

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46830 of 2018

Arising Out of PS. Case No.-73 Year-2014 Thana- AKBARNAGAR District- Bhagalpur

Sonu Kunwar S/o Sudama Kunwar, R/o Vill.- Bari Bhabnathpur, P.S.- Akbar
Nagar, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rabindra Yadav, S/o Late Ramdev Yadav, R/o Chit Makandpur, P.S.- Akbar
Nagar, Distt.- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv. Mr. Vijay Anand, Adv.
For the State	:	Mr. Md. Ashlam Ansari, APP
For the Opposite Party	:	Mr. Praveen Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 28-02-2019 This application has been filed for setting-aside the order dated 02.07.2018 passed by the learned Sessions Judge, Bhagalpur in Cr. Misc. Transfer Petition No.27/2018, by which the Transfer Petition filed by the opposite party no.2 was allowed and Sessions Trial Nos.794/2017 and 795/2017 arising out of Akbar Nagar P.S. Case No.73/2014 pending in the Court of learned Additional Sessions Judge-VIIth has been transferred to the court of learned Additional Sessions Judge-Vth, Bhagalpur for disposal.

The ground for assailing the order dated 02.07.2018 is that in this case all the prosecution witnesses have been examined and when the trial is at the defence stage a petition



was filed by the opposite party no.2, which is Annexure-3 of this petition, at a belated stage to transfer the case in any other court on the ground that he has apprehension from the accused persons, whereas, the petitioner or any accused person have never threatened the informant – opposite party no. 2 and the ground taken by the opposite party no. 2 for transfer of Sessions Trial Nos.794/2017 and 795/2017 is false and baseless. However, learned Sessions Judge has failed to appreciate the fact that transfer of Sessions Trial Nos.794/2017 and 795/2017 at such a belated stage would adversely affect the expeditious disposal of the trial and the transfer of sessions trial at such a belated stage on the petition of opposite party no. 2, which is without any cogent materials available on record is bad in eye of law especially when, learned Presiding Officer has himself opined that the allegation of the informant is baseless. In support of his contention, learned counsel for the petitioner has relied upon a decision of Hon'ble Supreme Court in the case of *Usangani Adambhai Vahora vs State Of Gujarat & Anr* reported in **2016(3) SCC 370** in para 11, in which the Hon'ble Supreme Court has held as under:-

“11. In the instant case, we are disposed to think that apprehension that has been stated is absolutely mercurial and cannot remotely be



stated to be reasonable. The learned single Judge has taken an exception to the remarks given by the learned trial judge and also opined about non-examination of any witness by him. As far as the first aspect is concerned, no exception can be taken to it. The learned Sessions Judge, while hearing the application for transfer of the case, called for remarks of the learned trial Judge, and in such a situation, he is required to give a reply and that he has done. He is not expected to accept the allegations made as regards his conduct and more so while nothing has been brought on record to substantiate the same. The High Court could not have deduced that he should have declined to conduct the trial. This kind of observation is absolutely impermissible in law, for there is no acceptable reason on the part of the learned trial Judge to show his disinclination. Solely because an accused has filed an application for transfer, he is not required to express his disinclination. He is required under law to do his duty. He has to perform his duty and not to succumb to the pressure put by the accused by making callous



allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court haunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable. The High Court has gravely erred in this regard.”

On the basis of the above decision of Hon’ble Supreme Court, learned counsel for the petitioner has submitted that in the present case also, except vague allegation that the informant opposite party no. 2, has apprehension from accused person and the said allegation has already been considered to be baseless by the learned Presiding Officer, there is no other ground for transfer of Sessions Trial Nos. 794/2017 and 795/2017. As such, the order dated 02.07.2018 is not sustainable in the eyes of law.

Heard learned A.P.P. as well as learned counsel for opposite party no.2, they have opposed the instant application on the ground that the case is at the stage of argument and as such no prejudice will be caused to the petitioner, if the case is



allowed to continue in the Court of learned Additional Sessions Judge-Vth and further stated that later on, one of the accused had granted provisional bail on the ground of admission of his son, though his prayer for bail was rejected by the High Court.

Having heard both sides, from perusal of the record, it appears that the ground taken by the opposite party no. 2-informant is that he has apprehension from the accused persons as well as the apprehension that they have influenced the presiding officer and will be released by the trial court, however, no concrete material has been brought on the record by the opposite party no. 2 in support of his contention and mere submission that he has apprehension, cannot be a ground for transfer of sessions trial. Furthermore, on the allegation of the opposite party no. 2, learned Sessions Judge has called for a report from the concerned court and learned Presiding Officer has said that the allegation is baseless, which has been referred by the learned Sessions Judge in his order. Furthermore, the ground that one of the accused person has been granted provisional bail, though his bail is rejected up to the High Court, however, the same is not the good ground for transfer of Sessions Trial Nos.794/2017 and 795/2017 and it further appears that even if the argument is accepted, he has been



granted only provisional bail and not the regular bail.

Considering the aforesaid facts and circumstances of the case as stated above, the impugned order does not appear to be sustainable. As such, this application is allowed and the impugned order is set-aside and the learned Additional Sessions Judge-VII, is directed to expedite the matter in order to conclude the same as expeditiously as possible.

(Vinod Kumar Sinha, J)

Amjad/-

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