

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36192 of 2018

Arising Out of PS. Case No.-350 Year-2010 Thana- COMPLAINT CASE District- Supaul

Reena Jha wife of Sri Ashish Jha, daughter of Sri Amrendra Jha, At present residing Krihnanagar, Bataraha Ward No.23, Saharsa District- Saharsa.

... .. Petitioner

Versus

1. The State of Bihar
2. Ashish Jha, Son of Bhavnath Jha,
3. Bhavnath Jha, Son of Late Nirsan Jha,
Both serial no.2 and 3 are residing in Quarter no. 0119 Post Sakeepur Delta-3, Greater Noida, Janpath, District- Gautam Budh Nagar U.P.

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Durga Nand Jha

For the Opposite Parties : Mr. Prem Kumar Jha

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. JUDGMENT

Date : 04-07-2019

This application has been filed for transfer of Complaint Case No.350 of 2010 from the court of ACJM, Birpur to any competent court either at Saharsa or Madhepura for trial.

2. The fact giving rise to this application is that a complaint petition was filed by the petitioner making allegation that she was subjected to cruelty- both mentally and physically, and sent back to her native village on 24.8.2006 and when she again went to her matrimonial home, Rs.10 lac was demanded from her. In the meantime, she became pregnant and she was sent back to her parental home; where she gave birth to a female child and several attempts were made by the petitioner to return to her



matrimonial house but that failed. Further case is that on 28.2.2010, husband of the petitioner came to her native place and pressurized her to put sign on an agreement prepared for the purpose of dissolution of the marriage as the demand of the dowry was not fulfilled. On the basis of that Complaint Case No.350 of 2010 was registered under Section 498A, 379/34 of the Indian Penal Code (hereinafter to be referred as 'the IPC') and Sections 3/4 of the Dowry Prohibition Act (hereinafter to be referred as 'the D.P. Act') against O.P.no.2 and others and the same is pending before the court of ACJM, Birpur.

3. Now the present case has been filed for transfer of the same from the court of ACJM, Birpur to the Sessions Division of Saharsa or to any other court of competent jurisdiction on the ground, apart from other grounds that the learned ACJM, Birpur is influenced by the husband of the petitioner and in support of that submission has been made in para 12 to 14 of petition that in spite of the fact that the petitioner was absconder for ten months, on his appearance, he was granted bail by the learned ACJM, Birpur on condition that he would remain present on the next date, vide order dated 21.2.2018 but again on next date i.e. 17.3.2018, he was not present and the petitioner made prayer to cancel the bail bond of the petitioner for violation of order dated 21.2.2018 but he always



filed petition under Section 317 Code of Criminal Procedure (hereinafter to be referred as 'the Cr.P.C.'), which always was accepted by the court, as such the petitioner has reasonable apprehension that she would not get justice from the court of ACJM, Birpur.

4. Second ground for transfer of the case is that at present the petitioner is residing with her father at Saharsa to provide better education of her daughter and her father is also suffering from several ailments, as such he is not in a position to accompany her to Birpur on every date, furthermore, the petitioner is not receiving single penny as maintenance, in such a situation, it is very difficult for her to participate in the proceeding regularly at Birpur, hence, she has prayed for transfer of the application in the interest of justice to Saharsa, which will not cause any inconvenience to the O.P.no.2 as he is residing at Greater Noida. On the above ground this application has been filed for transfer.

5. On the other hand, O.P.no.2 has appeared and submitted that no grounds for transfer have been fulfilled, moreover, the court of ACJM, Birpur has territorial jurisdiction of this case, as on the basis of the materials in the complaint petition as even according to the petitioner, she was residing at her parental house at Pratap Garh and witnesses are also of Pratap Garh within



the jurisdiction of Birpur court as well as the case is fixed for hearing on the point of charge and so far allegation against the court is concerned, it has been submitted on behalf of O.P.no.2 that this has only been made with an intention to pressurize the court by O.P.no.2. On the above submission, learned counsel for O.P.no.2 has submitted that this transfer application is devoid of any merit and it is fit to be dismissed..

6. Heard both sides and perused the application for transfer as well as counter affidavit filed by the O.P.no.2 and the supplementary affidavit filed by the petitioner, in which the petitioner has come with a plea that now she is residing at Saharsa for better education of her daughter and also for her medical treatment, which she has stated on oath in para 6 of the application, in support of that documents have been filed, which are annexed as Annexed 6 (series). The case of the petitioner is also that her father is very old and sick and can not accompany the petitioner from Saharsa to Birpur regularly, which is 105 km. Away..

7. The above fact has not been controverted by the O.P.no.2 . Apart from that some aspersion has also been made against the learned ACJM, Birpur that he is under influence of O.P. No.2, as such she would not get justice from the court of ACJM,



Birpur. Above aspersion against the court does not appear convincing. However, further ground is that she is residing at Saharsa considering the need of education and medical need of her daughter and her father is an old aged persons having various ailments, he is enable to accompany her to Birpur regularly. In view of the fact I find that the prayer for transfer of this case appears to have some merit. Furthermore, if the case is transferred to Saharsa, no inconvenience can be caused to O.P. No.2 as he is residing at Noida and it will not make any difference to him to attend the court at Saharsa instead of Birpur.

8. Considering the above facts as stated above, this application is allowed.

9. Let this Complaint Case No.350 of 2010 pending in the court of ACJM, Birpur be transferred to the court of sessions Division of Saharsa to be assigned to any competent court of the Sessions Judge.

10. The learned ACJM, Birpur is directed to send all the records of the case at once to the Sessions Division of Saharsa, which shall be sent to the court who will be assigned with this case.

11. At the same time, as it is a matter of the year, 2010, the learned court, which would be assigned the case by the



Sessions Judge to expedite the proceeding once the record has been received and try to conclude the same as expeditiously as possible.

12. Needless to say that both the parties have to co-operate in disposal of the same.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	18/06/2019
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