

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.720 OF 2014

Dr.Praven Gedam, IAS V/s. State of Maharashtra & Ors.

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.Ramdas Sabban i/by Mr.Subhas V. Gutte, for applicant-appellant.
Mrs.Anamika malhotra, APP for Respondent-State.
Mr. Niranjan Mundergi i/by Mr.Gajendra K. Jadhav,
for respondent no.1.

CORAM : A.R. JOSHI, J.

DATE : 13TH JULY 2015

P.C.:

1. Heard learned counsel for the applicant as also learned counsel for the respondent nos.2 to 7 and also learned APP for the State.

2. This is an application filed under section 407 of Cr.P.C. for transfer of Regular Criminal Case No.107 of 2005 from the court of Judicial Magistrate First Class, Khed to the competent court of equal jurisdiction situated at Pune for proceeding further

with the matter.

3. The present application is preferred by one of the prosecution witnesses cited in the chargesheet. The present applicant is cited in the list of witness at serial no.12. He is yet to be examined. The complainant, then Resident-Tahsildar of Taluka-Khed, District-Ratnagiri lodged a complaint with Khed Police Station for taking action against the respondent for the offences of rioting and as also other offences punishable under section 186,323,506 and section 353 of Indian Penal Code. During the pendency of the case before the court of concerned JMFC the trial started and as per the report filed before this Court by PI, Khed Police Station, dated 12th January 2015, eight witnesses were examined on behalf of State and out of them six witnesses turned hostile and did not support the prosecution case. The Investigating Officer was in examination-in-chief and during the pendency of his examination and apparently at the end of his examination-in-chief and prior to starting his cross-examination, an application was made before the Trial Court by the prosecution

asking for recording the evidence of the present applicant as one of the prosecution witnesses. By then the present applicant was working as Commissioner of Municipal Corporation of Nashik. During the time of the incident of lodging of the complaint he was working as a Sub-Divisional Officer at Taluka-Dapoli. The said application was rejected by the Court of JMFC, Court on the premise that once the Investigating Officer was in the box his entire evidence can be concluded including his cross-examination and then the present applicant can be examined as a witness. This was so as earlier during the progress of the trial the present applicant was not present before the Court as a witness, though various opportunities were given. There were various reasons for the present applicant not to attend the Court for giving evidence and as such the Investigating Officer was put in the box. After the rejection of the application, as mentioned above, it was taken by the prosecution that the Court is biased and no justice would be given by the trial Court and as such application was made before the District Judge, Ratnagiri, which was allowed and the case at part heard stage was transferred from the Court of concerned

JMFC to the Additional Judicial Magistrate First Class at Khed. This transfer was effected some time in August 2013. Thereafter the present application for transfer from the Court of JMFC, Khed to concerned JMFC Court at Pune is preferred by the applicant, one of the witnesses cited by the prosecution. Present application is preferred on or about 19th December 2014.

4. The present stage of the case against the respondent is part heard and out of 8 witnesses six have turned hostile, as reported in the police report dated 12th January 2015. According to the chargesheet, there are totally 13 witnesses and as such five witnesses are yet to be examined, including the present applicant.

5. During the arguments the main thrust for the transfer of the case is on the hostility of the six witnesses in as much as they did not support the case of the prosecution so also the hostility of even the first informant. Secondly, it is argued that when at one occasion the present applicant was present in the court during the trial, the main accused persons showed their hostile attitude towards him by vengefully looking at him, causing

a sort of fear in his mind. Thirdly, it is mentioned that even from the initial stage of lodging of FIR the case was not properly handled by the investigating agency and much belatedly the FIR was lodged. By pointing out this, it is submitted that all the respondents who are political bigwigs and one of respondent is a sitting MLA of a Political Party.

6. So far as the hostile attitude shown by the respondent towards the witnesses in the Court, whether any steps were taken for cancellation of bail or placing any affidavit of such witness, alleging threats of dire consequences at the hands of the respondents, learned counsel for the applicant so also the learned APP for the State could not answer in the affirmative. So also when it is asked whether there was personal threat given by the applicant-appellant by any of the respondents, the learned counsel stated that except for the said episode of vengeful looking in the court premises there was no such threat or any terrorizing act by the respondents.

7. In view of the above factual background though it is

vehemently argued on behalf of the applicant by taking shelter of the ratio propounded in the following authority {2004 AIR(SC) 524} K.Anbazhagan V/s. Superintendent of Police Etc., in the opinion of this court, the facts of each and every case are required to be considered in order to give the relief of transfer of the case from one jurisdiction to another. Hardly it can be said that only because of the hostility of the witness, the case can be transferred from the court presuming that the justice would not be given to the aggrieved party because of any action on the part of Presiding Officer of the Court. There are ways and means to deal with the hostile witnesses and to take remedial measures either by the prosecuting agency and also by the Judicial officer conducting the trial. Needless to mention that the entire evidence of the hostile witness is not required to be thrown mainly because of the principle of acceptance of part of evidence as what is commonly known as 'sifting the grain from the chaff'. Whatever that may be, in the considered view of the court any alleged hostility shown by the respondents cannot be a reason for the transfer of the case without there being any specific incident of any conduct of the

Court, or any cogent material to show that no justice would be given if the matter is continued to be tried before the same Court. As such in the opinion of this court there is no legal necessity to view this application in favour of the applicant so far as the transfer of the pending case.

8. Now so far as the examination of the present witness is concerned needless to mention that the trial Court shall take appropriate measures by allowing to take his evidence even after completing the evidence of the Investigating Officer. In that eventuality investigating Officer can be again recalled for further examination. However, that aspect is to be dealt with in accordance with law by the trial Court. In any event, in the present matter no case is made out by the applicant for transfer and hence application is dismissed and accordingly disposed of. The matter before the trial Court shall proceeded further in accordance with law and shall be disposed of as early as possible.

(A.R. JOSHI, J.)