**(2012) 3 PLJR 635**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 41341 of 2010

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| Neelam Chandra Patel and Another | | APPELLANT |
| | Vs | |
| The State of Bihar and Another | | RESPONDENT |

**Date of Decision:** May 5, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 407

**Citation:** (2012) 3 PLJR 635

**Hon'ble Judges:** Kishore K. Mandal, J

**Bench:** Single Bench

**Judgement**

@JUDGMENTTAG-ORDER

Kishore K. Mandal, J.
Heard learned counsel for the petitioners and opposite party no. 2. Petitioners by filing present application seek transfer of complaint case no. 181(c) of 2008, which is currently pending in the Court of learned Chief Judicial Magistrate, Nalanda at Biharshariff. Prayer of the petitioners is that the case may be transferred to the Court of cognate jurisdiction at Patna.

2. Few facts, apparent from the submissions of the parties as well as records of the case, are as follows:--

3. Petitioner No. 1 is own sister-in-law of opposite party no. 2. Petitioner No. 2 is husband of petitioner no. 1. Few litigations are going on between the parties at Patna. A proceeding seeking divorce was lodged by opposite party no. 2 at Biharshariff which was transferred to Patna under orders of this Court. Petitioner No. 2 has been cited in the said proceeding alleging that his wife had illicit relationship with him. The second suit/proceeding has been filed by the wife of opposite party no. 2 at Patna which is also

pending consideration at Patna.

4. From perusal of the complaint, it appears that complainant/opposite party no. 2 is posted as Sectional Engineer (Traffic) Central Rail Electrification Organization, Allahabad whereas petitioner nos. 1 and 2 are shown to be residents of Staff Nurse Quarter, Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna. As per the complaint, the petitioners herein had visited the ancestral house of the opposite party no. 2 located in Village-Palndapur, P.S.-Rahui in the District of Nalanda to pacify the conflict between the opposite party no. 2 and his wife. The petitioners while leaving the house committed theft of a suitcase belonging to the complainant. It further appears that in the matrimonial suit seeking divorce one of the grounds taken by the plaintiff/petitioner/opposite party no. 2 is that his wife developed physical relationship with petitioner no. 2.

5. Learned counsel for the petitioners submits the witnesses cited in the complaint (Annexure-1) are witnesses who deposed on behalf of the opposite party no. 2 in suit seeking divorce pending at Patna. Learned counsel for the petitioners submits that in these factual background it would be just and proper to transfer the present case also to Patna since there are few matters already pending at Patna at the instance of the opposite party no. 2 in which petitioner no. 2 has also been arrayed as party respondent and they are fighting it out at Patna. It is next contended that petitioner no. 1 is a Nurse employed with the Indira Gandhi Institute of Medical Sciences and has also to take care of her two minor children. It is contended with reference to order dated 20.11.2010, passed by learned Chief Judicial Magistrate, Biharshariff, Nalanda in complaint case no. 181(c) of 2008 that although an application seeking representation through lawyer was filed but the learned Court rejected the said application and directed for issuance of non-bailable warrant(s). A copy of the said order produced by the petitioners is kept on record marked "Y". It is the stand of the petitioners that transfer of the case to Patna shall be convenient to both the parties as there are already-suit/litigation pending here at the instance of the opposite party no. 2 as well as wife of opposite party no. 2.

6. Learned counsel for the opposite party no. 2 on the other hand, opposes the application. It is submitted that the transfer would create obstacle in disposal of the case as witnesses cited therein are local residents and there shall be enormous difficulty in prosecuting the case.

7. Section 407 of the Code of Criminal Procedure (for short "the Code") enables the High Court to pass order in this regard if It is made to appear that the order under special provision will tend to the general convenience of the parties/witnesses or expedient for the ends of justice. It is already noted hereinabove that petitioners and opposite party no. 2 are closely related to each other. Opposite Party No. 2 is employed with Indian Railways and is posted at Allahabad. He has himself filed a suit seeking divorce which is pending at Patna. It further appears that the witnesses in the said suit are some of the witnesses cited in the complaint case. It also appears from the materials on record that petitioner no. 1 is a lady and is employed at Patna and she has to take care of her two

minor children. In this backdrop transfer of the case from Nalanda to Patna would, in my view, tend to the general convenience of the parties and is also deemed expedient in the ends of justice. Accordingly the application is allowed. All the records of complaint case no. 181(c) of 2008 currently pending in the Court of learned C.J.M., Nalanda shall be transferred to the learned Sessions Judge, Patna within 2 weeks from the date of receipt/production of a copy of this order before the said Court whereafter learned Sessions Judge, Patna shall assign the same to a Court of Competent jurisdiction for disposal.