

(2019) 04 PAT CK 0053

In the Patna High Court

Case No : Criminal Miscellaneous No. 65943 Of 2018

Feroze Anwar @ Firoze Anwar

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 498(A)
Dowry Prohibition Act, 1961 — Section 4

Citation : (2019) 2 PLJR 996

Hon'ble Judges : Vinod Kumar Sinha, J

Bench : Single Bench

Advocate : Pritish Kumar Lal, Dr.Mrityunjaya Kr.Gautam

Final Decision : Dismissed

Judgement

This application has been filed by the petitioner for transfer of Complaint Case No. 916 of 2015, Tr. No.3067 of 2015 for offences under Section

498(A) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, pending in the court of Sub Divisional Judicial Magistrate, Gaya, to a

court of competent jurisdiction at Patna.

It appears from perusal of the record that opposite party no.2 filed a complaint case stating that she was married with the petitioner and after

marriage, the behavior of the petitioner and his family members became strange, as they start pressurizing the complainant to pay rupees twenty lacs

for purchasing of a flat at Patna and for that they brutally assaulted her and further allegation is that she was kicked from residence after relieving her

ornaments and they also threatened her to pronounce Talaq and on that basis, the Complaint Case No. 916 of 2015 was instituted.

The main ground for transfer of the case from the Sub Divisional Judicial

Magistrate, Gaya to a court of competent jurisdiction in Patna is that the petitioner is suffering from eye disease that is "Herido Macular Degeneration" and he was under treatment at Sankara Nethralaya, Chennai and further the petitioner is a poor visibility and a certificate of his disability has been issued by a Medical Board under Chairmanship of Civil Surgeon, Patna, that shows 75% disability of the petitioner and hence, the petitioner feels difficulty in going to Gaya to attend the court and participate in the proceeding. Second ground for transfer of the case is that now the opposite party no.2 has also been transferred to Kendriya Vidyalaya, Deoghar and as such she will not have any difficulty if the case is transferred to any court of competent jurisdiction at Patna or even at Deoghar.

On the other hand, learned counsel for the opposite party no.2 has appeared and filed a counter affidavit in this case stating that petitioner is employed as a government teacher at Patna and posted at Muradpur Middle School, Bankipur, Patna, and he is teaching for 10 years and never sought assistance of anyone and as such the ground of the petitioner for transfer of the case on the ground of physical incapability does not appear to be a good ground for transfer of the case and opposite party no.2 has also filed some of the photographs of the petitioner in order to show that he has no difficulty in moving. Further contention of learned counsel for the opposite party no.2 is that the opposite party no.2 has been transferred from Jawahar Nagar Kendriya Vidyalaya, Sutihara, Sitamarhi to Kendriya Vidyalaya, Danapur in November 2017, but she is residing alone and she is afraid of the misdeeds of the petitioner as one after another she is either lodging a case or complaint against the petitioner and his family members and even the younger brother of the opposite party no.2 has not been spared though he is residing in foreign and further the petitioner is resident of Patna and as such she will not be comfortable at Patna. Further submission is that apart from that all the witnesses of opposite party no.2 are of Gaya and as such she will have difficulty both physical and financial if the case is transferred to Patna, whereas the petitioner is a litigant contesting several cases before the lower court, High Court and even up to the Supreme Court and as such she has opposed the prayer for transfer of this case from Gaya to Patna.

Having heard both sides and on perusal of the record, it appears that petitioner

has sought the transfer on the ground of 75% physical disability and suffering from eye disease and he has given a certificate by Sankara Nethralaya, Chennai and also a certificate issued by Medical Board, Patna, but at the same time, he is not denying the fact that he is a teacher for last 10 years at Patna and he is performing his duty without any assistance and the disease of the petitioner is not of such type that he is unable to move out of Patna. No doubt in this case, opposite party no.2 has also been transferred to Danapur, but her witnesses are of Gaya and she is residing alone at Patna and she is feeling fear from the petitioner as he is local resident. So far transfer of case from one place to another is concerned, it is well settled that the convenience of the parties as well as the witnesses have to be considered before passing an order. In the present case as stated that the witnesses are of Gaya and opposite party no.2 also apprehends harassment at the hands of the petitioner, who is a local resident. In such view of the matter, I find this application is devoid of merit, accordingly, dismissed. Learned Trial Court is directed to expedite the trial.