

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

CRIMINAL APPLICATION NO. 5731 OF 2016

Ramesh s/o. Bhagwantrao Gadhe

..Applicant

Versus

The State of Maharashtra

..Non-applicant

Shri V.D. Sapkal, Advocate for the applicant.

Shri A.R. Kale, A.P.P. for the respondent/State.

CORAM : Z.A. HAQ, J.

DATED : 13.12.2016

P.C. :-

. Heard. The applicant/accused has challenged the order passed by the learned Sessions Judge dismissing the application filed by the accused under section 409 of the Criminal Procedure Code praying that the case be transferred from the Court of 7th Additional Sessions Judge, Aurangabad to the Court of Special Judge (PCA), Aurangabad. According to the applicant, the case was pending before the Special Court presided over by Shri U.L.Telgaonkar and the charge was also framed and subsequent to the framing of the charge, the case was transferred to the Court of 7th Additional Sessions Judge, which could not have been done in view of the prohibition as per sub-section (2) of Section 409 of the Criminal Procedure Code and therefore the applicant

sought re-transfer of the case from the Court of 7th Additional Sessions Judge to the Court of Special Judge – Shri U.L. Telgaonkar. The learned Sessions Judge has rejected the application filed by the accused by the impugned order observing that the case is not withdrawn from the Court of Shri U.L. Telgaonkar, exercising powers under section 409 of the Criminal Procedure Code, but it is transferred on the administrative grounds under section 408 of the Criminal Procedure Code to the Court of 7th Additional Sessions Judge.

02. Shri V.D. Sapkal, learned Advocate for the applicant has submitted that the power under section 408 of the Criminal Procedure Code could not have been exercised by the learned Sessions Judge after framing of the charge and if at all the case was required to be recalled from the Court of Special Judge, it could have been done only under section 409 of the Criminal Procedure Code and in the present case the power under section 409 of the Criminal Procedure Code could not have been exercised in view of the provisions as per sub-section (2) of Section 409 of the Criminal Procedure Code, the charge having been framed by the Special Judge.

. To support the submission, the learned Advocate for the applicant/accused has relied on the following

judgments :-

(i) Judgment given in the case of In Re: Smt. Tarulata Kala, 1997 CRI.L.J.1401;

(ii) Judgment given by the Division Bench of the Calcutta High Court in the case of State of W.B. Vs. Gangadhar Dawn & ors., 1989 CRI.L.J.563.

03. The learned A.P.P. has supported the impugned order.

04. The learned Sessions Judge has recorded that the case is transferred on administrative grounds exercising the powers under section 408 of the Criminal Procedure Code. The applicant has neither challenged the order by which the case is transferred to the Court of 7th Additional Sessions Judge nor copy of the order is placed on record. I see no reason to interfere with the impugned order specially when the applicant has failed to show that the exercise of administrative powers under section 408 of the Criminal Procedure Code suffers from any illegality. The prohibition created by sub-section (2) of Section 409 of the Criminal Procedure Code cannot be read to inhibit or to curtail the administrative powers of the Sessions Judge under section 408 of the Criminal Procedure Code. The Criminal Application is dismissed.

(4)

cria5731.16

In the circumstances, the parties to bear their own costs. The learned 7th Additional Sessions Judge shall dispose the case till 2nd May, 2017.

[Z.A. HAQ,J.]