

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39077 of 2017

Arising Out of PS.Case No. -110 Year- 2013 Thana -PAKARIBARAW District-
NAWADA

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Rajesh Kumar, Son of Late Harihar Prasad, Resident of -
Arfabad, Rithi Gali, P.S.-Alamganj, District-Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Mangal Sao, Son of Shankar Sao.

3. Shankar Sao, Son of Kishori Prasad.

Both Resident of Dhamol, P.S. Pakari Barawa, District
Nawada.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kr. Singh, Adv.
Mrs. Sudha Chandra, Adv.
Mr. Avinash Shekhar, Adv.

For the State : Mr. Binod Kumar, APP

For the O.P. Nos. 2 and 3 : Mr. Sanjeev Sharan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

8 11-04-2018 Mr. Sanjeev Sharan, learned Advocate has
filed the counter affidavit on behalf of the opposite party
No. 3 in Court. A rejoinder has also been filed by Mr.
Surendra Kumar Singh, learned Advocate for the
petitioner. Let both the documents be taken on record.



Heard the learned counsels for the petitioner, opposite party Nos. 2 and 3 and the State.

The present petition has been filed by the brother of the deceased, viz. Ruby Devi for transferring the Sessions Trial No. 181 of 2015, arising out of Pakaribarawa P.S. Case No. 110 of 2013, pending before the Court of learned 1st Additional Sessions Judge, Nawada from Nawada Sessions Division to any other Sessions Division, preferably in the Judgeship of Patna, on the ground that the witnesses are being pressurized by the opposite parties for settling the case or else the witnesses as well as the petitioner shall suffer serious consequences.

Certain facts necessary for disposal of this case are listed below.

The deceased/Ruby Devi had initially lodged a case against the opposite party Nos. 2 and 3 for the offences under Sections 341, 323, 328, 498(A) and 34 of the Indian Penal Code (in short '**the I.P.C.**'). Later, on her death, Section 302 of the I.P.C. was added. The trial ensued and four witnesses have up-till now been examined. The father of the deceased/Ruby Devi was pursuing the case at Nawada. He was murdered, which led to the registration of Gandhi Maidan P.S. Case No. 104 of 2017, instituted for the offences under Sections 302,



120(B) and 34 of the I.P.C. In the aforesaid case of murder of the father of deceased/Ruby Devi, the opposite party Nos. 2 and 3 were in jail.

Till the time, it has been argued, the accused persons/opposite party Nos. 2 and 3 were in jail, the trial continued at an even pace. With the grant of bail to one of the accused persons, the threatening again started coming.

Under the aforesaid circumstances, a prayer has been made for transferring the Sessions Trial No. 181 of 2015, arising out of Pakaribarawa P.S. Case No. 110 of 2013, to any Court of equal jurisdiction at Patna.

Mr. Sanjeev Sharan, learned Advocate appearing for the opposite party Nos. 2 and 3 has submitted that earlier also, one of the witnesses to the case had come up before this Court, seeking transfer of the aforesaid sessions trial, but a Bench of this Court declined to accede to the aforesaid request and only directed the Trial Court to look into the matter, verify the allegations and pass necessary orders with respect to cancellation of bail of the accused persons for their having misused the privilege of bail in threatening the witnesses.

It has been submitted by Mr. Sharan that, thereafter, no order was passed by the learned Trial Court,



meaning thereby that the allegations levelled by the prosecution regarding threatening of witnesses was not found to be correct. He has further submitted that looking at the allegations made by the petitioner seeking transfer, it would appear that only a vague and general allegation has been levelled without giving any specific details regarding the threatening; the details in the nature of who threatened whom and at what point of time. Lastly it has been submitted that even on the merits of both the cases, viz. the cases regarding the death of Ruby Devi and of her father, the allegations are absolutely vague and general and the present petition has been filed only with an oblique motive to further harass the accused persons in forcing them to come/go to a different district for contesting the trial.

In support of the aforesaid contention, Mr. Sharan has further submitted that if the sessions trial is transferred to Patna or to any other Judgeship away from Nawada, the opposite parties would find it extremely difficult to bring their witnesses to the witness-box in their defense.

After going through the records, this Court is of the view that the allegation of threatening the witnesses has been continuing since 2015, when one of the



witnesses had approached this Court for transfer of the sessions trial, referred to above. The Court, on hearing the matter, did not dismiss the petition, but only directed the Sessions Court to verify the allegations and pass necessary orders in the nature of cancellation of bail of the accused persons, if they were found to be threatening the witnesses, thereby misusing the privilege of bail.

No order having been passed by the Trial Court in that regard would not necessarily lead to an inference that the allegations made by the witnesses or the petitioner was found to be false. It is the case of the petitioner that only after one of the accused persons was granted bail, then the threatening to the witnesses resumed.

The circumstances, *viz.* the death of Ruby Devi and later the mysterious death of the father of aforesaid Ruby Devi are certainly indicative of the fact that the petitioner would find it absolutely difficult to contest the trial at Nawada.

A case, therefore, has clearly been made out for transfer of the aforesaid sessions trial from Nawada to any other Court of equivalent jurisdiction in a different Judgeship.

Since the case with respect to the



death/murder of the father of aforesaid Ruby Devi (deceased) is being contested at Patna, this Court is further of the view that it would be in the interest of justice that the Sessions Trial No. 181 of 2015, arising out of Pakaribarawa P.S. Case No. 110 of 2013, be transferred to Patna Judgeship from Nawada.

As such, it is ordered accordingly.

The learned District & Sessions Judge, Patna shall assign this case, referred to above, to any competent Judge of having the jurisdiction to try a case of murder. The Trial Court, at Patna, shall resume the trial from the stage from which the case has been transferred.

The entire process of transfer of records in connection with aforesaid Sessions Trial No. 181 of 2015, arising out of Pakaribarawa P.S. Case No. 110 of 2013, shall be completed within a period of 30 days from the date of receipt/production of a copy of this order.

The application is, accordingly, allowed.

(Ashutosh Kumar, J)

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