be disposed expeditiously as well. On instructions, learned Sr. Counsel submitted that the husband was also ready to meet all the expenses relating to journey, food, lodging etc. of the wife, child and their escort at Guwahati. To buttress his arguments, Mr. Sahewala placed reliance on a decision of this Court reported in 1994 2 GLR 390 and those rendered in TRPC (Civil) 31/2000, TRPC 5/2000 and TRPC 23/01 of this Court.

42. In reply, Mr. Agarwal, while reiterating the stand taken by the wife has contended that though it is true that the plaintiff in suit is the dominus litis, interest of justice is the decisive consideration while adjudicating an issue relating to the transfer of a proceeding. He contended that in terms of Section 19 of the Marriage Act, as the wife was residing at the relevant time at Dikom, the Court of the District Judge Dibrugarh had the jurisdiction, to try the divorce proceedings. Keeping in mind the scheme of the Family Courts Act, 1984, and the fact that a Family Court has been established at Guwahati only, there is no clash or jurisdiction and in the attending facts and circumstances, the divorce proceeding needs to be transferred to Dibrugarh in the interest of Justice. He contended that in view of the Section 126 Cr.P.C, the Court at Dibrugarh had the jurisdiction to try the maintenance case and as other cases are also pending at Dibrugarh and consequently the husband has to attend the Court there it would be in fitness of things if the divorce proceeding is transferred to Dibrugarh and the prayer for transfer of the Maintenance Proceeding to Guwahati is rejected. In support of his submissions, Mr. Agarwal has placed reliance of the following authorities.

Shakuntala Modi (Ms.) v. Om Prakash Bharuka , B.S Jaya Shree v. Ashok R. Ramble , Annamma Abraham (Sherly) v. Abraham Jacob , Geeta Heera v. Harish Chander Heera , Archana Rastogi v. Rakesh Rastogi , Mona Aresh Goel v. Aresh Satya Gael , Lalita A Ranga v. Ajay Champalal Ranga , Theja V. Nagarjuna v. V. Nagarjuna , Archana Singh v. Alok Pratap Singh , Simi Mehrotra v. Anil Mehrotra , Sumita Singh v. Kumar Sanjay and Anr. , Reena Mehra v. Rohit Rai Mehra and Anr. , Sikha Paul Choudhury v. Dilip Paul Choudhury (2002) 2 GLT 599, Smti Pushpanjali Das v. Dr. Diganta Kumar Das (2002) 1 GLJ 482, Dr. Subramaniam Swamy v. Ramkrishna Hegde .

43. The Apex Court in Dr. Subramaniam Swamy v. Ramkrishna Hegde, (supra) has laid down the cardinal principle for exercise of power in matters of transfer of a suit, appeal or proceeding. It has been held that the paramount consideration in such matters is the ends of justice and the decision would depend on the scrutiny of the facts and circumstances of each case. It held that though the plaintiff as the dominus litis has a right choose the place of suing and the defendant cannot demand that the suit be tried in any particular Court convenient to him, the preeminent consideration is to see that justice according to law is done and if in achieving that objective transferring of a case or

proceeding is imperative, the Court should not entertain any hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff.

44. The wife's request for transfer of matrimonial proceeding on the ground of inconvenience, like lack of income and resources to meet the expenses of the journey and accommodation, want of company to escort her to the place of the proceeding, minority of her child, health problems, dependence on her aged parents, other proceedings at the place where the transfer is sought for, etc., have been favourably considered by the Apex Court in *Simi Mehrotra* (supra), *Reena Bahri* (supra), *Sumita Singh* (supra), *Reena Mehra* (supra), *B.S Jayashree* (supra), *Annamma Abraham (Sherly)* (supra), *Geeta Heera* (supra), *Archana Rastogi* (supra), *Mona Aresh Goel* (supra), *Lalita A Ranga* (supra), *Theja V. Nagarjuna* (supra), *Archana Singh* (supra) and the requests have been allowed.

45. The same view was reiterated by this Court in *Sumita Singh v. Kumar Sanjay and Anr.* (supra).

46. Different view, however, depending on the evaluation of facts of the cases relied upon by Mr. Sahewala has been taken by this Court where the wife's request for transfer has been turned down. Further, in *Pranami Dutta Mazumdar*, supra, this Court has held that transfer should not be ordered for reasons of sentimentality and the balance of convenience of all the parties and the witnesses must be considered.

47. The Apex Court in *Ms. Sakuntala Modi*, (supra) allowed the wife's application for transfer from Delhi to Dibrugarh noticing, inter alia, that at Dibrugarh another proceeding initiated by the wife was pending. In ordering such transfer, the Apex Court negated the husband's contentions based on his inconvenience and hardship. His offer to pay the expenses for the journey of the wife also did not weigh with the Court. In the same vein the Apex Court in *Archana Singh*, (supra), held the view that the offer to pay the traveling expenses to the wife is not a substitute for the difficulties, which she would have to undertake for contesting a case by traveling to the place of the proceeding, more particularly when she had a minor child to look after.

48. In the conspectus of the facts noticed in details herein above and pronounced and consistent view of the Apex Court in the matters relating to wife's request for transfer and also keeping in view the decision of this Court rendered qua the request of the husband for the transfer of the Criminal Proceedings from Dibrugarh to Guwahati, I am inclined to allow the wife's prayer for transfer of the divorce proceeding from the Family Court at Guwahati to the Court at Dibrugarh. Admittedly, thereby, the requirement of Section 19 of the Marriage Act would not be flouted as is in the facts of the present case the District Judge at Dibrugarh has the jurisdiction to try the divorce proceeding. It is more than apparent from Section 126(1) Cr.P.C, that the Court of Magistrate at Dibrugarh has the jurisdiction to try the maintenance case there. It is indeed true that the Family Court at Guwahati has the jurisdiction to try the divorce proceeding and that the maintenance case if transferred to the said Court both the cases can be tried at Guwahati. However, the grounds put forth by the wife in support of her request for transfer of the divorce proceeding to Dibrugarh and the pendency of the Criminal Proceedings there as well in my view out weigh the justification cited to the contrary on behalf of the husband.

49. The wife, admittedly, is, without any income and depends on her aged parents. Dibrugarh would be at a stone's throw distance from Dikom compared to Guwahati. With the antecedents in her matrimonial life, it may not be convenient and free from embarrassment for her to put up with her relatives, if any, Guwahati for attending the proceedings. She has a minor child to look after and to undertake repeated journeys and stay at Guwahati, away from her parents would be seriously inconvenient for her. She has pleaded that there is none to accompany her to Guwahati. It is likely that she may face hostile environment at Guwahati in the background of the strained relationship between the parties. Considering the facts and circumstances of the case in their entirety, I am of the view that the offer made on behalf of the husband to meet the expenses of the journey, food and lodging is not a viable and reasonable substitute of the inconveniences that would be faced by the wife on the above fronts.

50. On balancing the rival pleas, I am, therefore, of the view that the wife's request for the transfer of the divorce proceeding needs to be allowed in the interest of justice. The inconvenience expressed by the husband, on the considerations put forward do not appear to be sufficient enough to offset those likely to be faced by the wife. To repeat, the husband will have to attend the three Criminal Proceedings at Dibrugarh compared to one by the wife at Guwahati. The apprehension expressed by the husband with regard to his safety is not supported by any tangible material on record. The ground cited by him justifying transfer of the maintenance proceedings to Guwahati also does not appeal to this Court. The plea of likely conflict in judicial decision is more hypothetical than real. When the law permits the trial of proceedings on different issues, between the same parties in different legal forums, such a plea cannot be entertained to defeat an otherwise legitimate and reasonable prayer for transfer of a proceeding to a Court of Law having jurisdiction to try the same. On an ultimate and comprehensive analysis of the materials on record, it is felt that the interest of justice would be best served if both the proceedings are tried at Dibrugarh.

51. The upshot of the above discussion therefore is that the Transfer Petition 14(C)/03 is allowed. The proceedings being FC (Civil) 229/02, pending in the Family Court at Guwahati would stand transferred to the Court of the District Judge, Dibrugarh. The parties would present themselves before the said Court on 24/5/04 for taking further orders. The learned Family Court would arrange to despatch the records to the Office of the District Judge, Dibrugarh, forthwith. The prayer for transfer in Transfer Petition (Criminal) 14/02, Transfer Petition (Criminal) 18/02, Transfer Petition (Civil) 1/03 is rejected and the petitions are dismissed. The Criminal Revision 743/02 is also dismissed.