

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3219 of 2016

Arising Out of PS.Case No. -484 Year- 2015 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Manoj Kumar Son of Sri Sachidanand Sinha, at present posted as Branch Manager, Madhya Bihar Gramin Bank, Branch office, at Keshari Nagar, P.S. Shashtri Nagar, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nawal Kishore Sharma Son of late Ram Bachan Sharma, Resident of Kila Garhpar P.S. Biharsharif District Nalanda, Ex Scale-II officer Madhya Bihar Gramin Bank, Regional Office, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the Opposite Party/s : Mr. P.K. Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 13-12-2016 This application has been filed under Section 407 of the Code of Criminal Procedure seeking transfer of Complaint Case No. 484 (C) of 2015 from Biharsharif (Nalanda) Judgeship to Patna Judgeship. The petitioner is at present posted as Branch Manager, Madhya Bihar Gramin Bank, office at Keshari Nagar, Patna. He is an accused in the said Complaint Case No. 484 (C) of 2015 lodged by the opposite party No. 2. In the said complaint case, the petitioner and Chairman of Madhya Bihar Gramin Bank have been implicated as accused.

It is submitted on behalf of the petitioner that the complaint case has been filed maliciously by opposite party No. 2



against whom disciplinary action has been taken for his misconduct as an Officer of Madhya Bihar Gramin Bank, who was posted at Biharsharif.

The ground, which has been taken for transfer of the case is that the brother of the opposite party No. 2 is “a local leader of the Bar and practising lawyer in Civil Court, Nalanda and even threatened in the open court of dire consequences, if the accused may appear at Biharsharif.”

It has also been contended on behalf of the petitioner that because of the influence of the brother of the opposite party No. 2, learned Judicial Magistrate has taken cognizance of the offence though there were no grounds for taking cognizance and issuing process. According to him, learned court below has rejected the petitioner’s application under Section 205 of the Code of Criminal Procedure also because of such influence.

It has also been submitted that the opposite party No. 2 will not be put to any inconvenience if the criminal case is transferred to any court under Patna Judgeship.

In view of the specific plea taken by the petitioner that the complainant (opposite party No. 2) had threatened the petitioner so as to which the court of learned Magistrate at Biharsharif, this Court by order dated 22.01.2016 had called for a



report from the Superintendent of Police, Nalanda at Biharsharif in this regard. In compliance of the order, a report has been received by learned Judicial Magistrate 1st Class, Biharsharif enclosing a copy of the enquiry conducted by the official of Biharsharif Police Station, which indicates that there was no evidence found, relating to the threat allegedly issued by the complainant or any other person.

The plea that the court below has wrongly taken cognizance and rejected the petitioner's application for exemption from personal appearance under Section 205 of the Code of Criminal Procedure, cannot be a valid ground in exercise of power under Section 407 of the Cr. P.C.

Learned counsel has relied on a Supreme Court decision in case of *G. X. Francis Vs. Banka Bihari Singh* reported in *AIR (SC) 309* in support of his submission that a free and fair trial was not possible at Biharsharif in the given facts and circumstances and, therefore, power under Section 407 of the Code of Criminal Procedure needs to be exercised. The fact of the said case is clearly distinguishable from the facts involved in the present case. In that case, the Court was dealing with a situation whether there was intense bitterness between two groups i.e. Christian and local non Christians of the area and in particular



facts and circumstances of that case, the Supreme Court had allowed transfer of case from the State of Madhya Pradesh to the other States.

This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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