

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34689 of 2021

Arising Out of PS. Case No.-441 Year-2016 Thana- SONEPUR District- Saran

1. AINUL KHAN @ AINULLAH KHAN son of Late kaleem Khan Resident of Village - Darwan, P.S. - Goh, District - Aurangabad, Presently residing at Village - Old 40 Unit, P.S. - North Asansol, District - Bardhaman (West Bengal).
2. Tammana Khatoon W/O Ainul Khan @ Ainullah Khan Resident of Village - Darwan, P.S. - Goh, District - Aurangabad, Presently residing at Village - Old 40 Unit, P.S. - North Asansol, District - Bardhaman (West Bengal).
3. Samim Khan Son of Ainul Khan @ Ainullah Khan Resident of Village - Darwan, P.S. - Goh, District - Aurangabad, Presently residing at Village - Old 40 Unit, P.S. - North Asansol, District - Bardhaman (West Bengal).
4. Numan Khan @ Md. Numan Ahamad S/O Ainul Khan @ Ainullah Khan Resident of Village - Darwan, P.S. - Goh, District - Aurangabad, Presently residing at Village - Old 40 Unit, P.S. - North Asansol, District - Bardhaman (West Bengal).
5. Manjar Khan S/O Ainul Khan @ Ainullah Khan Resident of Village - Darwan, P.S. - Goh, District - Aurangabad, Presently residing at Village - Old 40 Unit, P.S. - North Asansol, District - Bardhaman (West Bengal).
6. Mokima Khatoon @ Mokim Khatoon W/O Md. Asgar Khan Resident of village - Shamsher Nagar, P.S. - Bhule, District - Dhanabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gaurav Kumar
For the Opposite Party/s : Mr.Raj Kishore Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 07-07-2022 Heard the parties.

The petitioners have filed this petition under Section 407 of the Code of Criminal Procedure for transfer of Sessions Trial No. 89/2021, arising out of Sonapur PS case No. 441/2016 (GR No. 8031/ 2016), which is pending for trial in the court of



learned Additional Sessions Judge-I, Saran at Chapra to Civil Court, Aurangabad.

As per prosecution case, petitioners have been made accused in Sonapur PS case No. 441/2016 under Section 363, 365, 366/34 on the basis of written application of the informant, which is pending in the court of A.C.J.M.,I, Saran at Chapra. Thereafter, one more FIR, that is, Uphara PS case No. 41/2017 has been lodged against the petitioners on the basis of Fard Bayan of local Chowkidar u/s 302, 201/34 of the IPC, which is pending at the Civil Court, Aurangabad.

It is submitted on behalf of the petitioners that petitioners are old persons and petitioner No.1 is aged about 77 years and petitioner No.2 is aged about 65 years. The petitioners are poor persons having very low income and are suffering from various ailments. It is further submitted that petitioners are presently residing in Bardhaman of West Bengal State and it is inconvenient for them to go to attend the cases at two different Civil courts.

Learned counsel for the State vehemently opposed the prayer. He submits that inconvenience of parties cannot be a valid basis for transfer of criminal proceeding from one Court to another.



It is settled law that jurisdiction of a Court to conduct a criminal proceeding is based on the provisions of Cr. P.C. Often either complainant or accused have to travel across entire state to attend criminal proceeding before the jurisdictional court. Likewise, witnesses too were to travel long distance in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the case is accepted, the provision contained in Cr.P.C. conferring jurisdiction to try cases would become meaningless. Even if it assumed that a couple of days would be consumed for travelling to and fro, the inconvenience would not be such as on basis for seeking transfer. The same view has been reiterated by the Hon'ble Apex Court in the case of ***Jyoti Mishra v. Dhananjay Mishra, (2010) 8 SCC 803*** and in the case of ***Rajesh Talwar v. Central Bureau of Investigation and others, (2012) 4 SCC, 217.***

In view of the law laid down by the Supreme Court in the case of *Jyoti Mishra v. Dhananjay Mishra (supra)* and in the case of *Rajesh Talwar v. Central Bureau of Investigation and others (supra)*, the plea of petitioners is not acceptable.



The transfer petition is dismissed accordingly.

(Prabhat Kumar Singh, J)

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