

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10444 of 2017

Arising Out of PS.Case No. -49 Year- 2016 Thana -MAHILA PS District- JEHANABAD

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Sabita Kumari, wife of Santosh Kumar, daughter of Shri Binod Kumar, resident of Mohalla Prasad Bigha, Police Station Nawada, District Nawada

.... Petitioner

Versus

1. The State of Bihar
2. Santosh Kumar, son of Munna Prasad, resident of village Panch Muhalla, Police Station Gilanpur, District Jehanabad

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Krishna Pd. Singh, Sr. Adv.
Ms. Asha Devi

For the Opposite Party/s : Mr. Nand Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

2 03-03-2017 Heard learned Senior Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

The petitioner is the wife of Opposite Party No. 2. She has filed an F.I.R., which has been registered as Jehanabad Mahila Police Station Case No. 49 of 2016, for the offences punishable under Sections 341, 323,195-A, 504, 307, 498A, 506 read with Section 34 of the Indian Penal Code, and is pending in the Court of the learned Sub Divisional Judicial Magistrate, Jehanabad.

Through the present application, filed under



Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as „the Code“), she seeks transfer of the said Jehanabad Mahila Police Station Case No. 49 of 2016 from the Court of the learned Sub Divisional Judicial Magistrate, Jehanabad, to an equivalent Court in the judgeship of Nawada.

The plea, which has been taken for transfer of the said case, is that the petitioner's native village falls under the Nawada district and she is apprehensive of being abused, battered, otherwise mistreated and killed at the hands of her husband and his men, at Jehanabad, which is the home district of the Opposite Party No. 2.

As regards the said apprehension, the allegation which has been made is there in the informatory petition filed in the Court of learned Chief Judicial Magistrate, Jehanabd, paragraph no. 6 of the said informatory petition read thus:-

“6. That on 02.12.2016, the petitioner came to Jahanabad Court to know about the stage and present petition of Mahila P.s. Case No. 49 of 2016 and after consulting her lawyer when she was returning to catch at 2 PM, member of opp. party surrounded the petitioner outside gate of court and asked that why you are not compromising the case in spite of threatening. The



petitioner out of fear kept mum upon which members of opp. party started abusing the petitioner saying that "sala court Charhoge to Gayab kkar Denga" and started dragging him by putting Gamchha on his neck with a view to kidnap him. On the hulla of petitioner nearby people assembled and pacified the matter and anyhow the petitioner fled away and saved his life."

On the basis of the information made in the said informatory petition, as noted above, the petitioner seeks an order from this Court under Section 407 of the Code for transfer of the said case from the Court of the learned Sub Divisional Judicial Magistrate, Jehanabad, to a criminal Court of equal jurisdiction under Nawada Judgeship.

It is to be noticed at this stage that in the First Information Report, apart from the husband of the petitioner, who is Opposite Party No. 2 herein, there are five other persons named in the First Information Report. The other five named accused persons have not been impleaded as party to the present case seeking transfer of the criminal case from the Court at Jehanabad to Nawada.

So far as general convenience of parties or witnesses, as the ground of transfer for a case from one



Court to another is concerned, comparative inconvenience and hardship likely to be caused to the accused, the complainant, the prosecution and the witnesses etc. are necessary considerations which are to be taken into account.

In the case of **Jyoti Mishra v. Dhananjaya Mishra**, reported in **(2010) 8 SCC 803**, the Supreme Court observed that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, the Court shows much indulgence to the wife, but a criminal case is on entirely different footing. In a criminal proceeding, right of the accused to a fair trial and proper opportunity to defend himself/herself cannot be ignored for the convenience of the complainant/informant simply because she happens to be the estranged wife.

In a subsequent decision, the Supreme Court, in the case of **Rajesh Talwar v. Central Bureau of Investigation and others**, reported in **(2012) 4 SCC 217**, observed, in paragraph 44, as follows:

"44. From the two judgments, referred to hereinabove, it clearly emerges that inconvenience cannot be a valid basis for transfer of "criminal proceedings" from one court to another under Section 406 of the Code of Criminal Procedure. Be that as it may, we are of



the view that the instant contention advanced at the hands of the learned counsel for the petitioner is wholly frivolous.”

Though, the Supreme Court was dealing with the provision under Section 406 of the Code, in my opinion, the said reasoning for invoking Section 407 of the Code for transfer by the High Court applies with the equal force. Accordingly, in view of the law laid down by the Supreme Court, in the case of **Rajesh Talwar** (supra), inconvenience cannot be a valid basis for transfer of criminal proceedings from one Court to another under Section 407 of the Code.

We should be mindful of the fact that the jurisdiction of a Court to conduct criminal prosecution is determined by the provisions of the Code. If the plea of convenience or inconvenience of the nature as taken in the present application is accepted for transferring cases from one Court to another, the provisions contained in the Code in relation to the jurisdiction and trial would be rendered meaningless.

I have no hesitation in concluding that convenience or inconvenience are not significant so far as mandate of law is concerned, in view of what has been held in the case of **Rajesh Talwar** (supra).



Now, coming to the plea of the petitioner, as taken in the present application, that she has filed an informatory petition in the Court of the Chief Judicial Magistrate, Jehanabad, that the Opposite Party No. 2 and his family members have attempted to kill her for not compromising the case, in my view, cannot be valid ground for transfer of a case.

I have perused the said informatory petition, which has been brought on record by way of Annexure-5 to this application. The allegation of issuing threats etc. is quite sweeping and vague and cannot be taken as ground for transfer of the criminal case.

In view of the discussion, as above, I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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