

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.687 OF 2014

Mohan Ramkrushna Amburle	..Applicant
<i>Versus</i>	
Jagdeesh Tulsheeram Patil and Anr.	..Respondents

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Mr. Kashyap Bhalerao, for the Applicant.
Mr. Amit A. Gharte, for the Respondent No.1.
Mrs. Anamika Malhotra, APP, for Respondent No.2-State.

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WITH
CRIMINAL APPLICATION NO.688 OF 2014

Mohan Ramkrushna Amburle	..Applicant
<i>Versus</i>	
Vijay Vitthalrao Deore and Anr.	..Respondents

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Mr. Kashyap Bhalerao, for the Applicant.
Mr. Nagesh Chavan, for the Respondent No.1.
Mrs. P.P. Bhosale, APP, for Respondent No.2-State.

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CORAM : A. R. JOSHI, J.

DATE : 13th OCTOBER, 2015

P.C.

1. Heard learned Counsel for the applicant in both these applications. Also heard respective Counsel for the respective respondents in these applications for transfer.

2. Both the applications are being disposed of by this common order as the ground for transfer alleged by the applicant, who is same person in both the applications, is same.

3. In first application No.687 of 2014 the applicant who is the original accused facing criminal case under Section 138 of Negotiable Instruments Act, has prayed for transfer of said pending criminal case from JMFC, Dhule to the appropriate JMFC Court at District Thane.

4. Similar prayer is made by the applicant in another application No.688 of 2014. In this case also the applicant is accused and facing criminal case for the offence under Section 138 of Negotiable Instruments Act.

5. The respective respondents in both these applications are the respective original complainants in those criminal complaints alleged under Section 138 of Negotiable Instruments Act.

6. The only ground pressed for transfer of both the criminal complaints from the Court of JMFC, Dhule to the concerned JMFC Court at District Thane is the ill-health and

deteriorating physical condition of the applicant who is at advanced age of 70 years. Paras-5 and 6 in both these applications gave details regarding his present physical and mental condition and more specifically the mental agony he is suffering because of untimely death of his son aged about 45 years. It is mentioned in para-6 in both the applications that due to untimely death of his son, his wife who is also of advanced age is in fact mentally ill and the applicant do not want to leave her alone at Dombivali where he resides and to attend the JMFC Court at Dhule.

7. As against this apparent physical and mental condition of the applicant/accused, the factual position of both these cases is required to be viewed in order to ascertain whether it is a just and proper case for transfer of both criminal cases for Section 138 of Negotiable Instruments Act from Dhule to District Thane.

8. In Criminal Application No.687/2014 about 15 months earlier the examination-in-chief of the present respondent No.1, then complainant, was already over and then he was under cross-examination. However, in December, 2014 the application

for transfer was made and since then the matter before the JMFC, Dhule did not proceed. This is in fact a frustrating state of affairs though this Court has not stayed the proceedings before the trial Court.

9. So far as Criminal Application No.688/2014 is concerned admittedly the charge is not yet framed and the matter is yet to start for recording of evidence.

10. At this juncture it must be observed that the proceedings under Section 138 of Negotiable Instruments Act are required to be disposed of expeditiously and within the period of six months from institution. This is in fact an ideal condition required to be achieved by the Courts, but, the factual position is something else and in the present matter though the complaints are lodged in the year 2010, both the complaints are still pending. One of the reasons for pendency of those matters is in fact filing of present application for transfer in December 2014. Needless to mention that such type of applications for transfer under these special circumstances, as detailed earlier, should have been disposed at the earliest so that the trial Court could be definitely in a position to proceed further in the

matters. It is experienced that though the High Court do not stay the proceedings before the trial Court, as and by way of abundant care and caution the trial Court refrains itself from proceeding further with further progress of the matter. Same thing has happened in the present case.

11. Whatever it might be, now the question is whether on the alleged ground of mental and physical suffering of the applicant which is caused in the matters under Section 138 of Negotiable Instruments Act, both the cases are required to be transferred to Thane District ?. Needless to mention that there is nothing like a jurisdictional issue so far as transfer of these pending cases from Dhule to Thane. Moreover attendance or otherwise of the present applicant before the trial Court can be minimized by making suitable application by his Counsel in the respective complaints asking for exemption from the personal appearance. If that course of action is adopted then apparent grievance of the present applicant can be subserved and only in case of dire need he will be required to attend concerned JMFC Court at Dhule.

12. So far as first application No.687/2014 is concerned in

fact the complainant, i.e. present respondent No.1, is required to be cross-examined. For this purpose immediate presence of the applicant/accused may not be necessary. However, it is the choice of the applicant whether to remain personally present or to get represented by his Counsel. So far as his evidence, if at all to be recorded before the trial Court, there are ways and means how the evidence can be recorded either by remaining present before the Court or on Commission if there is risk to the health of the applicant if he undertakes the travel to Dhule.

13. So far as the second case is concerned, in Application No.688/2014, the matter is still at the stage of framing of the charge and as such the same mode of action can be taken in this matter also.

14. In the result, in the considered view of this Court, there is nothing to entertain both these applications for transfer and the same are accordingly dismissed and disposed of. Directions are given to the concerned trial Court at Dhule to expeditiously deal with the matters in accordance with law and see that the matters are put to the logical end after allowing the parties to lead their evidence. Needless to mention that in case

any application is filed by the present applicant/accused for his personal exemption, same shall be appropriately dealt with as per the exigencies of the case. Both the applications are accordingly disposed of.

15. Present order be immediately forwarded to the concerned trial Court.

(A. R. JOSHI, J.)

Deshmane (PS)