

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55331 of 2015

Arising out of PS. Case No.-484 Year-2015 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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A.K. Bhatia @ Anil Kumar Bhatia @ A.K. Bhatiya, son of late S.C. Bhatia, at present posted as Chairman, Madhya Bihar Gramin Bank, Head Office, Meena Plaza, South of Museum, P.S. - Kotwali, Patna -1.

... .. Petitioner

Versus

1. The State of Bihar
2. Nawal Kishore Sharma, son of late Ram Bachan Sharma, resident of Kila Garhpar, P.S. - Biharsharif, District - Nalanda, at present posted as Officer Scale-II Officer under Suspension at Madhya Bihar Gramin Bank, Regional Office, Patna.

... .. Opposite Party

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Appearance :

For the Petitioner/s	:	Mr. Suresh Prasad Singh-1, Advocate Ms. Kumari Rashmi, Advocate
For the Opposite Party/s :		Mr. Yogendra Kumarapp, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date : 5-8-2019

1. This application has been filed for transfer of Complaint Case No. 484 (C) of 2015 (Nawal Kishore Sharma Versus A.K. Bhatia & Another) from Biharsharif (Nalanda) Judgeship to Patna Judgeship for fair and impartial trial of the case.

2. The facts in short is that the opposite party no.2 filed a Complaint Case No. 484 (C) of 2015 in the Court of learned Chief Judicial Magistrate, Nalanda against the petitioner, who happens to be the Chairman of Madhya Bihar Gramin Bank and his P.A. alleging that he has been suspended on false allegation made by one Narayan Prasad of village Aungari while he was



posted as Manager of Madhya Bihar Gramin Bank, Aungari Branch. It is also the case of the complainant that petitioner abated the complainant after alluring him to file this complaint against the opposite party no.2 with an allegation that in the tenure of his posting to Fixed Deposit Accounts of said Narayan Prasad and his wife was matured and the amount was deposited in his saving bank account. Thereafter, Narayan Prasad was got matured amount of Rs.50,000/- each fixed for further 12 months. Upon such instructions, two FD accounts were opened by the opposite party no.2 and receipts of deposit were issued by the opposite party no.2 which were handed over to Narayan Prasad. It is also his case that on 16.12.2013, when said Narayan Prasad came in his bank and enquired about his status of his fixed deposit accounts, it transpired that though the amount was available in his Saving Account but due to human error those amounts were not transferred in his FD Accounts. It is also his case that thereafter, on the written application of Narayan Prasad those two Fixed Deposit Accounts were cancelled. However, when the petitioner came to know about this fact, he called said Narayan Prasad through his Personal Secretary and Assistant Manager at Regional Office, Bihar Sharif and got prepared an application from said Narayan Prasad and got it forwarded to



Regional Office, Biharsharif and thereafter, petitioner came to the Regional Office, Biharsharif and called the complainant in the Chamber of Regional Officer and threatened of his suspension and dismissal. It is also his case that thereafter, he was suspended which was objected by him. It is further his case that on 25.04.2015 while complainant was at Regional Office, Biharsharif, he was informed by co-accused, but thereafter, petitioner on 27.04.2015 at Biharsharif who would come there and to place his matter, an assurance was given to revoke his suspension. Thereafter, complainant reached at Biharsharif on 27.04.2015 and was asked to meet the petitioner at Elet Garden Restaurant and Marriage Hall, where petitioner demanded Rs. 1,00,000/- from him. On being opposed and showing his inability, he became angry and threatening and abusing him, causing insult to him.

3. The complainant filed a complaint petition on 29.04.2015 registered as Complaint Case No. 484 (C) of 2015. After enquiry, process were issued against the petitioner and other accused person. It is also alleged that thereafter, petitioner filed an application under Section 205 of Cr.P.C for exemption for day to day appearance. with an undertaking that when his presence may be required during the trial, he shall make



himself available before the court but intentionally the court has rejected the prayer for dispensing the presence of the petitioner on 08.09.2015 and it was fixed for appearance during the closure of the Court and all these steps were taken to coerce the petitioner to succumb before the opposite party no.2 and exonerate him from the charges, though he is not the disciplinary authority nor has to pass the order, he is only Appellate Authority. It is further his case that the brother of the opposite party no.2 is a Lawyer at Biharsharif and he is very influential and at his instance such type of order has been passed.

4. In the above stated facts, the petitioner has filed this transfer petition, as he is not expecting a fair trial or impartial justice from the Court, as the Court is under influence of the brother of opposite party no.2. Petitioner has also taken a ground that as the opposite party no.2 was put under suspension, due to this act and misdeed and he is the Chairman, as such, just to put pressure on him, the present complaint case has been filed at Biharsharif, where the brother of the opposite party no.2 is a Lawyer.

5. Further case of the petitioner is that now the opposite party no.2 has been deputed to Patna Regional Office.



6. In the above facts and circumstances, petitioner seeks his case for transfer of Complaint Case No. 484 (C) of 2015 from the Court of Shri Swarn Prabhat, learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda to another Court of competent jurisdiction of Patna Judgeship.

7. In this case, opposite party no.2 has appeared and also filed a counter affidavit, in which, he has admitted that his brother is practicing as Lawyer at Biharsharif and denied allegation of filing the case by the opposite party no.2-complainant against the petitioner to exonerate him in false and concocted case. Further case is that Enquiry Officer has submitted his report before the Disciplinary Authority and a show cause asked from the opposite party no.2 and he has already filed reply to the show cause, but no order on the departmental proceedings was served on him and it is also his case as per counter affidavit that at the instance of the petitioner, he has been deputed at Regional Office, Patna though he was earlier shifted to Regional Office, Bhabhua. It is also the case of the opposite party no.2 that the order passed on the petitioner under Section 205 of Cr.P.C. by the petitioner, is just and proper and if petitioner is aggrieved by the same, he ought to have file a revision against that order.



8. It is relevant to mention here that at the time of final hearing, the opposite party no.2 has not appeared nor any prayer was made on his behalf and as such, the matter was heard and was disposed of, vide this order.

9. Submission of learned counsel for the petitioner is that the Hon'ble Apex Court has already held in a decision reported in *Abdul Nagar Nadani Vs. State of Tamil Nadu (2000) 6 SCC 204*:

“the purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 of Cr.P.C. and anywhere in the country under Section 406 of Cr.P.”

10. Similarly, the Hon'ble Apex Court in a decision reported in *Mrs. Maneka Sanjay Gandhi and Anr. Vs. Ms. Rani Jethmalani*, reported in *1979 (4) SCC 167* has held that;

“assurance of a fair trial is the first imperative of the dispensation of justice..... If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate Court may transfer the



case to another Court where it feels that holding of fair and proper trial is conductive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.”

11. Further submission is that in this case, the complaint case has been filed only with a view to harass the petitioner being Chairman of Madhya Bihar Gramin Bank as a departmental proceeding was initiated against the opposite party no.2 and the case has been lodged at Bihar Sharif where the brother of the opposite party no.2 is an Advocate and influential person and further, rejection of the petition under Section 205 of Cr.P.C. and asking the petitioner to appear during Durga Puja vacation, so that he cannot move before the Hon'ble High Court shows the bias-ness on the part of the Presiding Officer and proved his apprehension that he will not get fair and impartial trial. It has also been submitted that without obtaining sanction, the cognizance has been taken.

12. Further submission is that since the petitioner and opposite party no.2 both are residing at Patna, it will not cause any convenience to the opposite party no.2, if the prayer of petitioner is allowed.. Further submission is that petitioner being Chairman has to attend several proceedings and meetings and



for that purpose also, it will be better that the case be transferred to Court of competent jurisdiction within Patna Judgeship.

13. Nobody has appeared on behalf of the opposite party no.2. A counter affidavit has been filed, that has been discussed above, in which, the opposite party no.2 has not denied that his brother is an Advocate at Bihar Sharif and secondly, he is presently posted at Patna.

14. Having heard both sides, it is well settled by several decisions of the Hon'ble Apex Court, which has also been relied upon by the learned counsel for the petitioner, which has been discussed above, the purpose of the criminal trial is to provide fair and impartial justice, not influenced by extraneous consideration without any bias but in the present case, the opposite party no.2 has lodged a case at Bihar Sharif where his brother is an Advocate whereas petitioner is outsider working as Chairman in Madhya Bihar Gramin Bank and the petitioner has also come with a case that his petition under Section 205 of Cr.P.C. for dispensing him from the personal appearance on the ground that he has so many engagement meetings and to dispose of the several files and as such, his personal appearance be dispensed with and ready to appear when his appearance is necessary but the same has been rejected by the learned



Magistrate on the ground that no special reason has been assigned in the application, without going into the merit in the application, order was passed by the learned Magistrate, rejecting the petition under Section 205 of Cr.P.C. It appears that as the brother of the opposite party no.2 is working at Bihar Sharif and his brother is an influential person, as such, there is apprehension on the mind of the petitioner not to get a fair trial at Bihar Sharif and also apprehension that he will not get justice at Bihar Sharif as he apprehends also any untoward incident may also happen with him, as the brother of the opposite party no.2 may influence the Court being the local influential lawyer.

15. It is also well settled that a case cannot be transferred only on mere apprehension of not to get justice, rather the apprehension be genuine apprehension based on some materials.

16. From the discussion made above, I have found that petitioner has genuine apprehension from the Court not to get fair and impartial trial and not to get the justice from the Court.

16. In view of the above, this application is allowed. The Complaint Case No. 484-C of 2015 be transferred from the Court of Sri Swarn Prabhat, learned Judicial Magistrate, 1st Class, Bihar Sharif, Nalanda to a court of competent jurisdiction



in the Sessions Division, Patna. The learned court in sesin with the case is directed to send the record at once to the Sessions Division, Patna, which will be sent to the concerned Court by the Session Judge.

Sunil Shukla/-

(Vinod Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
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