

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1350 OF 2015

MANIK S/O SARJERAO MODAKE
VERSUS
THE STATE OF MAHARASHTRA & ANR

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Advocate for Petitioner : Shri Shaikh Samir Ahmad Saifuddin
APP for Respondent 1 : Shri Karlekar S.G.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 20, 2016
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PER COURT :-

1. Though respondent No.2 has been served with the notice indicating that the matter would be taken up for final disposal at the stage of admission, no appearance has been entered on behalf of the second respondent.
2. The petitioner is aggrieved by the order dated 29.7.2015 passed by the learned Sessions Judge, Aurangabad by which, the Sessions Case No.148 of 2012, pending with the learned District Judge 1 and Additional Sessions Judge, Vaijapur has been transferred by allowing the application filed by the second respondent.
3. I have heard the learned Advocate for the petitioner and the learned APP.
4. By an application dated 25.3.2015, filed by the second respondent /

original accused, the proceedings before the learned Sessions Judge were sought to be transferred under Section 408 of the Criminal Procedure Code (“CrPC”). While dealing with an application under Section 408, the effect of the provision of Section 407 of the CrPC has to be considered by the learned authority who is empowered to pass an order under Section 408.

5. Sections 407 and 408 of the CrPC read as under:-

“Section 407 - Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:*

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) *Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.*

(4) *When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).*

(5) *Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.*

(6) *Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:*

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

"Section 408 - Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) ,and (9) of

section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under subsection (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand" rupees occurring therein, the words "two hundred and fifty rupees" were substituted."

6. In the application at issue, the only grievance put forth by the respondent / accused is set out in paragraph No.5 indicating that the learned Additional Sessions Judge had called upon the learned Advocate of the accused not to take a long gap between one answer and the subsequent question as it amounts to wastage of time. After noting that a lot of time was being wasted by taking long gaps, the learned Additional Sessions Judge stopped further cross-examination.

7. In the above backdrop, the impugned order has been passed. As the applicant / accused was not ready to conduct the matter before the concerned Court, the learned Sessions Judge directed the withdrawal of Sessions Case No.148 of 2012 and transferred the same to the learned Ad-hoc District Judge 1 at Vaijapur.

8. I find the impugned order to be cryptic and without any reasons. Merely because the learned Advocate of the accused was instructed to avoid wastage of time, it could not be a ground for transferring the matter. Apparently, the learned Sessions Judge has lost sight of Section 407(6) of the Cr.P.C. which mandated that the Court must be satisfied that it was

necessary to transfer the proceedings in the interest of justice. This Court, while entertaining an application against refusal to transfer is also required to consider, whether interest of justice would be sub-served by such transfer.

9. Considering the reason cited in the application, the learned Sessions Judge could not have transferred the proceedings at the mere askance. No reasons are assigned in passing the impugned order, much less, indicating grounds on which the learned Sessions Judge came to a conclusion that ends of justice would be met and the interest of justice would be sub-served if the matter was transferred.

10. If transfer of matters are ordered casually, it is bound to undermine the sanctity of Court proceedings and demoralise a judicial officer.

11. In the light of the above, this petition succeeds. The impugned order dated 29.7.2015 is quashed and set aside and the application dated 25.3.2015, filed by the second respondent / accused stands rejected.

(RAVINDRA V. GHUGE, J.)

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