

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33554 of 2011

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1. Mohan Kunwar, S/o Sri Asheshwar Kunwar, R/o Village -
Kuadh, P.S. Jainagar, District – Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Madhuri Devi, W/o Ram Sakal Kunwar, R/O Village -
Kuadh, P.S. Jainagar, District – Madhubani.

3. Vinay Kunwar.

4. Abhay Kunwar.

5. Vimal Kunwar.

Nos. 3 to 5 are Sons of Ram Sakal Kunwar.

6. Dev Chandra Kunwar, S/o Kusheshwar Kunwar.

7. Upendra Singh, S/o Late Chandra Shekhar Singh.

All serial Nos. 3 to 7 are resident of Vill.-Kuadh, Kunwar
Tole, P.S.-Jainagar, District-Madhubani.

8. Jharo @ Ram Chandra Yadav, S/o not known to the
petitioner, resident of Vill.-Chhaprari, Majhalpur, P.S.-
Jainagar, District-Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kr. Thakur, Adv.

Mr. Md. Imteyaz Ahmad, Adv.

For the Opposite Party/s : Mrs. Nirmala Kumari (App)

Mr. Jagdish Prasad Singh, Adv.

Mr. Bimal Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER



6 13-12-2016 Heard the parties.

This is an application, under Section 407 of the Code of Criminal Procedure (*hereinafter referred to as the Cr. P.C.*), seeking transfer of G.R. No. 793 of 2006, Trial No. 4037 of 2010, arising out of Jainagar P.S. Case No. 82 of 2006, from the Court of learned Judicial Magistrate, Ist Class, Madhubani, to the Court of learned Additional Sessions Judge, Madhubani, where the trial of Sessions Trial No. 13 of 2007, arising out of Jainagar P.S. Case No. 81 of 2006, is pending.

There is no dispute that said Jainagar P.S. Case No. 81 of 2006 and Jainagar P.S. Case No. 82 of 2006 are counter cases and both of them relate to the same incident. Date and time of the occurrence, date and time of reporting of the occurrence and registration of the First Information Reports are the same. Opposite party No. 2, herein, is the informant of Jainagar P.S. Case No. 81 of 2006, whereas, the petitioner is the informant in Jainagar P.S. Case No. 82 of 2006.

This is also not in dispute that the trial, arising out of Jainagar P.S. Case No. 81 of 2006, being Sessions Trial No. 13 of 2007, has advanced to a considerable extent in the Court of learned Additional Sessions Judge, Madhubani, whereas, progress in trial, arising out of



Jainagar P.S. Case No. 82 of 2006, being Trial No. 4037 of 2010, is not to that extent. Before filing of the present application, under Section 407 Cr. P.C., the petitioner had made an application before the Court of learned Sessions Judge, Madhubani, for such transfer under the proviso to Section 407 of the Cr. P.C., which has been rejected by an order, dated 17.08.2011, by the learned Sessions Judge, Madhubani, in Cr. Misc. No. 8 of 2011.

In this background, the present application has been filed.

Mr. Ajay Kumar Thakur, learned counsel, appearing on behalf of the petitioner has drawn my attention to the order of learned Sessions Judge, Madhubani, dated 17.08.2011, wherein, though he has taken note of the normal rule that counter cases should be tagged before the same Court, but only because of the difference of stage in the two aforementioned cases, the learned court below has declined such request.

Mr. Thakur has placed reliance upon a Supreme Court decision, in case of ***Sudhir Vs. The State of Madhya Pradesh (AIR 2001 SC 826)***, in support of his submission that in counter cases, both the cases should be tagged together and tried by the same Judge, who should not pronounce the judgment till hearing in both the cases



is finished.

Learned counsel, appearing on behalf of opposite parties, has not disputed this legal position.

Considering the submissions made on behalf of the parties, I am of the view that this application deserves to be allowed.

I, accordingly, direct that let Trial No. 4037 of 2010, arising out of Jainagar P.S. Case No. 82 of 2006 (G.R. No. 793 of 2006), be transferred from the Court of learned Judicial Magistrate, Ist Class, Madhubani, to the Court of learned Additional Sessions Judge, Madhubani, who is *in seisin* of Sessions Trial No. 13 of 2007, arising out of Jainagar P.S. Case No. 81 of 2006.

It is further directed, in the light of Supreme Court decision in case of Sudhir Vs. State of Madhya Pradesh (***supra***), that after the evidence is closed in the first case and the arguments are complete, learned Additional Sessions Judge, Madhubani, will immediately, thereafter, proceed with the trial of Trial No. 4037 of 2010, without pronouncing the judgment in the first trial. Thereafter, on completion of hearing in both the cases, he shall pronounce the judgment/s in both the cases.

Learned counsel, appearing on behalf of opposite party Nos. 2 to 8, since has expressed his anxiety



over delay in conclusion of trial in both the cases because of the present order, to allay any such apprehension, it is directed that the learned court below shall make all endeavour to expedite the trials and conclude it as expeditiously as possible, preferably within a period of six (6) months from the date of receipt/production of copy of the present order.

This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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