

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL TRANSFER APPLICATION NO. 1 OF 2015

Vijayraj R. Desai,
son of Raya Desai,
47 years old, male, doctor,
presently at subjail, Vasco, Goa,
permanent resident of G-7, 'C' building,
Kurtarkar Township Ambaji,
Margao, Goa – 403 602.

... **Applicant**

Versus

State
through the Public Prosecutor
Central Bureau of Investigation,
with office at F-1,
Type VI Goa Medical College quarters,
Bambolim, Goa.

... **Respondent**

Petitioner in person.

Mr. Joseph Vaz, Special Public Prosecutor for the respondent.

Coram : C. V. BHADANG, J.

Date : 9th July, 2015.

ORAL ORDER :

By this application the applicant-accused is seeking transfer of Sessions Case No.29/2014 from the file of the learned Principal District and Sessions Judge, Margao, to any other Sessions Court.

2] The applicant is facing prosecution for the offences punishable under Section 302, 201 and 498A of Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act. The

applicant is presently in judicial custody at Sub Jail Vasco, Goa.

3] It is undisputed that the application filed by the applicant-accused for discharge, was dismissed by the learned Sessions Judge, South Goa, Margao and that order has been confirmed by this Court. It would not be necessary to go to the contents of the application for transfer, which pertain to the merits of the prosecution case. The ground on which the transfer of the case is sought is that the learned Sessions Judge on 4th May, 2015 while hearing the petitioner had said that, "I have seen your histrionics now. Enough". According to the applicant, this is sufficient to raise an apprehension that he will not get a fair trial at the hands of the concerned Sessions Judge.

4] The applicant is produced before this Court today. I have heard the applicant in person and also Mr. Vaz, the learned Special Public Prosecutor for the respondent.

5] It is submitted by the applicant that he has a reasonable apprehension that he will not get a fair trial before the Court, before which the Sessions Case is now pending.

6] Mr. Vaz, the learned Special Public Prosecutor for the respondent has opposed the prayer. It is submitted that the reason

shown, is not sufficient to infer that the concerned Sessions Judge is either prejudiced or has made up mind or that the applicant would not get a fair trial before the Court.

7] I have considered the rival contentions and the submissions made. I have also perused the order dated 11th May, 2015 passed by the learned Sessions Judge.

8] At the outset, it needs to be stated that the reason and the ground shown for transfer is anything, but sufficient. It would not even be necessary to dilate on this aspect, as the words attributed to the learned Sessions Judge as stated in Para. 7, cannot give rise to an apprehension in the mind of the applicant - accused that the Judge has made up mind or that he would not get a fair trial.

Thus, it is not possible to act on the ground as put-forth by the applicant. However, what is significant is that the learned Sessions Judge in the order dated 11th May, 2015 has found the case is at the threshold where the charge is yet to be framed and in the circumstances, it would be in fitness that the case be heard by an Additional Sessions Judge, competent to deal with the case. The only reason, why the Sessions Judge could not transfer the case, was that the Sessions Judge had no power to transfer the case from its own Court to the Court of the Additional Sessions Judge.

9] Thus, on account of the procedural difficulty in withdrawing the case from her own file and transferring it to some other Court, that the learned Sessions Judge was unable to transfer the said case. Thus, I find that although, it would not be possible to act upon the ground raised by the applicant in support of the transfer, this Court finds it appropriate to transfer the case to some other Court. In the result, the following order is passed :

- i) Sessions Case No. 29/2014 is hereby withdrawn from the file of the Principal District and Sessions Judge, Margao and transferred to the file of the First Additional Sessions Judge, Margao, for disposal in accordance with law.
- ii) The criminal transfer application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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