

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.34280 of 2017**

Arising Out of PS.Case No. -293 Year- 1994 Thana -SULTANGANG District- PATNA

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1. Dhirendra Kumar Singh, Son of Late Dashrath Singh, Resident of Mohalla- Mahatama Gandhi Nagar, P.S.- Agamkuan, District- Patna, Kanti Factory Road, Near R.N. Villa, Kankarbagh, Patna- 26.

.... .... Petitioner/s

Versus

1. Nameshwar Singh Nirala, Son of Late Sheonandan Singh, Resident of Mohalla- Mahatma Gandhi Nagar, P.S.- Agamkuan, Kanti Factory Road, Near, R.N. Villa, Kankarbagh, Patna- 26.  
2. Sanjay Kumar Singh.  
3. Anil Kumar Singh.  
4. Sunil Kumar Singh, All sons of Nameshwar Singh Nirala. All Residents of Mohalla- Mahatam Gandhi Nagar, P.S.- Agamkuan, Kanti Factory Road, R.N. Villa, Kankarbagh, Patna- 26.  
5. The State of Bihar.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. S. N.P. Sinha, Sr. Adv.  
With Mr. Nagendra Kumar  
For the Opposite Party/s : Mr. Sri Binod Kumar 3

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

2      27-07-2017                      Heard learned counsel for the parties.

2. This application has been filed for transfer of Sessions Trial No. 811 of 1999 arising out of Sultanganj (Agamkuan) P.S. Case No. 293 of 1994 from the Court of Sri Manoj Kumar, learned Additional Sessions Judge-VII, Patna City to any competent Court within the Sessions Division, Patna, for just and fair trial.

3. Before I come to the ground taken in the



present application for transfer of the case, I must take note of the observation made by the learned Sessions Judge, Patna, in his order, dated 12.06.2017, passed in the application filed by the petitioner before him for transfer of the said case under Section 408 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the Code*):-

“Considering the facts and circumstances of the case and basically this fact that F.I.R. is of the year 1994 and more than 22 years have lapsed and perusal of the report of the learned Court of Additional Sessions Judge-VII, Patna City bearing letter no. 98 dated 18.05.2017, it is clear that the said S.Tr. No. 811 of 1999 arising out of Agam Kuan P.S. Case No. 293 of 1994 is fixed for argument and it is further reported therein that Informant himself wants to linger on the proceeding. Considering these facts, I came to the conclusion that this Cr. Misc. (Transfer) petition is absurd and vexatious and contents mentioned in the petition are not believable. Accordingly, this Cr. Misc. (Transfer) petition is liable to be rejected.”

4. I consider it apt to directly refer to the allegations made by the petitioner in paragraphs 8 and 9 of the application which are foundational facts asserted in the



application for seeking transfer, which read thus:-

“8. That on 28.03.2017 there was some function in the house of Opposite Ist Party which is close to the house of the petitioner where several persons had assembled and ‘Nameshwar Singh Nirala’ when asked by some guests about status of the case lodged by the petitioner, he disclosed that he and his sons would be acquitted as assured by learned Trial Court. The version of the accused Nameshwar Singh Nirala was overheard by the petitioner and some of his family members.

9. That the aforesaid version of Nameshwar Singh Nirala was not taken care of seriously by the petitioner but on 05.04.2017 on the day of Ram Navami in the evening Nameshwar Singh Nirala was seen by the petitioner going to the residence of learned Judge in Om Pratima Apartment with a packet of gifts and after few minutes he was seen coming out of from the Om Pratima Apartment with empty hand.”

5. The Court has experienced that making scurrilous allegation against officers discharging judicial function, for making out ground for transfer of a case has



off late become fashion. Vague allegations like entering into the Chambers/Residence of the Magistrate and coming out from his Chambers/Residence to make out a case of bias against judicial officers for oblique reasons is being noticed these days.

6. Learned Senior Counsel appearing on behalf of the petitioner has submitted that since the facts, which have been alleged in paragraphs 8 and 9 of the application and were stated before the Court below also stood un rebutted, this Court must exercise power under Section 407 of the Code. I find absolutely no merit in the contention.

7. Transfer of a case on the basis of allegation made against the Presiding Judge of the Court is a very serious matter and it affects the morale of the Judicial Officers. On the basis of such allegations, no order for transfer under Section 407 of the Code can be made.

8. The decision in case of *Bindeshwar Missir and others vs. Emperor (AIR 1938 Patna 376)*, relied on by the learned senior counsel for the petitioner has no application in the facts and circumstances of the case since in that case there was allegation that the Magistrate had



intimate relationship with the complainant with whom he stayed and in whose boundary he held the Court and examined the prosecution witnesses. The said decision has nothing to do with the facts and circumstances of the present case.

9. I do not find any merit in this application.

10. This application is, accordingly, dismissed.

11. The Court below is directed to conclude the trial expeditiously.

**(Chakradhari Sharan Singh, J)**

ArunKumar/-

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