

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6335 of 2023

Arising Out of PS. Case No.-688 Year-2020 Thana- PATNA COMPLAINT CASE District-
Patna

SHAZIYA NAAZ WIFE OF MD. NADEEM, D/O- SHAMSHAD ALI R/O MOHALLA- AMIN COLONY, LODI KATRA, P.O.- JHAUGANJ, P.S.- KHAJEKALAN, DISTT.- PATNA, PRESENTLY, RESIDENT OF MOHALLA- DAHIYAWAN, BACK OF SIYA MASJID, P.S.- TOWN, DISTT.- CHAPRA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. MD. NADEEM SON OF MD. SHAMIMUDDIN @ MD. SHAMIM
3. MD. SHAMIMUDDIN SON OF LATE MD. KAMALUDDIN
4. SHABANA KHATOON WIFE OF MD. SHAMIMUDDIN
5. MD. SHAMIR @ CHHOTU SON OF MD. SHAMIMUDDIN
6. RUKHSAR KHATOON WIFE OF MD. SAMEER @ CHOTU
2-5 are R/O MOHALLA- AMIN COLONY, LODI KATRA, P.O.- JHAUGANJ, P.S.- KHAJEKALAN, DISTT.- PATNA
7. PARVEZ AHMAD NOT FOUND R/O GULSHAN HAIDARI, NEAR LAL MANDIR, P.S.- KHAJEKALAN, POST- JHAUGANJ, DISTT.- PATNA
8. MD. AFJAL NOT FOUND R/O SHAH KI IMLI, P.S.- KHAJEKALAN, POST- JHAUGANJ, DISTT.- PATNA

... .. Opposite Party/s

Appearance :

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| For the Petitioner/s | : | Mr.Vijay Anand |
| For the State | : | Mr.Md. Matloob Rab |
| For Res. Nos. 2-8 | : | Mr. Md. Azimuddin |

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 03-11-2023

The petitioner, who is the wife of Opposite Party No. 2, has invoked the jurisdiction of this Court, under Section 407 of the Code of Criminal Procedure, 1973, for transfer of Complaint Case No. 688 (C) of 2020, from the Court of learned Sub



Divisional Judicial Magistrate, Patna City, to any court within the Sessions Division of Saran at Chapra.

2. A complaint case was filed by the petitioner-wife on 25.11.2020 against her husband and the entire family members of her husband, who are Opposite Party Nos. 02 to 08 herein, for the offences punishable under Sections 498-A/323/341/307/ 120-B/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

3. The factual matrix of the case is that marriage between the petitioner-wife and the Opposite Party No.2/husband was solemnized on 27.03.2018 according to the Muslim rites. It has been alleged by the complainant-wife that after sometime of the marriage, the behavior of her in-laws changed and they started demanding Rs. 5 lakhs and one Alto car as dowry and due to non-fulfillment of the said demand, she was subjected to torture and harassment. It is the further case of the complainant-wife that she was sent to her paternal home when she was pregnant, where she gave birth to a female child on 04.02.2020 and upon returning back to her matrimonial home, her husband as well as her in-laws again started demanding dowry and lastly, on 29.02.2020, she was ousted from her matrimonial home.



4. When the steps taken by the family members and well-wishers of the petitioner-wife to settle the matter failed, the complainant-wife filed the present complaint petition on 25.11.2020.

5. The learned District Court, on the basis of the statement of the enquiry witnesses, by order, dated 09.03.2021, took cognizance, for the offences punishable under Sections 323/498-A/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against her husband and her in-law.

6. The Opposite Party No.2/husband filed anticipatory bail application, on 27.09.2021, bearing Criminal Misc No. 59685 of 2021, and by order, dated 10.11.2022, the Opposite Party No.2/husband was granted anticipatory bail on the condition that he will give Rs. 3,500/- per month to the petitioner-wife as maintenance amount.

7. During the pendency of Criminal Misc No. 59685 of 2021, the petitioner-wife filed Criminal Misc no 18161 of 2022, on 07.04.2022, for transfer of the present complaint case, but the petitioner-wife withdrew the transfer petition due to the compromise arrived at between the parties and the petitioner-wife was taken to her matrimonial home, but again, after sometimes, she was assaulted and ousted from her matrimonial home.



8. Learned Counsel for the petitioner submits that when the petitioner-wife was ousted from her matrimonial home, she was residing at Dargah Road, Sultanganj, Patna City (in the district of Patna), but due to COVID pandemic, the survival of the petitioner-wife, with her sole daughter, became impossible and as such, her father took her and at present, she is residing in her parental home at Dahiyawan, Chapra, with her infant daughter.

9. Learned Counsel further submits that there are two cases filed by the petitioner which are pending in between the parties. One is Maintenance Case No. 140 of 2022, which is pending before the learned Principal Judge, Family Court Saran at Chapra, while the other is the present complaint case, pending before the learned Sub Divisional Judicial Magistrate, Patna City, Patna, and it is very difficult for the petitioner-wife to travel and pursue the case at Patna, which is at a distance of about 80 Kms from Chapra and there is no direct train route.

10. Further, except the father of the petitioner, there is no other person to look after the petitioner-wife or her child and the father of the petitioner is an agent of ICICI prudential and works purely on private basis. As such, it is very difficult for the petitioner to come at Patna, along with her child, to attend the Court at Patna for proper pairvi in her complaint case.



11. Learned Counsel further submits that the Opposite Party No. 2-husband is working as an auditor in Nelson India Pvt. Limited, Frazer Road, Dakbanglow Road, Patna and is earning more than 50,000/- per month.

12. On the other hand, learned counsel for the Opposite Party Nos. 2 to 8 submits the petitioner has filed this complaint case only to harass her husband and his family members. Entire family members of the husband have been made accused in the present complaint case, in which some of them have no concern with the affairs of the petitioner and/or the Opposite Party No. 2. He next submits that the petitioner is in habit of fleeing away from Patna to Chapra without informing her husband and/or the other family members of her husband. The earlier attempts made by the husband-Opposite Party No. 2 to bring back the petitioner went in vain as the petitioner is not ready to live along with the family members of the Opposite Party No. 2 since the time of marriage though the Opposite Party No. 2 is the only person living in Patna to look after his parents. The husband-Opposite Party No. 2 had always tried and is still ready to keep the petitioner, but the petitioner had always mistreated and misbehaved with the Opposite Party No. 2 and his family members, for which



Information Petition No. 795 of 2020 has been filed on 02.06.2020 itself.

13. In order to rebut the allegation that the wife was ousted at the time of her pregnancy from her matrimonial home and she did not give birth to the child in her matrimonial home, the husband-Opposite Party No. 2 has annexed, in the counter affidavit, some photographs, showing that the birth ceremony of the daughter of the petitioner-wife was held at her matrimonial home. He further submits that the child was born at Mona Hassan Clinic, Nala Road, Patna, and the expenses were borne by the Opposite Party No. 2-husband and his company.

14. Learned Counsel further submits that the Opposite Party No. 2 is a surveyor in a private company and earns only Rs. 20,000/- per month and it would be difficult for him to take leave on each and every date fixed in the complaint case filed by the petitioner-wife. He further submits that Opposite Party Nos. 3 and 4, father-in-law and mother-in-law of the petitioner, are old aged persons, suffering from age related ailments. He further contends that at present also, the petitioner is residing at Patna and only to harass them, she has filed this transfer petition.

15. I have heard learned Counsel for the parties concerned and have perused the materials on record.



16. The transfer of a criminal case within the State is permissible only when (i) there is no possibility to conduct fair and impartial trial at the present place; (ii) the apprehension of threat to life of the petitioner is clearly visible; (iii) witnesses are not coming forward to depose and/or are turning hostile due to the pressure tactics of accused; and (iv) no prejudice shall be caused to the other side.

17. It is apparent from perusal of the materials on record that till date, no evidence has been adduced by the complainant/petitioner and as such, there is no question of becoming hostile. It further appears that the petitioner has not alleged anything regarding non-possibility of the fair and impartial trial at Patna. The petitioner has also not been able to show that there is any threat to the life of the petitioner and/or her witnesses at the hands of the Opposite Party Nos. 2 to 8.

18. Accordingly, the grounds taken by the petitioner does not fall in any of the four criteria mentioned above for transfer of the complaint case filed by her from Patna to Sessions Division of Saran, at Chapra.

19. It further appears from the record that the learned District Court, on the basis of statement of the enquiry witnesses, on 09.03.2021, took cognizance of the offences punishable under



Sections 323/498-A/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against altogether seven family members of the husband. Though some of them reside at different places and have no interference in the affairs of the petitioner-wife and the Opposite Party No. 2-husband, though they have been made accused in the present case. The receipt of the holding tax also goes to show that the petitioner-wife has a house in Patna.

20. In view of the aforesaid discussion, in my opinion, the transfer of the present criminal case, filed by the petitioner herself, would cause more hardship to the Opposite Party Nos. 2 to 8 and, as such, it would not be expedient, in the ends of justice, to transfer Complaint Case No. 688 (C) of 2020 from the Court of learned Sub Divisional Judicial Magistrate, Patna City, Patna, to any Court within the Sessions Division of Saran at Chapra.

21. Accordingly, I do not find any merit in this application warranting interference by this Court.

22. In the result, this application is dismissed.

23. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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