

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3140 OF 2015

Shri Narendra Premji Naidu

..Petitioner

v/s.

Mukund Gurudas Tondapurkar & Anr. ..Respondents

Mr. Anil S.Pandey for the Petitioner.

Mr.S.H.Joshi, for the Respondent no.1

Mr. Rajesh More, APP for the Respondent no.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : OCTOBER 26, 2015.

P.C.

1. Rule. Rule made returnable forthwith. By consent, the petition is taken up for hearing.
2. By this petition, the petitioner herein who is an accused in SSC No.1789 of 2007 under Section 138 of the Negotiable Instruments Act, has sought transfer of the said case from JMFC, 3rd Court, Kalyan to any other court in the district of Thane.
3. The petitioner claims that the brother of the respondent no.1 complainant is a practicing lawyer in the District Court at Kalyan.

The petitioner has stated that the respondent no.1 complainant has executed a Power of Attorney in favour of his brother. The petitioner claims that the brother of the respondent no.1 complainant is in position to influence the court staff as well as the presiding Officer. Apprehending that he would not get justice in the court of JMFC, Kalyan, the petitioner, filed a transfer application No.432 of 2013 before the learned Sessions Court at Thane. The said application has been dismissed by the Sessions Court vide order dated 19.12.2013. The petitioner has stated that the fact that the brother of the respondent no.1 complainant is practicing in Kalyan District Court since last 22 years is itself sufficient to justify his apprehension that he would not get justice if the case is tried before JMFC, Kalyan. The petitioner has therefore urged that the case be transferred.

4. Heard learned counsel for the petitioner and for the respondent. Section 408 of Cr.P.C. confers powers upon the Sessions Judge to transfer any particular case from one criminal court to another when such transfer is expedient for the ends of justice. There is no straight jacket formula for exercise of such powers,

nonetheless, such powers are required to be exercised judiciously with due care, caution and circumspection. A reasonable apprehension in the mind of the litigant that he will not get justice is one of the grounds of transfer. Suffice it to say, reasonable apprehension cannot be equated with imaginary suspicion or capricious belief. Every hunch, hesitancy and absence of belief and faith in the administration of the justice cannot be equated with conception of reasonable apprehension. It has to be borne in mind that transfer of the case is a serious matter and if the powers of transfer are exercised casually without there being any justification, the same can seriously dampen the high morale and the independent spirit of a judicial officer and corrode the faith of the litigants in the administration of justice. The onus is therefore on the party applying for transfer to justify the plea of apprehension in the realm of actuality.

5. In the instant case, the petitioner has sought transfer on the sole ground that the brother of the respondent no.1 complainant is a practicing lawyer in the District Court, Kalyan, and that he is in a

position of exercising influence on the court staff as well as the Presiding Officer. Apart from this bald statement, the petitioner has not spelt out even a single instance which led to entertaining such apprehension. It is also not the case of the petitioner that the presiding officer has by his act or conduct given any sort of indication of likelihood of bias or prejudice. Thus there can be no doubt that the apprehension entertained by the petitioner is not reasonable and genuine, but it imaginary and fanciful. The petitioner, having failed to establish reasonable apprehension, cannot get the case transferred by quoting oft repeated settled principle that justice should not only be done but manifestly seen to be done .

6. Under the circumstances, the petition has no merits and is hereby dismissed. Since the case is of the year 2007, the learned Magistrate is directed to dispose of the same as expeditiously as possible, in any case, within the period of three months from the date of the order. Rule discharged.

(ANUJA PRABHUDESSAI, J.)