

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53932 of 2017

Arising Out of PS. Case No.-86 Year-2010 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Anita Devi W/o Manoj Kumar Guar, D/o Late Haribansh Prasad, resident of Nayagaon, Behind the Baptists Church, P.S.- East Colony, Jamalpur, District- Munger.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Manoj Kumar Gaur, Son of Lalan Gaur, resident of Village P.O.- Kathar, P.S.- Krishnabrahon, District- Buxar, presently posted in the District Office of Food Corporation of India behind Patel Maidan, Town and P.S. - Samastipur, District- Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ram Sevak Choudhary
For the Opposite Party/s : Mr.Sri Narendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

8 25-01-2019 Petitioner has filed this application under Section 407 of the Cr.P.C. for transfer of complaint case filed by the opposite party no. 2, which is C.R. No. 86/10 from the court of learned Sub Divisional Judicial Magistrate, Samastipur to the court of learned Chief Judicial Magistrate, Munger.

Case in short is that opposite party no. 2 has filed a complaint case against his wife (herein petitioner) stating there in that the petitioner and her relatives assaulted him and took away the articles worth Rs. 2,00,000/-. It further appears that the petitioner has also filed a complaint case against the opposite party no. 2 in the court of learned Chief Judicial



Magistrate, Munger bearing Complaint Case No. 934C/2008. Apart from that the petitioner also filed a maintenance case bearing Matrimonial Case No. 44/2009 in the court of learned Principal Judge, Family Court, Munger, which was allowed in favour of the petitioner and she was awarded maintenance. Thereafter, a Matrimonial Case was also filed by the opposite party no. 2 in the court of learned Principal Judge, Family Court, Samastipur bearing Matrimonial Case No. 200/2009 and when the petitioner came to know about the same, she filed the transfer petition before this Court bearing M.J.C. No. 3369 of 2009 for transferring the matrimonial case from Samastipur to Munger on the ground that she was facing difficulty in travelling to Samastipur to appear in the case and she also had apprehension that the opposite party no. 2 will try to eliminate her, if she came to make her appearing in the case at Samastipur. The said transfer petition i.e. M.J.C. No. 3369 of 2009 was allowed vide order dated 20.07.2011 and the matrimonial case filed by the opposite party no. 2 was transferred from the court of learned Principal Judge, Family Court, Samastipur to the learned Principal Judge, Family Court, Munger.

In the meantime, the complainant has filed the



complaint case i.e. C.R. No. 86/10, which is pending in the court of learned Sub Divisional Judicial Magistrate, Samastipur, in which, cognizance has been taken.

The present application has been filed for transfer of the said complaint case on the ground that the petitioner is residing in her native village at Munger and with her mother and other family members as such she is unable to attend the court at Samastipur in absence of anyone to accompany her on each date fixed in the said complaint case i.e. C.R. No. 86/10 and her financial condition is also not good to attend the litigation at Samatipur and further the complaint case filed by the petitioner is running at Munger and the matrimonial case being Matrimonial Case No. 200 of 2009 has also been transferred from Samastipur to Munger and the opposite party no. 2, who is working in F.C.I. is now posted at Buxar, therefore, prayed for transfer of the C.R. No. 86/10 from the court of learned Sub Divisional Judicial Magistrate, Samastipur to the court of learned Chief Judicial Magistrate, Munger.

It appears that in this case, opposite party no. 2 was noticed and he has appeared also but in spite of giving several opportunities for filing counter affidavit, but he did not choose to file the counter affidavit and vide order dated 02.11.2018, the



case was adjourned by last indulgence and it was made clear that if there is no representation on behalf of opposite party no. 2, the court would be constrained to proceed *ex-parte* but in spite of that nobody has appeared on behalf of opposite party no. 2 nor any counter affidavit has been filed.

Considering the facts and circumstances of the case as discussed above and also the contention of the petitioner, for the ends of justice, it would be expedient to transfer the complaint case filed by the opposite party no. 2 which is C.R. No. 86/10 from the court of learned Sub Divisional Judicial Magistrate, Samastipur to the court of learned Sub Divisional Judicial Magistrate, Munger.

In view of the above, the complaint case C.R. No. 86/10 pending in the court of learned Sub Divisional Judicial Magistrate, Samastipur is being transferred to the court of learned Sub Divisional Judicial Magistrate, Munger and also the records of the said complaint case is directed to be transferred to the court of Sub Divisional Judicial Magistrate, Munger, without any further delay.

Needless to say, as the opposite party no. 2 has not appeared, learned Sub Divisional Judicial Magistrate, Munger shall notice to opposite party no. 2 and shall fix a date and



expedite the matter in accordance with law.

Accordingly, this application is allowed.

(Vinod Kumar Sinha, J)

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