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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.775 OF 2016

1. Sachin @ Shanishwar s/o Ramkisan Ghawate,
Age : 25 yrs, Occu. Legal Practitioner,
R/o House No.750,
Civil Hudco Colony
Ahmednagar, Dist. Ahmednagar
2. Nitin s/o Ramkisan Ghawate,
Age : 28 yrs, Occu. Legal Practitioner,
R/o House No.750,
Civil Hudco Colony
Ahmednagar, Dist. Ahmednagar ..PETITIONERS

VERSUS

The State of Maharashtra
Through Police Station Officer
Newasa Police Station,
Tq. Newasa, Dist. Ahmednagar ..RESPONDENT

Mr N.V. Gaware, Advocate to for petitioners;
Mr K.D. Munde, Addl. Public Prosecutor for respondent;
Mr V.D. Sapkal, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 20th August, 2016

ORAL ORDER :

Criminal Misc. Application (Transfer) No.26 of 2016 moved by the present petitioners, who are accused in Sessions Case No.10 of 2016, pending before the court of Additional Sessions Judge, Newasa, seeking transfer of Sessions Case No.10 of 2016 to any other court, in view of provisions of section 408 of the Code of Criminal Procedure (for short "CrPC"), came to be rejected by the learned Sessions Judge, Ahmednagar by an order dated 28th April, 2016. Thus, the present petition.

(2)

2. With a view to make out a ground for exercise of powers under section 408 of CrPC, Mr Gaware, learned Counsel appearing on behalf of the petitioners would urge that the victim and witnesses in the sessions case are practicing lawyers before the courts at Ahmednagar and Newasa. According to him, the said aspect will have sub-conscious effect on the mindset of the Presiding Officer of the court at Newasa, as there will not be a congenial atmosphere for the conduct of a fair trial. Mr Gaware would then invite attention of this Court to the fact that the petitioners-accused were reprimanded by the learned Additional Sessions Judge, in view of noticing a fact that they have tried to send a proposal to the witnesses for compromise. According to him, as there are hardly any chances of getting an opportunity of fair trial, particularly the atmosphere in the court, the powers under section 408 of CrPC are required to be exercised by ordering transfer of the sessions case to any other place than Newasa and Ahmednagar.

3. Mr Sapkal, learned Counsel appearing on behalf of the complainant and the learned Addl. Public Prosecutor would strenuously oppose the application, as according to them while exercising powers under section 408 CrPC, the parameters as are required to be considered, are not at all satisfied in the present case. According to them, just because the petitioners are apprehending that they will not get fair treatment, that cannot be a reason for ordering transfer of sessions case. According to them, the petition lacks merit and as such be dismissed.

(3)

4. It is not in dispute that in the transfer application moved under section 408 CrPC, a categorical statement is made that the petitioners are not apprehending any prejudice or any unfair or treatment by the presiding officer of the court at Newasa. Whatever apprehension is expressed by the petitioners-accused is only as regards professional status of the witnesses and that of the complainant, who are lawyers practicing in the same court.

5. In my opinion, the same cannot be a ground for seeking transfer of the proceedings from the court at Newasa to any other court, particularly in the light of the law laid down by the Apex Court, in the matter of **Usmangani Adambhai Vahora vs. State of Gujarat & anr.**, reported in **2016 ALL SCR (Cri) 313**.

6. Apart from above, it is required to be noted that the petitioners have not satisfied the requirement of section 408 of CrPC, particularly for substantiating their apprehension of not likely to get fair opportunity to defend the charge against them in the sessions case or fair trial.

7. In view of above, no case for interference in exercise of extraordinary jurisdiction of this Court is made out. Thus, Criminal Writ Petition fails and stands rejected.

(N.W. SAMBRE, J.)

amj