

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19964 of 2016

Arising Out of PS.Case No. -789 Year- 2015 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Surendra Kumar @ Sonu @ Surendra Kumar Sonu, son of Etwari Yadav,
resident of Daudbat, P.S.- Habibpur, District- Bhagalpur

.... Petitioner

Versus

1. The State of Bihar
2. Dr. Rajeev Kumar Singh (Advocate), s/o Tarkeshwar Singh, resident of Sadar
Hospital Campus (near Purana Police Nirikchhak), P.S.- Kotwali (Tilkamanjhi),
District- Bhagalpur

.... Opposite Parties

with

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Criminal Miscellaneous No. 5354 of 2017

Arising Out of PS.Case No. -31 Year- 2014 Thana -HABIBPUR District- BHAGALPUR

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1. Surendra Kumar @ Sonu @ Surendra Kumar Sonu, Son of Etwari Yadav,
Resident of Daudbat, P.S.- Habibpur, District- Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Dr. Rajeev Kumar Singh (Advocate), S/o Tarkeshwar Singh, R/o- Civil Court
Campus (near Purana Police Nirikchhak), P.S.- Kotwali (Tilkamanjhi), District-
Bhagalpur.

.... Opposite Parties

with

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Criminal Miscellaneous No. 10241 of 2017

Arising Out of PS.Case No. -412 Year- 2014 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Surendra Kumar @ Sonu @ Surendra Kumar Sonu, Son of Late Etwari Yadav,
resident of Daudbat, P.S.-Habinpur, District-Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar
2. Dr. Rajeev Kumar Singh (Advocate), S/o Tarkeshwar Singh R/o Civil Court
Campus, Bhagalpur, Permanent resident of Sadar Hospital Campus (near Purana
Police Nirikchhak), P.S.-Kotwali (Tilkamanjhi), District-Bhagalpur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Nihar Nandan Ambasta
Mr. Diwakar Upadhyaya
For the O.P. No. 2 : Mr. Narendra Kumar Singh



For Bar Council of India : Mr. Vishwajeet Mishra
For Bihar State Bar Council : Mr. Shantanu Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 29-06-2017

In all these three cases, which have been filed, seeking transfer of criminal cases, under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the contesting parties, i.e. the petitioner and the Opposite Party No. 2 are same and since common ground has been taken in all these case for transfer, with the consent of the parties, the said three cases have been heard together and are being disposed of by the present common judgment and order.

2. Heard learned Counsel for the parties concerned.

3. The Opposite Party No. 2, Dr. Rajeev Kumar Singh, is a practicing lawyer at Bhagalpur Civil Court. He is the informant of Kotwali (Tilkamanjhi) Police Station Case No. 789 of 2015 and Habibpur Police Station Case No. 31 of 2014.

4. The petitioner has been made accused of offences punishable under Sections 182/211 of the Indian Penal Code in Police Station Case No. 59 of 2015 (Official Complaint), which arises out of Bhagalpur Kotwali Police



Station Case No. 412 of 2014, which was registered by the petitioner.

5. Apart from being a practicing Advocate, Opposite Party No. 2 claims to be holder of Ph.D. degree and teaching law at T. N. B. College, Bhagalpur.

6. The Opposite Party No. 2 lodged First Information Report, on 28.11.2015, giving rise to Kotwali (Tilkamanjhi) Police Station Case No. 789 of 2015, alleging that in the night of 27.11.2015, at about 10:30 PM, two unknown accused persons came at his residence, knocked his door and when he opened the door, one of them put his country-made pistol on his temple and opened fire, but the fire missed him. The Opposite Party No. 2, thereafter, snatched the said country-made pistol from the accused and chased the two criminals. While opening fire, the accused persons are said to have threatened saying that they will not allow him to remain alive if he took rancor with the petitioner. On that basis, the petitioner was made named accused in the case.

7. On 01.12.2015, the District Bar Association, Bhagalpur, decided to hold a general body meeting to consider the occurrence involving Opposite Party No. 2, he being a legal practitioner. The general body of the District Bar Association, Bhagalpur, on 01.12.2015 itself, decided, *inter*



alia, that the members of the Association shall not do pairvi for such persons who commit crime against lawyers. The said resolution has been brought on record by way of Annexure 3 to Criminal Misc. No. 19964 of 2016. It seems that prior to lodging of said Kotwali (Tilkamanjhi) Police Station Case No. 789 of 2015, Opposite Party No. 2, Dr. Rajeev Kumar Singh, had lodged one Habibpur Police Station Case No. 31 of 2014 on 28.07.2014 in relation to an occurrence which had taken place on 14.06.2014. He alleged in the said First Information Report that he was having some land in mouza Hazi Shahpur and the petitioner used to demand rangdari from Opposite Party No. 2 whenever he went to see his land. On 14.06.2014, when the Opposite Party No. 2 had gone to see his land, he noticed that the petitioner and 20-25 other persons, variously armed, were demolishing the boundary wall of the plot of the Opposite Party No. 2 and digging the earth out of the plot. When Opposite Party No. 2 objected to it, they demanded rangdari of a sum of Rs. 5,00,000/- and threatened him of dire consequences. The Opposite Party No. 2, out of fear, gave a sum of Rs. 5,000/- to the petitioner and because the petitioner had asked the Opposite Party No. 2 not to go to the police, he, initially, did not lodge the First Information Report and finally lodged it on 28.07.2014.

8. A case was lodged by the petitioner also



being Kotwali (Bhagalpur) Police Station Case No. 412 of 2014. In the said First Information Report, the petitioner alleges that the petitioner runs a school over a piece of land, which belongs to him and the Opposite Party No. 2 claims ownership over the said piece of land. On the alleged date of occurrence, i.e. on 02.07.2014, the Opposite Party No. 2 and some other persons had intercepted the petitioner and had demanded rangdari and snatched his mobile phone. In Kotwali (Bhagalpur) Police Station Case No. 412 of 2014, the police submitted final report and appear to have recommended action against the petitioner under Sections 182/211 of the Indian Penal Code, which has been numbered as Police Station Case No. 59 of 2015 (Official Complaint).

9. The cases are pending before different courts in the Judgeship of Bhagalpur. The petitioner seeks transfer of the said three criminal cases to a Court of Competent Jurisdiction in any other Judgeship except Bhagalpur Judgeship, since, according to the petitioner, a fair and impartial trial is not possible at Bhagalpur in view of the resolution of the District Bar Association, Bhagalpur and the fact that the lawyers, at Bhagalpur, are not accepting his brief.

10. Taking serious note of the nature of decision taken by the District Bar Association, Bhagalpur, this Court allowed impleadment of the Bar Council of India, New Delhi,



and the Bihar State Bar Council, Patna, through their Secretaries.

11. Learned Counsel for the Bihar State Bar Council and the Bar Council of India have entered appearance. Affidavit has also been filed on behalf of the Bar Council of India.

12. It has been submitted on behalf of the Bihar State Bar Council that Bihar State Bar Council is contemplating appropriate action after due enquiry into the conduct of the members of the District Bar Association, Bhagalpur, leading to the said resolution, dated 01.12.2015.

13. Curiously, with the counter affidavit filed on behalf of the Bar Council of India, a communication, dated 07.03.2017, of Bihar State Bar Council, addressed to the President and the Secretary of the District Bar Association, Bhagalpur, has been brought on record, from which it appears that the President and the Secretary of the District Bar Association, Bhagalpur, were not responding to the communications made by the Bihar State Bar Council in this regard. It also appears from Annexure-B, which is extract from the proceedings of the meeting of the special committee of the Bihar State Bar Council, held on 11.03.2017, that the members of the District Bar Association, Bhagalpur, despite notice by the Bihar State Bar Council, were not duly



responding. It has, however, been informed that the said resolution, dated 01.12.2015, has been recalled.

14. The Opposite Party No. 2 claims to be lawyer by profession. There is no room for doubt that the resolution of the District Bar Association, Bhagalpur, dated 01.12.2015, was passed at the initiative of Opposite Party No. 2. The effect of such resolution was that the petitioner missed to exercise his right to engage lawyer of his choice in the case in which he was made accused at the instance of the Opposite Party No. 2.

15. In that background, the apprehension of the petitioner that he may not get fair trial at Bhagalpur cannot be said to be unsubstantiated.

16. To show the conduct of the Opposite Party No. 2, my attention has been drawn to an order, dated 12.08.2016, passed, by the learned Chief Judicial Magistrate, Bhagalpur, in Police Station Case No. 59 of 2015 (Official Complaint) wherein learned Chief Judicial Magistrate has recorded that Opposite Party No. 2 entered into his chamber and started threatening him of spoiling his career because he was unnecessarily granting adjournment in favour of the petitioner. In the said order, the learned Court below has taken note of the fact that lawyers of Bhagalpur were not ready to conduct the case on behalf of the petitioner.



17. When the Court expressed its inclination to transfer the case in exercising of power under Section 407 of the Code in the facts and circumstances as noted above, learned Counsel for the Opposite Party No. 2 submitted that if, in Court's opinion, the transfer of the cases is imminent, the cases may be transferred to the Courts of equivalent jurisdiction within Patna Judgeship. To this, learned Counsel for the petitioner also agreed.

18. From what is there on record, which have been discussed above, I am of the opinion that a case for transfer, under Section 407 of the Code, is made out since the Opposite Party No. 2, who is himself a practicing lawyer at Bhagalpur, was responsible for passing of a resolution by the District Bar Association, Bhagalpur, because of which the petitioner could not solicit legal assistance from the members of the District Bar Association, Bhagalpur. The apprehension of the petitioner of not getting a free, impartial and fair trial at Bhagalpur, in my view, in the present case is reasonable and not imaginary, based on conjectures and surmises. It appears to the Court that dispensation of criminal justice may not be possible impartially and objectively at Bhagalpur and the Court is, therefore, required to pass appropriate orders for transfer of the cases.

19. Accordingly, these applications are allowed.



Let the proceedings arising out of Kotwali (Tilkamanjhi) Police Station Case No. 789 of 2015, Habibpur Police Station Case No. 31 of 2014 and Police Station Case No. 59 of 2015 (Official Complaint) be transferred to Patna Judgeship at the same stage where the cases are pending.

20. Let all the records of the aforesaid three cases be sent to the District Judge, Patna, for the said purpose, whereafter the case will be assigned to Courts of equivalent jurisdiction under him.

21. These applications are accordingly allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	NA
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