

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44152 of 2016

Arising Out of PS.Case No. -411 Year- 2015 Thana -HAJIPUR District- VAISHALI(HAJIPUR)

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1. Reema Devi wife of Subodh Rai and Daughter of Sri Nagesh Prasad Yadav resident of Mohalla- Massorganj Police Station- Malsalami District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Subodh Rai Son of Sri Ram Dahin Ray resident of Village- Baghmali Police Station Town Hajipur District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kishore

For the Opposite Party/s : Mr. Sri Jai Narain Thakur

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

2 19-12-2016 Heard learned counsel for the parties.

2. This is an application filed under Section 407 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) for transfer of a proceeding arising out of Hazipur Town P. S. Case No. 411 of 2015 from the Hazipur Court to an equivalent Court under District Judgeship, Patna.

3. The petitioner is the wife of Opposite party No.2. The case has been registered for the offence punishable under Sections 498A, 323, 324 of the Indian Penal Code by the father of the petitioner. The sole ground, which has been taken for transfer of the application, is that the Opposite party had assaulted her brother



and snatched a golden chain and purse containing a sum of Rs. 5,500/- when he had gone to Hazipur Court premises in connection with the said case.

4. Learned counsel for the petitioner has, accordingly, submitted that since the petitioner has genuine apprehension that the Opposite party will get her and family members assaulted and subjected to harassment and humiliation, if they went to the Civil Court premises Hazipur, to pursue the case and thus a fair trial was not possible.

5. The ground taken by the petitioner is not at all convincing, for the purpose of exercise of power under Section 407 of the Code. Reference can be made in this regard to Supreme Court decision in case of ***Jyoti Mishra Vs. Dhananjay Mishra*** reported in ***(2010) 8 SCC 803***, 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 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 estranged wife."

6. However, if the petitioner has such apprehension, she may approach the Superintendent of Police, Hazipur for providing adequate security if she is required to appear before the Court below or in course of criminal proceeding for any purpose. If she does so, the Superintendent of Police, Hazipur will be required to look into it and provide her necessary security.

7. This application stands disposed of.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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