

GAHC010022782023



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

Case No. : Tr.P.(Crl.)/2/2023

PARTHA GHOSH

S/O- SRI KRISHNA CHANDRA GHOSH, R/O- ASHOK PATH, P.N. ROAD, PO.,
P.S. AND DIST. DIBRUGARH, ASSAM, PIN- 786001.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMT. FORMEEN GHOSH @ LIZA
D/O- LATE SWAPAN GHOSH
W/O- SRI PARTHA GHOSH
R/O- SEUJI NAGAR
P.O. JORHAT ENGINEERING COLLEGE
P.S AND DIST. JORHAT
ASSAM
PIN- 785007

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.01.2024

Heard Mr. C. Chakraborty, learned counsel for the petitioner and also heard Mr. K.

Baishya, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1. None appears for the respondent No.2, though notice was served upon her.

2. This application under Section 407 of the Code of Criminal Procedure, 1973 is preferred by the petitioner, namely, Shri Partha Ghosh for transferring Misc. Case No.104/2022, under Section 125 Cr.P.C. pending before the Court of learned Judicial Magistrate First Class, Jorhat, to the Court of learned Chief Judicial Magistrate, Dibrugarh.

3. The learned counsel for the petitioner submits that the respondent No.2 is the married wife of the petitioner and presently she has been residing at Jorhat and she has filed one Misc. case, being Misc. Case No.104/2022, under Section 125 Cr.P.C. for granting her maintenance from the petitioner. The learned counsel for the petitioner further submits that the petitioner has instituted one divorce proceeding, being Title Suit (Divorce) No.106/2022, which is pending in the Court of learned District Judge, Dibrugarh at the evidence stage and the respondent has contested the said case by filing written statement. The learned counsel for the petitioner further submits that the petitioner has one daughter and one son and they are residing with him and the daughter is suffering from swelling of neck and the petitioner has to take her to the hospital for treatment and that it is difficult for him to attend the Court at Jorhat in connection with Misc. Case No.104/2022 and since another proceeding, being Title Suit (Divorce) No.106/2022 is pending in the Court of learned District Judge, Dibrugarh, the learned counsel for the petitioner submits that the Misc. Case No.104/2022 which is pending before the Court of learned Judicial Magistrate First Class, Jorhat, may be transferred to the Court of learned Chief Judicial Magistrate, Dibrugarh, for the end of justice.

4. It is to be noted here that though notice upon the respondent No.2 was served, yet she has failed to turn up and Mr. Baishya, learned Additional P.P. for the respondent No.1 submits that he has no objection in the event of allowing this petition.

5. Having heard the submission of learned Advocates of both sides, specially considering the fact that Title Suit (Divorce) No.106/2022 is pending before the Court of learned District Judge, Dibrugarh, in which the respondent has already submitted written

statement and also considering the fact that the daughter of the petitioner is suffering from ailments and there is none to look after her and that he has to take care of her by taking her to hospital for treatment, this Court is inclined to allow this petition.

6. It is provided that Misc. Case No.104/2022 under Section 125 Cr.P.C. pending in the Court of learned Judicial Magistrate First Class, Jorhat, be transferred to the Court of learned Chief Judicial Magistrate, Dibrugarh.

7. In terms of above, this petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant