

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25766 of 2016

Arising Out of PS.Case No. -1 Year- 2015 Thana -KAJRA District- LAKHISARAI

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1. Fojiya Nishat Daughter of Md. Asraf Nishat resident of Shah Colony, shah Jubair Road, PS Kotwali District Munger.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Javed Alam Son of Late Minhajuddin Resident of Urain PS Kajra District Lakhisarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha
Mr. Kamal Kishore Jha
For the State : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 20-12-2016

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

2. The petitioner is the wife of Opposite Party No. 2. She has filed an F.I.R., which has been registered as Kajra Police Station Case No. 01 of 2015, for the offence punishable under Sections 341, 323, 498A read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, which is pending in the Court of the learned Sub Divisional Judicial Magistrate, Lakhisarai.

3. Through the present application, filed under



Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), she seeks transfer of the said Kajra Police Station Case No. 01 of 2015 from the Court of the learned Sub Divisional Judicial Magistrate, Lakhisarai, to an equivalent Court in the judgeship of Munger.

4. The plea, which has been taken for transfer of the said case, that the petitioner's native village falls within the Munger district and she is fully dependent on her father, who is an old man and she is apprehensive of being abused, battered, otherwise mistreated and killed at the hands of her husband and his men, at Lakhisarai, which is the home district of the Opposite Party No. 2.

5. As regards the said apprehension, the allegation which has been made is there in paragraphs 9 and 11 of the application, which read thus:-

"9. That on 25.05.2016 the petitioner filed an application before the S.P., Lakhisarai stating therein that Kajra P. S. Case No. 1/15 is pending in the Court of SDJM Lakhisarai district Lakhisarai and she is not capable to go all alone to Lakhisarai to attend the Court and contest the case since her father is an old man aged about 70 years and he is suffering from old age ailments and opposite party has threatened her to withdraw the above said case otherwise be ready to face dire consequences and



would be killed.

11. That the petitioner is a lady and is fully dependent her father who is an old man and she is apprehensive of being abused, torture, assaulted and killed at the hands of the opposite party and his men at Lakhisarai which is home district of the opposite party.”

6. Further, it has been stated in paragraph 6 of the application that she filed a *Sanha* in the Court of the learned Chief Judicial Magistrate, Munger, stating therein that her husband and his family members are threatening her for withdrawal of the said Kajra Police Station Case No. 01 of 2015. The said '*Sanha*' has been brought on record by way of Annexure-3 to the present application.

7. On the basis of the information made in the application, as noted above, the petitioner seeks an order from this Court under Section 407 of the Code for transfer of the said case from the Court of the learned Sub Divisional Judicial Magistrate, Lakhisarai, to a criminal Court of equal jurisdiction under Munger Judgeship.

8. Learned Counsel appearing on behalf of the petitioner has submitted that fair and impartial enquiry or trial cannot be have in such circumstance in Lakhisarai Court. It is also his plea that since the petitioner is a lady, she is not capable of going all alone to Lakhisarai to attend the Court



and pursue the case since her father is an old person, aged about 70 years.

9. He has placed reliance on Supreme Court's decision, in the case of **Mrudul M. Damle and Another v. Central Bureau of Investigation, New Delhi**, reported in **(2012) 5 SCC 706**. He has also relied on Supreme Court's decisions, in the case of **Lalita A. Ranga v. Ajay Champalal Ranga (AIR 2000 SC 3406 (1))** and **Mona Aresh Goel v. Aresh Satya Goel**, reported in **2001 (1) BBCJ IV-156**. He has submitted that considering the hardship of a lady, the case needs to be transferred for the ends of justice.

10. It is to be noticed at this stage that in the First Information Report, apart from the husband of the petitioner, who is Opposite Party No. 2 herein, there are two other persons named in the First Information Report, who are uncle and brother of Opposite Party No. 2. The other two named accused persons have not been impleaded as party to the present case seeking transfer of the criminal case from the Court at Lakhisarai to Munger.

11. Section 407 of the Code permits the High Court to transfer cases and appeals in three circumstances, which are as follows:

"407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to



appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.”

12. So far as general convenience of parties or



witnesses, as the ground of transfer for a case from one Court to another is concerned, comparative inconvenience and hardship likely to be caused to the accused, the complainant, the prosecution and the witnesses etc. are necessary considerations which are to be taken into account.

13. In the case of **Jyoti Mishra v. Dhananjaya Mishra**, reported in **(2010) 8 SCC 803**, the Supreme Court observed that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, the Court shows much indulgence to the wife, but a criminal case is on entirely different footing. In a criminal proceeding, right of the accused to a fair trial and proper opportunity to defend himself cannot be ignored for the convenience of the complainant/informant simply because she happens to be the estranged wife.

14. In a subsequent decision, the Supreme Court, in the case of **Rajesh Talwar v. Central Bureau of Investigation and others**, reported in **(2012) 4 SCC 217**, observed, in paragraph 44, as follows:

"44. From the two judgments, referred to hereinabove, it clearly emerges that inconvenience cannot be a valid basis for transfer of "criminal proceedings" from one court to another under Section 406 of the Code of Criminal Procedure. Be that as it may, we are of the view that the instant contention advanced at the hands of the learned counsel for the petitioner is wholly



frivolous.”

15. Though, the Supreme Court was dealing with the provision under Section 406 of the Code, in my opinion, the said reasoning for invoking Section 407 of the Code for transfer by the High Court applies with the equal force. Accordingly, in view of the law laid down by the Supreme Court, in the case of **Rajesh Talwar** (supra), inconvenience cannot be a valid basis for transfer of criminal proceedings from one Court to another under Section 407 of the Code.

16. We should be mindful of the fact that the jurisdiction of a Court to conduct criminal prosecution is determined by the provisions of the Code. If the plea of convenience or inconvenience of the nature as taken in the present application is accepted for transferring cases from one Court to another, the provisions contained in the Code in relation to the jurisdiction and trial would be rendered meaningless.

17. I have no hesitation in concluding that convenience or inconvenience are not significant so far as mandate of law is concerned, in view of what has been held in the case of **Rajesh Talwar** (supra).

18. Now, coming to the plea of the petitioner, as taken in paragraph 6 of the application, that she has filed a



'*sanha*' in the Court of the Chief Judicial Magistrate, Munger, that the Opposite Party No. 2 and his family members are always issuing threats and are pressurizing her to withdraw the case, in my view, cannot be valid ground for transfer of a case.

19. I have perused the said '*sanha*', which has been brought on record by way of Annexure-3 to this application. The allegation of issuing threats etc. is quite sweeping and vague and cannot be taken as ground for transfer of the criminal case.

20. The Supreme Court's decision, in the case of **Mrudul M. Damle** (supra), relied on by learned Counsel for the petitioner, has absolutely no application in the present facts and circumstances of the case since it was an admitted fact in that case that the trial at Delhi would have been inconvenient not only to the accused persons, but also to almost all witnesses cited by the prosecution, except four. The Supreme Court, in that case, had found that the case was not "Delhi centric" in true sense inasmuch as the only reason why the First Information Report was registered in Delhi was the fact that the petitioner no. 2 was posted in Delhi. Paragraph No. 10 of the said decision takes into account the factual aspect based on which the Supreme Court had allowed transfer of the criminal case from Delhi to Thane



(Maharashtra). The said case has no application at all in the facts and circumstances of the present case.

21. The decision, in the case of **Mona Aresh Goel** (supra), relied on behalf of the petitioner is also not application in the present case, which relates to transfer of a criminal case from one Court to another, whereas the case before the Court for transfer, in the case of **Mona Aresh Goel** (supra), was under Section 22 of the Civil Procedure Code.

22. Similar is the case with Supreme Court's decision, in the case of **Lalita A. Ranga** (supra), which is also not applicable.

23. The decision, rendered in the case of **Neelam Chandra v. The State of Bihar and Another**, reported in **2012 (3) PLJR 635**, relied on by learned Counsel for the petitioner is not binding precedent as it does not lay down a law that on the basis of allegation of the nature made in the present case, the High Court should exercise power of transfer of cases under Section 407 of the Code. The said decision is based on the facts and circumstances of that case. What is binding on this Court is the law laid down by the Supreme Court, in the case of **Jyoti Mishra** (supra) and subsequent decision, in the case of **Rajesh Talwar** (supra), where the Supreme Court has clearly held that inconvenience cannot be a valid basis for transfer of criminal proceeding from



one Court to another.

24. In view of the discussion, as above, I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
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