

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.23192 of 2023**

Arising Out of PS. Case No.-3509 Year-2022 Thana- PATNA COMPLAINT CASE District-  
Patna

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RAJEENA PARVEEN W/O MD RAHMAT ALAM R/O VILLAGE-  
HABIBPUR, TAKICHAK, P.S- HABIBPUR, DISTT.- BHAGALPUR.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. FAZLUR RAHMAN S/O HABIBUL RAHMAN R/O RAHMAN MANJIL  
AT MOHALLA- BHWAR POKHAR, P.S- PIRBAHORE, DISTT.- PATNA.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Swapnil Kumar Singh

For the Opposite Party/s : Mr.Umanath Mishra

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

3      26-06-2023                      The present application has been filed for transfer of  
  
Complaint Case No. 3509 (c) of 2022 pending in the court of  
  
learned Sub Judge X- cum- A.C.J.M. -X, Patna to the court of  
  
Chief Judicial Magistrate, Bhagalpur.

Learned counsel for the petitioner submits that the  
  
court of A.C.J.M.-X, Patna lacks territorial jurisdiction  
  
inasmuch as no occurrence has taken place under the  
  
jurisdiction of Patna Court and the land in question which is the  
  
sole reason behind the conflict between the parties is also  
  
situated at Bhagalpur.

The Complaint Case No. 3509 (c) of 2022 has been  
  
filed by the Opposite Party-2, who is a Builder and is engaged



in the business of building construction through his firm in the name and style “Avone Real Tech Projects L.L.P”. The Opposite Party-2 entered into an agreement with petitioner for development of a piece of land situated at Bhagalpur measuring 06 katha appertaining to Khata No. 328, Plot No. 604, Ward No. 41 belonging to the petitioner. On the aforesaid ground the petitioner prays for transfer of Complaint Case No. 3509 (c) of 2022 from Patna to Bhagalpur.

The Hon’ble Supreme Court in a case reported in (2020) 10 SCC 92 Kaushik Chatterjee versus State of Haryana and others had the occasion to consider the issue regarding transfer of case on the ground of lack of territorial jurisdiction and has held that transfer on the ground of lack of territorial jurisdiction and the fact that court does not have the territorial jurisdiction has to be established by evidence which may relate either to the place of commission of offence or to other things dealt with by Section 177 to 184 of the Cr.P.C. In such circumstances, this Court cannot order transfer on the ground of lack of territorial jurisdiction even before evidence is marshalled. The Hon’ble Supreme Court concluded in paragraph- 38 of the judgment that the issue of jurisdiction of a court to try an “offence” or “offender” as well as the issue of



territorial jurisdiction depends upon facts established through evidence. Further if the issue is one of territorial jurisdiction, the same has to be decided with respect to various rules enunciated in Section 177 to 184 of the Code. These questions may have to be raised before the court trying the offence and such court is bound to consider the same.

Taking into consideration the facts involved in the case and the contention of the petitioner regarding lack of territorial jurisdiction of the court at Patna and the law laid down by the Hon'ble Supreme Court in Kaushik Chatterjee Case (Supra), this transfer petition is liable to be dismissed. Accordingly, the same is dismissed.

However, it is open to the petitioner to raise the issue of territorial jurisdiction, lead evidence on questions of facts that may fall within the purview of Section 177 to 184 read with Section 26 of the Code before the same court.

praful/-

**(Anil Kumar Sinha, J)**

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