

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.300 of 2017

Arising Out of PS.Case No. -572 Year- 2011 Thana -SAHARSA District-
SAHARSA

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Jyoti Poddar, Wife of Krishna Murari Poddar, D/o Late
Prakash Poddar, R/o Vill.-Choti Ballia, P.S.-Ballia, District-
Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Krishna Murari Poddar, S/o Lakshmi Poddar, R/o Mohalla-
Shiv Puri, P.S.-Sadar, District-Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandip K. Gautam, Adv.

For the Opposite Party/s : Mr. Ajay Kumar Jha, APP

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

ORAL ORDER

2 10-01-2017 Heard the parties.

The petitioner is the wife of opposite party No. 2,
who has filed Sadar P.S. Case No. 572 of 2011,
corresponding to G.R. No. 2033 of 2011, disclosing offences
punishable under Sections 498(A), 323 and 494 of the Indian
Penal Code. The said case is presently pending in the Court
of learned Judicial Magistrate, Ist Class, Saharsa.

This application has been filed, under Section 407



of the Code of Criminal Procedure, 1973, seeking transfer of the said case to a Court of equivalent jurisdiction under the Judgeship of Begusarai, where the petitioner is said to be residing.

The plea which is being taken on behalf of the petitioner for transfer of the case is that being a lady, it is inconvenient for her to peruse the criminal case at Saharsa, which is 100 kms. away from Begusarai, where she is presently residing.

I do not consider the ground so taken to be sufficient for allowing transfer of the case, exercising power under Section 407 of the Code of Criminal Procedure, 1973, 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."*

This application has no merit and is, accordingly,
dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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