

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Misc. CRIMINAL APPLICATION NO. 9 OF 2016

Smt. Jyotsna Bipinchandra Naikwadi ...	Applicant
vs.	(Orig. complainant
The State of Maharashtra & Ors. ...	Respondents

Mr. Umesh Kurund, Advocate for the applicant.
Mr. P.G.Sarda for respondent No.3.
Mr. S.S.Pednekar, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 19th January, 2016.

P.C.

Heard.

2. This is an application filed by the original complainant seeking transfer of Sessions Case No.151 of 2014 from the Court of Sessions Judge, Barshi to some other Court.

3. It is the contention of the applicant that the applicant apprehends that she would not get proper justice before the said learned Sessions Judge and that it is not a fair trial. It is contended that the learned Sessions Judge has refused to examine the witnesses cited by the prosecution although then the witnesses were present before the Court. The

complainant is apprehensive that the learned Sessions Judge is deciding the trial hastily. It is submitted that the complainant has no personal grievance against the Presiding Officer.

4. This Court had issued notice and directed the learned APP to take appropriate instructions from the Prosecutor who is in charge of Sessions Case No.151 of 2014. Today, the learned APP has filed the report filed by the Public Prosecutor on record. The report shows that the prosecution has examined five witnesses.

5. It appears from the record that on 21.1.2015, the learned APP had filed an application before the learned Sessions Judge praying therein that witness summons be issued to the persons mentioned in the application. The witness summons were issued. On 5.11.2015, the learned APP had again filed an application requesting the Court to issue witness summons to another four persons. The said application was also allowed. The witnesses were present in the Court. However, they were not examined by the Court. Warrants were issued to some of the witnesses on 15.12.2015. Bailable warrants were also issued to two witnesses on 4.12.2015. The report of the Public Prosecutor indicates that panch No.1 Jayant was examined by the prosecution to prove the seizure of the letter allegedly

written by the deceased. That panch No.1 has not supported the prosecution. Witness No.2 is the complainant, who happens to be the wife of the deceased. PW-3 Dr. Sanjay Angare had treated the deceased prior to his death. PW-4 is Ajay Kulkarni who is the friend of the deceased who was in his company on the previous evening i.e. on 25.9.2013. PW-5 is Shobha Padval, who happens to be the Investigating Officer.

6. The learned APP fairly submits that the witnesses were present before the Court. Their presence is not marked in the Roznama. The Public prosecutor has further opined that the Court was of the opinion that there shall not be multiplicity of similar evidence and, therefore, the said witnesses were not examined and the Court was of the opinion that recording of the substantive evidence of the said witnesses would be irrelevant to the facts of the case.

7. In fact, it is incumbent upon the prosecution to bring before the Court the best of evidence available to prosecute their case and to prove their case beyond reasonable doubt. The Court cannot form an opinion that there would be multiplicity of evidence. In fact, the applications filed by the Prosecutor were allowed by the Court and the witness summons were

issued. The prosecution has not challenged any order passed by the Court thereby rejecting the application filed by the prosecution to record the evidence of particular witnesses as their evidence would be material to substantiate the case of prosecution. It is in these circumstances that the original complainant had apprehended that it would not be a fair trial and therefore sought transfer of the case from the Court of Sessions to any other Court.

8. It appears from the records, the post-mortem reports and some other panchnamas are admitted by the accused under Section 294 of Cr.P.C. The report of the handwriting expert dated 6.11.2015 was seen by the Court for the first time on 13.1.2016. Prior to receipt of the report, the Sessions Court has rejected the application for examining the handwriting expert. Justice hurried would be justice buried and, therefore, the Court cannot proceed with the trial in a hurriedly manner without giving the prosecution a fair opportunity to substantiate their case. Since the learned counsel for the applicant has fairly submitted that he has no personal grievance against the Presiding Officer, this Court is not inclined to transfer the matter, but a word of caution is given to the learned Sessions Judge and he is hereby directed to allow the prosecution to examine the witnesses as per their

choice, specially the witnesses who are named in applications dated 21.1.2015 and 5.11.2015 as well as the witnesses mentioned in the application below Exhibit 37. The Court shall not proceed with recording the statement under Section 313 of Cr.P.C. unless the said witnesses are examined. The prosecutor is at liberty to drop any witness in case it is found that it would amount to multiplicity of similar evidence.

9. With these directions, the application is disposed of.
10. Office to communicate this order to the concerned Sessions Court.
11. Parties to act on an authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)