

SUPREME COURT OF INDIA

Fajlor Rahman @ Mohamod Fajloo @ Raju and Others

Vs

State of Punjab and Another

Transfer Petition (Criminal) No. 517 of 2005

(Ashok Bhan and L. S. Panta, JJ)

10.04.2006

JUDGMENT

ASHOK BHAN, J.

This Petition under Section 406 of the Criminal Procedure Code, 1973 read with Order XXXVI of the Supreme Court Rules, 1966 is filed by the Petitioners seeking transfer of P.S. Case No. 21/2005 (titled State v. Mohamod Fajloo @ Raju and others) pending before the learned Magistrate, Phillour, Jalandhar (Punjab) to the Court of learned Chief Judicial Magistrate, Barpeta (Assam).

2. The brief facts leading to the filing of the present Transfer Petition are that Fajlor Rahman @ Mohamod Fajloo @ Raju, petitioner No. 1 herein, is a permanent resident of District Barpeta, Assam. He is employed as a truck driver. He has been carrying goods in his vehicle to other States including the State of Punjab. Most of the time, the petitioner has the assignment of loading/unloading of goods from Mouza Phillour, District Jalandhar, Punjab. While doing so, he used to stay in the Truck Union area of Goraya Police Station. During his frequent visit to Phillour, petitioner No. 1 met petitioner No.2, Mani Khatun, and both of them became close to each other. The petitioners herein have averred in this petition that the relation between the petitioner Nos. 1 and 2 was known to the parents of the petitioner No.2, but, at no point of time, they every raised any objection to such relationship.

3. On the basis of the consent of the petitioner No.2, the petitioner No. 1 agreed to convert such relationship into marriage and, accordingly, the petitioner No. 1, prior to 1-3-2005, made a formal proposal to the parents of petitioner No.2, but they have outrightly rejected the offer of marriage.

4. On 1-3-2005, petitioner No.2 left the house of her parents and straight away came to the native place of petitioner No. 1. On 6-3-2005, petitioner, Nos.1 and 2 along with the elder members of the family applied for registration of their marriage in the Office of a Kazi (Muslim Marriage Registrar) at Barpeta Road, who performed their marriage as per the Muslim Shariat. In the application for registration of the marriage, petitioner No.2 alleged to have voluntarily stated that she is in love with petitioner No.1 and, on her own free Will and consent, she accompanied the petitioner No. 1 without informing anyone in her family and reached Assam. The Kazi at Barpeta issued a Kabin Nama (Certificate of Marriage) on the same day in which the amount of Mehar was fixed at Rs. 10,001/-.

5. It was on 15-3-2005 when the mother of petitioner No.2 (respondent No.2 herein) made a statement before the Goraya Police Station, Mouza Phillour, District Jalandhar, on the basis of which, a Case No.21/2005 for offences under Sections 363-A, 366 and 120-BIPC was registered against petitioner No.1 and his two brothers, namely, Mohamod Moti and Bazrul Ali, petitioner Nos.3 and 4 herein.

6. The case of the petitioners in this petition is that the petitioner No.2 is a major and she left the house of her parents with her free consent and Will. The criminal case implicating the petitioners has been falsely lodged by the respondent No.2, the mother of petitioner No.2, who got a warrant of arrest issued from the Court of learned Magistrate, Phillour, Jalandhar, against the petitioner Nos.1, 3 and 4. The said warrant of arrest was executed through the Barpeta Police, Assam, and petitioner No.4, Mohamod Bazrul Ali, was arrested on 4-4-2005 from his house at Village Halapakri, District Barpeta, Assam, who, later on, was released on bail by the learned Gauhati High Court by its Order dated 27-4-2005.

7. On 15-6-2005, the petitioner Nos.1 and 2, apprehending their arrest in the above-said case, filed an application for the grant of an anticipatory bail before the Honble Gauhati High Court, which was allowed by the Court on 1-7-2005 and the petitioner Nos.1 and 2 were ordered to be released on bail, subject to certain conditions contained in the said Order.

8. The petitioners state that the petitioners Nos.1 and 2, after valid marriage, are living happily as husband and wife at their Village Halapakri, P.O. Howli, District Barpeta (Assam), but keeping in view the case pending before the learned Magistrate, Phillour, District Jalandhar (Punjab), they are receiving constant threat from the relatives and family members of the petitioner No.2 to the extent of even killing both of them. They apprehend that in the event of their arrest by the police of P.S. Goraya and taking them outside the State of Assam, their life will be in danger. On these premises, the petitioners have filed the present Transfer Petition.

9. On notice, Shri Gursharan Deep Singh Grewal, Deputy Superintendent of Police, Tehsil Phillaur, District Jalandhar, filed a counter affidavit admitting the registration of an FIR No. 21/2005 dated 15-3-2005 against petitioner Nos.1, 3 and 4 in Police Station Goraya, Tehsil Phillour, on the basis of the complaint lodged by Smt. Shelo (respondent No.2), mother of petitioner No.2. He stated that as per the allegations made by the respondent No.2 in her complaint to the Police, the age of petitioner No.2 was stated to be 13 V2 years at the time of the occurrence. The State of Punjab has opposed this Transfer Petition inter alia on the grounds that the complainant respondent No.2 is residing at Goraya and most of the witnesses, including the official witnesses in this case, are also from Goraya and the case has been registered with Police Station Goraya, Tehsil Phillour, District Jalandhar, and it would practically be very difficult for the witnesses to go to Assam for giving their evidence as the distance between Jalandhar and Assam is about 2000 Kms. Respondent No.2 in her counter affidavit has stated that her daughter, petitioner No.2, at the time of occurrence was minor and she has been kept in illegal confinement by petitioner Nos. 1, 3 and 4. She further submitted that her daughter has not been allowed to meet her parents for the past about one year and they do not know about her welfare and whether she is really being kept as a married woman or she has been forced in illegal trafficking in a remote corner of the country where her parents are not in position to go and find out the welfare of their daughter.

10. Having heard the learned counsel for the parties and considering the averments made by the petitioners in the Transfer Petition as well as the counter affidavits, we are of the opinion that in the interest of justice and fair play and more particularly in the interest and for the convenience of the parties, the prayer of the petitioners for transfer of the Criminal Case from the Court of the learned Magistrate, Phillour, Jalandar (Punjab) to the Court of learned Chief Judieial Magistrate, Barpeta (Assam) deserves to be allowed.

11. Accordingly, P.S. Case No. 21/2005 (titled State v. Mohamod Fajloo @ Raju and others) pending before the learned Magistrate, Phillour, District Jalandhar, State of Punjab, is ordered to be transferred to the Court of learned Chief Judicial Magistrate, Barpeta, State of Assam, for consideration and disposal in accordance with law. The Principal District and Sessions Judge, Jalandhar, shall transmit the entire record of Case No.21/2005 from the Court of learned Magistrate, Phillour, to the Court of Chief Judicial Magistrate, Barpeta, expeditiously.

12. The Transfer Petition shall stand disposed of accordingly.