

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45797 of 2016

Arising Out of PS.Case No. -40 Year- 2014 Thana -MAHILA
P.S. District- SEKHPURA

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Jyoti Kumari Wife of Uday Kumar Rajak, resident of C/o Anil
Kumar, Mohalla-Mogalkuan, Nalanda Biharisharif.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Uday Kumar Rajak, Batch No. 336, Son of Ramanand
Rajak, Resident of Village-Bagdaha, P.S.-Bodhgaya, District-
Gaya at Present Posted at Police Line Nalanda, at
Biharshariff.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Raj

For the Opposite Party/s : Mr. Nand Kishore Pd.

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

ORAL ORDER

2 19-12-2016

This is an application, under Section 407 of the
Code of Criminal Procedure, seeking transfer of proceedings
arising out of Mahila P.S. case No. 40 of 2014, registered for
the offences punishable under Section 498A read with
Section 34 of the Indian Penal Code and Section 3/4 of the
Dowry Prohibition Act, from the Court at Sheikhpura to the
Court of equivalent jurisdiction at Biharsharif, under Nalanda



Judgeship.

The petitioner is wife of opposite party No. 2. It transpires that in the said First Information Report, apart from opposite party No. 2, the mother-in-law of the petitioner, her sister and the father-in-law, all of them, made accused. The accused persons are residents of Bodh Gaya.

Learned counsel for the petitioner has submitted that it is highly inconvenient for the petitioner to pursue the case at Sheikhpura and, therefore, the case should be transferred.

It do not find any merit in such contention made on behalf of the petitioner, in view of the Supreme Court decision, in case of Jyoti Mishra Vs. Dhananjaya Mishra, reported in (2010) 8 SCC 803, paragraph Nos. 5 and 6 of which reads thus:-

"5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows 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 non-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 the estranged wife."

As has already been mentioned, the female members of the husband of the petitioner have also been implicated as accused. Only on the ground therefore that it would be convenient for the petitioner if the case is transferred to Bihar Sharif, this application, under Section 407 of the Code of Criminal Procedure, cannot succeed.

This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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