

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28361 of 2023

Arising Out of PS. Case No.-289 Year-2019 Thana- KASIMBAZAR District- Munger

EKTA KUMARI SAINY Daughter of Sri Binod Kumar A.K.A. Binod Malakar Wife of Akash Anand, Resident of - Naya Tola, Motichak, P.O.- Tilakpur, P.S.- Akbarnagar, District - Bhagalpur. At Present resident of - Commissionery Bazar, Ekta Selai Centre, P.O., P.S. and District - Sheikhpura.

... .. Petitioner/s

Versus

1. Akash Anand Son of Late Ganesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
2. Mukesh Malakar Son of Late Ganesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
3. Rajesh Malakar Son of Late Ganesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
4. Munni Devi @ Anita Wife of Mukesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
5. Uttam Kumar Son of Mukesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
6. Mandakini Devi Wife of Rajesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
7. Raushan Kumar Son of Rajesh Malakar Resident of - Naya Tola, Motichak, P.S.- Akbarnagar, District - Bhagalpur.
8. Rukmini Devi Wife of Om Prakash Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
9. Om Prakash Malakar Son of Late Lakshmi Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
10. Aditya Kumar Son of Om Prakash Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
11. Preet Saurabh Kumar Son of Om Prakash Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
12. Ranjan Devi Wife of Ranjit Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
13. Ranjit Malakar Son of Late Lakshmi Malakar Resident of - At and P.S.- Piribazar, District - Lakhisarai.
14. Nandani Devi Wife of Sunil Malakar Resident of - Naraun, P.S.- Shambhuganj, District - Banka.
15. Sunil Malakar Son of Late Bhagwan Malakar Resident of - Naraun, P.S.- Shambhuganj, District - Banka.
16. The State of Bihar

... .. Opposite Party/s



Appearance :

For the Petitioner/s : Mr.Shantanu Kumar
For the Opposite Party/s : Mr.Dinesh Kumar Gupta

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

- 7 19-09-2023 1. The petitioner has invoked the jurisdiction of this Court under Section 407 of the Cr.P.C. for transfer of G.R. No. 2893 / 2019, T.R. No. 790 / 2020 from the court of learned S.D.J.M., Munger to the court of learned S.D.J.M., Sheikhpura. The aforesaid trial arises out of Kasimbazar P.S. Case No. 289 of 2019 lodged by the petitioner-wife on 19.11.2019 against fifteen accused persons, who are husband of the petitioner and entire family members of the husband for the offences alleged under Section 147/149/341/323/498A/506/504 of the I.P.C.
2. The marriage between the petitioner and the Opposite Party No.1/husband was solemnized on 10-03-2018 according to Hindu rites. It has been alleged that behaviour of the in-laws of the petitioner was not good and she was subjected to torture and harassment for not fulfilling the demands of dowry at the hands of her husband and other family members, who are Opposite Party Nos. 1 to 15. The petitioner was asked to bring dowry of Rs. 10 Lakh cash and a four-wheeler vehicle. On 19-11-2019 while she was on her way to her maternal grandmother's house she was assaulted by the Opposite Party Nos. 1, 2, 3, 5 & 10 due to which she became unconscious.



3. Learned counsel for the petitioner submits that petitioner was tortured and assaulted by the Opposite Party No. 1 and his family members accordingly F.I.R. was lodged at Munger. The petitioner has left her matrimonial home and is no more staying at Munger rather she is staying at her father's place at Commissionery Bazar, Sheikhpura with an infant daughter to look after. Two cases filed by the petitioner i.e. Matrimonial Case No. 20/2020 for restitution of conjugal rights and Maintenance Case No. 63M of 2019 are being contested by the Opposite Party No. 1 pending before Family Court, Sheikhpura, however, the said maintenance case has been disposed of on 22-03-2022. It is very difficult for the petitioner/ wife to travel and pursue the case at Munger. Further the petitioner is under severe threat perception. It has also been submitted that none of the Opposite Parties now reside at Munger and Opposite Party No. 1 / husband of the petitioner is working as Assistant Treasury Officer posted at Jamui.

4. On the other hand, learned counsel for the Opposite Parties argued that the allegation of demand of dowry is false and concocted and the petitioner with support of her family members and local goons have always tortured the Opposite Parties for which Sanha No. 2849J/2019 was registered. The



allegation made in the F.I.R. is false and concocted as none of the family members were present on the alleged date of occurrence but the petitioner has made entire family members, altogether fifteen persons, as accused. The Opposite Party Nos. 2 to 7 are residing at Motichak Naya Tola, PS- Akhbar Nagar, District- Bhagalpur ; Opposite Party Nos. 8 to 13 are residing at Piri Bazar, PS- Piri Bazar, District – Lakhisarai and Opposite Party No. 14 to 15 are residing at Naraun Shambhuganj, Banka

5. The Opposite Party No. 1/husband has also filed a Complaint Case which is pending in the court of Chief Judicial Magistrate 1st Class , Munger wherein he has alleged about torture and cruelty caused to him by his wife and her family members. Referring to Annexure-C of the show cause, learned counsel submits that the Opposite Party No. 1 has given application to the District Magistrate, Jamui with regard to the incident of threat and assault upon him at Jamui Treasury at the instance of the parents of the petitioner-wife. At last, learned counsel submits that the petitioner and her family members have a group of antisocial elements at Sheikhpura, which increases the chances of clash between the parties. If the case is transferred then serious prejudice would be caused to them. It would cause much inconvenience and hardship to the Opposite



Parties [accused].

6. I have heard learned counsel for the parties and have perused the materials on record. Transfer of the case within the State is permissible:-

(i) when there is no possibility to conduct fair and impartial trial at the present place;

(ii) apprehension of threat to life of the petitioner clearly visible:

(iii) witnesses not coming forward to depose and are turning hostile due to pressure tactics of accused; and

(iv) no prejudice shall be caused to the other side.

7. The Opposite Party No. 1 / husband has submitted an application before District Magistrate, Jamui with regard to the incident of threat and assault upon him at Jamui Treasury at the instance of the parents of the petitioner-wife and has apprehension that at Sheikhpura there is chance of clash between the parties at the hands of the petitioner and her family members.

8. It appears that from record that altogether fifteen members of the family members of the husband, who reside at different places have been made accused, as such, in my opinion, transfer of the case would cause more hardship to the accused/ Opposite Parties than to the petitioner. Thus, it is not



expedient for the ends of justice to transfer G.R. No. 2893/2019, T.R. No. 790/2020 from Munger to Sheikhpura. Accordingly, I find no merit in this application.

9. The application stands dismissed.

(Anil Kumar Sinha, J)

praful/-AFR

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