

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28278 of 2017

Arising Out of PS.Case No. -573 Year- 2010 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Rajni Kant Choubey, Son of Late Shankaracharya Chaubey,
 2. Sandhya Devi, W/o Sri Rajni Kant Choubey,
 3. Sarika Kumari, Daughter of Sri Rajni Kant Choubey, All Resident of Flat No. 409, Priyambika Apartment, Vijay Nagar, Bailey Road, P.S.- Rupaspur, District- Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. Niru Choubey, W/o Sri Rajeev Rajan Choubey and Daughter of Late Ram Naresh Upadhyay, Resident of Mohalla- Telbigha, Rang Bahadur Road, P.S.- Kotwali, District- Gaya. At present Residing at Flat No. 310, Priyambika Apartment, Vijay Nagar, Baily Road, P.S.- Rupaspur, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajan Ghoshrave, Advocate
For the State : Mr. Nityanand, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-08-2017

Heard learned counsel for the petitioners, learned APP for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. On previous occasion the Court directed opposite party no.2 to file an affidavit as the parties showed inclination for referring the matter to mediation centre but it is submitted on behalf of opposite party no.2 that unless the husband participates in the mediation, there is no purpose for sending the case for mediation. The husband is absconding up-till-date.

3. Learned counsel for the petitioners submits that there is no chance of husband participating in the mediation as he is absconding



up-till-now so the matter be heard on merit.

4. The petitioners seek transfer of Complaint Case No.573 of 2010 from the court of SDJM, Gaya to the court of CJM, Patna. The ground for transfer of the complaint case is that the petitioner no.1 Rajni Kant Choubey has suffered from paralytic attack, therefore, it would be inconvenient for him to attend the trial court at Gaya as he resides in Patna, moreover, the complainant is also residing at present in Patna. Subsequently to the present case she has lodged three other cases at Patna so it would be convenient for her also to pursue the case at Patna; whereas the learned counsel appearing on behalf of opposite party no.2, the complainant, submits that already the case is at the evidence stage after framing of the charge and all witnesses of the case are resident of Gaya so it would be convenient for trial at Gaya, hence objects transferring the case to Patna.

5. An application is filed under Section 407 Cr.P.C for transferring a criminal case from one court to another on three grounds, first when fair or impartial enquiry or trial cannot be held at the criminal court where the present case is pending, secondly some question of law of unusual difficulty is likely to arise, thirdly considering the general convenience of the parties and witnesses or if the transfer of the case is expedient for the ends of justice. In the present case transfer of Complaint Case No.573 of 2010 pending in the court of S.D.J.M., Gaya is being sought on ground of convenience of the accused but the



witnesses of the case as submitted are residents of Gaya so it would be convenient to produce the witnesses at Gaya. As far as the illness of petitioner no.1 is concerned, the medical report shows that he suffered from weakness in the right part of his body but after treatment he was discharged from the hospital. Moreover, personal attendance of the accused may be dispensed with if the accused is represented by a pleader in view of Section 317 Cr.P.C. The complainant’s three cases pending at Patna cannot be a ground for transferring the present complaint to the court of Patna for the reason that case was instituted at Gaya and witnesses of the present complaint case also reside there; hence there is no valid ground for transferring Complaint Case No.573 of 2010 from the court of S.D.J.M., Gaya to the court of Chief Judicial Magistrate, Patna rather it is expedient in the interest of justice to continue the trial of the complaint at the place of its institution.

6. Accordingly, this application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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