

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.163 OF 2015

Parmeshwar Bandu Punekar .. Applicant
Versus
The State of Maharashtra .. Respondent

Ms.Naima Shaikh i/b Khan Abdul Wahab, Advocate for the applicant.

Mrs.Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 17th APRIL, 2015

P.C. :

1 Heard Ms.Naima Shaikh, learned counsel for the applicant. Heard Mrs.Anamika Malhotra, learned APP for the State.

2 The applicant is the accused no.3 in Sessions Case No.29 of 2011. The trial of the case is at an advanced stage. The prosecution evidence has already been adduced. The case is now kept for examination of the accused persons under section 313 of the Code of Criminal Procedure. By the present application, the applicant prays that the case be transferred to the Court of the learned Judge who had recorded a substantial part of the evidence that has been adduced during the trial.

3 I have gone through the application. There is no dispute about the correctness of the facts stated in the application.

4 Totally, 16 witness for the prosecution have been examined during the trial. It appears that the evidence of the first five witnesses for the prosecution, was recorded by three different Judges, and the evidence of the subsequent witnesses was recorded by Her Honour Judge Smt. R. Bapat Sarkar. After the evidence was recorded by her, and after the case had been kept for examination of the accused persons as contemplated u/s.313 of the Code, due to the administrative arrangements, the trial of the case came to be assigned to His Honour Judge Shri Murumkar. Admittedly, His Honour Judge Shri Murumkar has not recorded any evidence in the trial, except the evidence of the Investigating Officer after he was recalled for further cross-examination.

5 The learned APP submitted that she had taken instructions from the Prosecutor in-charge of the trial. According to her, the prosecutor in-charge of the trial, is not ready to have the matter transferred to Her Honour Judge Smt.R. Bapat Sarkar. The objection is based on two grounds. The first is that Judge Smt.Bapat Sarkar is now handling civil matters. The second objection is that it would be difficult for the learned Prosecutor in-charge of the trial to attend the Court of a Judge who is primarily taking civil matters.

6 I find no substance in any of these objections. It is a fact that, almost the entire evidence has been recorded by Judge

Smt.R.Bapat Sarkar. As far as possible, the Judge who heard the evidence must deliver the judgment. When such Judge is available in the same Court, and when the trial has been taken away from the said Judge only on account of administrative exigencies, it would be proper, in my opinion, to direct the trial to be held by the same Judge, and for that purpose, the application needs to be allowed.

7 Application is allowed.

8 The Sessions Case No.29/11 shall stand transferred to the Court of Her Honour Judge Smt. R. Bapat Sarkar, who shall proceed with the trial further, in accordance with law.

9 All concerned to act in consonance with this order, and do the needful.

10 Application is allowed in the aforesaid terms.

(ABHAY M.THIPSAY, J)