

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39850 of 2016

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1. Nutan Devi wife of Kundan Kumar & D/o Anirudh Sharma presently residing at Block No.9, Flat No.6, Adalatganj, Budh Marg, Patna, P.S.- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Kundan Kumar S/o Sri Ram Nandan Singh resident of village- Rahatpur, P.S.- Piparia, District- Lakhisarai, Presently residing in the house of Upendra Singh (Teacher), Mohalla- Mali Tola, Station Road, Begusarai, P.S.- Begusarai Town, District- Begusarai.

.... Opposite Party/s

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with

Criminal Miscellaneous No.40091 of 2016

Arising Out of PS.Case No. -35 Year- 2014 Thana -MAHILA THANA District- BEGUSARAI

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1. Nutan Devi . Wife of Kundan Kumar & D/o Anirudh Sharma, presently residing at Block No. 9, Flat No. 6, Adalatganj, Budh Marg, Patna, P.S.- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kundan Kumar S/o Sri Ram Nandan Singh, resident of Village- Rahatpur,, P.S. - Piparia, District- Lakhisarai, presently residing in the house of Upendra Singh (Teacher), Mohalla- Mali Tola, Station Road, Begusarai, P.S.- Begusarai Town, District- Begusarai.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.39850 of 2016)

For the Petitioner/s : Mr. Arun Kumar

For the Opposite Party/s : Mr. Sri Ashok Kumar

(In Cr.Misc. No.40091 of 2016)

For the Petitioner/s : Mr. Arun Kumar

For the Opposite Party/s : Mr. Sri Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

2 19-12-2016

Heard learned counsel for the parties.

2. The petitioner is wife of Kundan Kumar, the opposite



party No.2 in both the cases. Both the cases have been filed for transfer of cases under Section 407 of the Code of Criminal Procedure, 1973.

3. In Cr. Misc. No. 39850 of 2016, the prayer is for transfer of Domestic Violence Case No.22 of 2014 pending in the Court of learned Judicial Magistrate, Ist Class, Begusarai to a Court of equivalent jurisdiction at Patna. In Cr. Misc. No.40091 of 2016, the petitioner prays for transfer of the case arising out of Begusarai Mahila P. S. Case No. 35 of 2014 (G.R. No. 3054 of 2014) registered for the offence punishable under Section 498A of the Indian Penal Code and Section 34 of the Dowry Prohibition Act. The said case is pending in the Court of learned Sub Divisional Judicial Magistrate, Begusarai and according to the petitioner; the said case should be transferred in exercise of power under Section 407 of the Code of Criminal Procedure, 1973, to a court of equivalent jurisdiction under the Patna Judgeship.

4. Both the cases before the Court below have been instituted by the petitioner. The plea, which has been taken for transfer of both the cases, is that it would be inconvenient for the petitioner to travel from Patna to Begusarai to pursue the cases.

5. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner being a lady and has a minor



child, it would be highly inconvenient for him to travel from Patna to Begusarai to pursue the cases.

6. I have noticed from the complaint petition filed by the petitioner in 2014, under Domestic Violence Act that female members of the husband of the petitioner have also been arrayed as respondents. Similar is the case with Begusarai Mahila P. S. Case No. 35 of 2014, in which the female members of the husband of the petitioner have been implicated as accused. I am not convinced with the submissions advanced on behalf of the petitioner that on the ground of mere inconvenience, power under Section 407 of the Code of Criminal Procedure, 1973, transferring a case from a Court of competent jurisdiction should be transferred to another Court.

7. In a recent decision of the Supreme Court in case of ***Rajesh Talwar Vs. Central Bureau of Investigation***, the Court considered the ground of inconvenience for transfer and relying on earlier decision of the Supreme Court in case of ***Jyoti Mishra vs. Dhananjay Mishra*** reported in ***(2010) 8 SCC 803*** held in paragraph 44 that inconvenience cannot be a valid basis for transfer of criminal proceeding from one court to another under Section 406 of the Code of Criminal Procedure, 1973. If the ground of convenience of the parties is to be taken into account for



the purpose of exercising power under Section 407 of the Code of Criminal Procedure, situation of all the parties will be required to be taken into account. Evidently, the female members of the family of the husband of the petitioner have also been made accused. Will it not be inconvenient for them in moving from Patna to Begusarai, if this application for transfer is allowed?

8. Observations made by Supreme Court decision in case of ***Jyoti Mishra V s. Dhananjay Mishra*** (supra), is of much significance, paragraphs 5 and 6 of which read thus:-

“5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court show 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 no-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 estranged wife.”

9. I do not find any merit in these applications, which



are, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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