

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18625 of 2016

Arising Out of PS.Case No. -35 Year- 2008 Thana -MAIRWA District- SIWAN

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1. Baccha Prasad Jaiswal Son of Late Satya Narayan Prasad,
2. Kanchanbala Jaiswal, Daughter of Baccha Prasad Jaiswal, Resident of
Village - Roopganj, Police Station - Chapra Town, District - Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nitish Kumar @ Nitish Kumar Jaiswal, Son of Late Ashok Kumar Jaiswal,
3. Malti Devi, Wife of Late Ashok Kumar Jaiswal,
4. Ravi Kumar @ Ravi Shankar Jaiswal, Son of Late Shambhu Nath Jaiswal,
5. Ramawati Devi, Wife of Late Shambhu Nath Jaiswal,
6. Shani Kumar, Son of Late Ashok Kumar Jaiswal,
7. Vikki Kumar @ Ghanshayam Kumar Jaiswal, Son of Late Ashok Kumar Jaiswal,
8. Sipi Kumar Son of Late Ashok Kumar Jaiswal,
9. Rinku Devi, Daughter of Late Ashok Kumar Jaiswal,
10. Kiran Devi, Daughter of Late Ashok Kumar Jaiswal, All residents of
mohallah - Main Road, Mairwa, Police Station - Mairwa, District - Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav
For the Opposite Party/s : Mr. R.P.S.Singh (App)
Mr. Bijay Prakash Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL ORDER

4 20-12-2016 Heard the parties.

This application has been filed, under Section 407 of the Code of Criminal Procedure, 1973, seeking transfer of the proceedings of Trial No. 854 of 2016 (old Trial No. 1697 of 2015), arising out of Mairwa P.S. Case No. 35 of 2008, registered for the offences punishable under Sections 323 and 498A of the



Indian Penal Code and Section 3/4 of Dowry Prohibition Act, from the court of learned Sub-Divisional Judicial Magistrate, Siwan to any other equivalent court under the Judgeship of Saran at Chapra.

On perusal of the record, I do not consider the ground so taken to be sufficient for allowing transfer of the case, exercising power under Section 407 of the Code of Criminal Procedure, 1973, in view of the Supreme Court decision, in case of ***Jyoti Mishra Vs. Dhananjaya Mishra, reported in (2010) 8 SCC 803***, paragraph Nos. 5 and 6 of which reads thus:-

“5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.

6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's



prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

This application has no merit and is, accordingly,
dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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