

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO.88 OF 2016**

SHRI. UDAY TEJAM AND ANR. .... PETITIONERS

V/S

MRS. LATA TEJAM ...RESPONDENT

Shri D. Vernekar, Advocate for the Petitioners.  
Shri G. Agni and Shri Eeshan Usapkar, Advocate  
for the Respondent.

**CORAM : C.V. BHADANG, J.**

**DATE : 2<sup>nd</sup> AUGUST, 2016**

**ORAL ORDER :**

Heard learned Counsel for the  
petitioners and the learned Counsel for the  
respondent.

2. The petitioners are facing a case under  
the Domestic Violence Act filed by the  
respondent. The petitioners want the said case  
to be transferred to some other Magistrate as  
according to the petitioners there is reasonable  
apprehension, that they will not get a fair  
trial at the hands of the concerned Magistrate.

The learned Sessions Judge by the impugned order dated 30/05/2016 has rejected the transfer application.

3. It is contended on behalf of the petitioners that although the petitioners had approached the learned Sessions Judge on three grounds, the learned Sessions Judge has only considered one of the three grounds namely the Magistrate giving short dates. It is contended that the other grounds are not considered. It is submitted that in an application seeking transfer the Court has to look from the perspective of the litigant to find out whether there are sufficient circumstances to support the reasonable apprehension that the party will not get fair trial at the hands of the concerned Court. The learned Counsel has relied upon the decision of the Delhi High Court in the case of ***Shafiq-ud-din V/s. State, 1968 0 Cr.L.J. 1536*** and the decision of the Gauhati High Court in the case of ***N.C. Bose V/s. Probodh Dutta Gupta,***

**1955 0 AIR (Gau) 116** in order to submit that in similar circumstances the application for transfer was allowed. The learned Counsel submits that no prejudice would be caused to the respondent, if the matter is transferred as prayed.

4. On the contrary, the learned Counsel for the respondent submits that the cases relied upon are distinguishable. It is submitted that the petitioners cannot justifiably complain about the Magistrate hearing the matter expeditiously as there is a statutory mandate under the Domestic Violence Act that the same should be decided within a period of three months. It is submitted that there is nothing on record to show that the Magistrate was suggesting answers and, lastly, the orders regarding the exhibition of the documents are judicial orders.

5. I have carefully considered the rival

circumstances and the submissions made and I do not find that any case for transfer is made out.

6. It is true that the learned Sessions Judge has considered only one of the grounds. I have heard the parties on the other two grounds in order to consider whether any of the grounds can afford the basis for a reasonable apprehension in the mind of the petitioners to seek transfer.

7. The petitioners approached the learned Sessions Judge on, three grounds namely; (i) that the learned Magistrate was acting in the interest of the respondent/complainant and "helping in suggesting answers to the questions put by the petitioners in cross-examination", (ii) that the learned Magistrate has taken certain documents on record without exhibiting the same through its author. Reference is made to PW3 Ashok in whose evidence certain bills regarding golden ornaments issued by M/s. V.S.

Bembalgi were exhibited, overruling the objections raised by the petitioners and; (iii) It is contended that the Magistrate is giving short dates, "within a span of three to four days".

8. In so far as the first ground is concerned there is nothing on record to show that Magistrate was suggesting answers during the cross-examination at the instance of the petitioners. In the absence of any record as to any application being filed or an objection being taken in writing to that effect, before the Magistrate in my considered view, the said ground cannot be considered in support of prayer for transfer. In the absence of any record it is difficult, if not impossible, to decide whether the learned Magistrate was so suggesting the answers during the cross-examination at the instance of the petitioners. In so far as the second ground is concerned they are judicial orders and merely because the Magistrate

exhibits certain documents, overruling the objection, by itself cannot be a ground to transfer the matter. Even so far as the third ground is concerned it is needles to mention that if the Court hears the matter expeditiously that cannot raise an apprehension in the mind of the party that the Court is biased and that the party will not get fair trial at the hands of the concerned Court.

9. There cannot be any dispute with the proposition that while considering the prayer for transfer the Court has to place itself in the position of the concerned litigant in order to find whether there are circumstances to support a reasonable apprehension in the mind of the party that it will not get a fair trial. The question obviously depends upon facts and circumstances of each case. I find that the facts in the cited cases are clearly distinguishable. In the case of **Shafiq-ud-din** (supra) before the Delhi High Court, the

Magistrate without giving any reasons or declaring the witness hostile allowed the prosecutor to cross-examine the said witness. It further appears that the Magistrate of his own accord referred a disputed document to the Government examiner. In the case before the Gauhati High Court in the case of **N.C. Bose** (supra) it was found that the Magistrate had expressed certain opinion during the course of the hearing, against the party.

10. The facts in the present case, in my considered view, are distinguishable. I, therefore, find that no case for transfer is made out. In the result, the Writ Petition is rejected.

**C.V. BHADANG, J.**

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