

SUPREME COURT OF INDIA

Bench: HON'BLE MR. JUSTICE DIPANKAR DATTA

Date of Decision: 13-10-2023

TRANSFER PETITION (CRIMINAL) Diary No(s). 35098/2023

IA No.203506/2023-STAY APPLICATION and IA No.203507/2023

KOMAL NIKHILESH ANAND & ORS.**Petitioner(s)****VERSUS****AKHILESH ANAND****Respondent(s)****Section, Acts, Rules, and Article:**

Section 406 of the Code of Criminal Procedure, 1973

Subject: Transfer Petition (Criminal) seeking the transfer of cases from Bihar to Mumbai.

Headnotes:

Transfer of Cases – Petitioner-wife seeks transfer of multiple cases from Bihar to Mumbai – Complaints pending before various Courts in Bihar – Petitioner's grounds for transfer based on inconvenience and lack of merit in complaints. [Para 2-3]

Grounds for Transfer – Petitioner's claims of not visiting Bihar and inconvenience in contesting proceedings there – Court's assessment of these contentions. [Para 4]

Dismissal of Transfer Petition – Transfer Petition found devoid of merit and dismissed – Petitioner-wife advised to take appropriate legal steps in response to the complaints filed against her. [Para 5-6]

Referred Cases: None.

ORDER

1. Delay of 5 days in refiling the Transfer Petition is condoned.

2. By presenting this petition under Section 406 of the Code of Criminal Procedure, 1973, the petitioner-wife seeks transfer of the following cases:
 - a. Complaint No. 647(c)/2021 titled as Akhilesh Anand vs. Komal Nikhilesh Anand & Ors pending before the Hon'ble Upper Chief Judicial Magistrate, Barth, Patna, Bihar to the Hon'ble Family Court, Mumbai, Maharashtra.
 - b. Complaint No. 152(C)/2022 titled as Krishna Ballabh Singh vs. Sagar and Ors. pending before the Hon'ble Upper Chief Judicial Magistrate, Barth, Patna, Bihar, to the Hon'ble Family Court, Mumbai, Maharashtra.
 - c. NLC Suit No. 18/2022 titled as Bholu Tanti vs. Sagar Gawand & Ors. pending before the Hon'ble Court of A.D.J.I, Lakhisarai, Bihar to the Hon'ble Family Court, Mumbai, Maharashtra.
 - d. NC Suit No. 1922 of 2022 titled as Chandan Kumar vs. Sagar Gawand and Ors. pending before the Chief Judicial Magistrate, Begusarai, Bihar to the Hon'ble Family Court, Mumbai, Maharashtra.
3. It has been gathered in course of hearing that upon summons being issued to the petitioner-wife by the concerned Court, she did not appear leading to issuance of non-bailable warrant. It is at this stage that the petitioner-wife has approached this Court with this petition seeking transfer on the ground that she had never been to any place in Bihar and, therefore, the complaints are absolutely without merit. It is also submitted, in the alternative, that even if the complaints do have some merit, the petitioner-wife would be inconvenienced in contesting the proceedings in Bihar, being a resident of Mumbai, Maharashtra, for which the prayer for transfer ought to be granted.
4. The contentions advanced on behalf of the petitioner-wife have not impressed this Court. The contention that the petitioner-wife never visited any place in Bihar is essentially a question of fact, which cannot be urged as a ground for transfer. That apart, once it is conceded that the petitioner-wife received the summons from the concerned Court, it was her duty to respond or to question the same in an appropriate proceeding. It is obvious that for the omission or the failure of the petitioner-wife to respond to the summons, the Court may not have been left with any other option but to issue non-bailable warrant. It is clear from the factual narrative that in order to avoid the execution of the

warrant, the petitioner-wife has now approached this Court with this misconceived prayer for transfer.

5. The Transfer Petition is devoid of merit; hence, it stands dismissed.
6. This order shall, however, not preclude the petitioner-wife to take steps in accordance with law for her appearance before the Courts which have entertained the private complaints of the respondent-husband and to raise whatever defence that is available to her in law.

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