

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43509 of 2015

Arising Out of PS.Case No. -38 Year- 2013 Thana -PAUTHU District- AURANGABAD

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Siyaram Sharma son of Janeshwar Sharma, resident of village- Sabdal, P.S.-Pauthu,
District-Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. Satrughan Sharma son of Surendra Sharma
3. Sudhir Sharma son of Aditya Narayan Sharma
4. Ashok Sharma son of Sudarshan Sharma
5. Anil Sharma son of Sheo Pujan Sharma
6. Upendra Sharma son of Ash Narayan Sharma
7. Mahendra Sharma son of Ash Narayan Sharma
8. Surendra Sharma son of Saroop Sharma
9. Nanda Sharma son of Late Jagdish Sharma
10. Sheo Kumar Sharma son of Late Jagdish Sharma
11. Kamlesh Sharma son of Awadhesh Sharma
12. Anoj Sharma son of Kamlesh Sharma
13. Birendra Sharma son of Parshuram Sharma
14. Gaya Sharma son of Prem Sagar Sharma
15. Pappu Sharma son of Late Ram Pravesh Sharma
16. Birja Nandan Sharma son of Late Ram Bilash Sharma
17. Mithilesh Sharma son of Late Awadhesh Sharma

All are residents of village-Dhanahi, P.S.-Pauthu, District-Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kamlendra Prasad Singh, Advocate

For the Opposite

Party Nos. 2 to 17 : Mr. Ramakant Sharma, Sr. Advocate

For the State : Mr. Ansuiya Jaiswal, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-02-2016

By way of present application preferred under section 482
of the Code of Criminal Procedure (for short “Cr.P.C.”), the petitioner
seeks quashing of the order dated 9.6.2015 passed by the learned
Sessions Judge, Aurangabad, Bihar, in Cr. Misc. No.24 of 2015



arising out of Pauthu P.S. Case No.38 of 2013 whereby and where under he has dismissed the application of the petitioner for transfer of Sessions Trial No.227 of 2014/77 of 2014 from the court of Additional Sessions Judge-III, Aurangabad to any other sessions court available in the district.

2. The facts, in brief, of the present case are that the petitioner is informant of Pauthu P.S. Case No.38 of 2013 dated 3.8.2013 registered under sections 147, 148, 149 and 302 of the Indian Penal Code and section 27 of the Arms Act. The first information report (for short "FIR") was instituted against sixteen accused persons named in the FIR with the allegation that they killed the brother of the informant. The police investigated the case and found the allegation to be true and submitted charge-sheet in the case against the accused persons named in the FIR. On receipt of the police report submitted under section 173(2) of the Cr.P.C., the learned Magistrate took cognizance of the offence and after complying with the provisions prescribed under section 207 of the Cr.P.C., committed the case to the court of sessions for trial. In due course of time, charges were framed before the sessions court against the accused persons and the trial proceeded. In course of trial, 24 witnesses were examined on behalf of the prosecution and after closing the prosecution case, statements of the accused were also recorded under section 313 of the Cr.P.C. No



witness on behalf of the defence was examined during trial. After closure of the prosecution and defence evidence, the arguments were also advanced on behalf of the parties and the case was fixed for judgment on 2.6.2015. At this stage, the informant filed Cr. Misc. No.24 of 2015 seeking transfer of sessions trial in question from the court of Additional Sessions Judge-III, Aurangabad to any other court. The said application filed by the informant of the case was dismissed by the learned Sessions Judge, Aurangabad vide order dated 9.6.2015. Being aggrieved by the aforesaid order dated 9.6.2015, the petitioner has preferred the present application.

3. It has been contended by the learned counsel for the petitioner that after arguments were advanced before the learned Sessions Judge-III, Aurangabad the petitioner heard rumour in the village that the accused persons are claiming that they are bound to be acquitted by the court. In view of the said rumour, the petitioner has got apprehension in his mind that he will not get justice from the court of learned Additional Sessions Judge-III, Aurangabad. He has contended that justice should not only be done but it should also appear to have been done and since in the present case there is apprehension in the mind of the petitioner that he would not get justice from the trial court, the learned Sessions Judge ought to have allowed the application and transferred the sessions trial to some other

court.

4. Learned counsel for the State and learned counsel for the accused have contested the matter. They submit that the informant of the case has filed the transfer petition before the Sessions Judge with oblique and ulterior motive. He is just delaying the completion of the trial so that one of the accused named in the FIR, namely, Sudhir Sharma, whose bail application has already been rejected by this Court may continue in jail for an indefinite period. They have also submitted that a case ought not to be transferred merely on the basis of rumour spread in the village.

5. I have heard respective counsel for the parties and examined the materials available on the record. It is true, when there is reasonable apprehension in the mind of the accused or the complainant/informant that there may not be a fair trial, an order of transfer under section 407 of the Cr.P.C. can be made. However, it is not any and every apprehension that can be a ground for transfer of a case. It should be a reasonable apprehension. A party either complainant or the accused cannot be allowed to have forum of his choice. A transfer application cannot be allowed merely on the basis of unfounded and baseless rumours.

6. In the present case, the basis on which transfer of the case is being sought for is a rumour spread in the village. In my view,

it is not a justifiable ground on which the case ought to be transferred from one court to another. In absence of any justified reason, the learned Sessions Judge has rightly rejected the application filed on behalf of the petitioner. I am also of the view that there is no proper and legal ground, in the facts and circumstances of the present case, to exercise power under section 407 of the Cr.P.C.

7. Considering the aforesaid, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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