

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.227 OF 2016

Office Notes, Office
Memorandum of appearances,
Court's orders or directions &
Registrar's orders.

Court's or Judge's orders

.....
Mr. R. Sathyanarayanan, Advocate for the Applicant.
Mr. D. R. More, APP for the Respondent – State.

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CORAM : C.V. BHADANG, J.

DATED : MARCH 9, 2016.

P.C.

Heard the learned counsel appearing for
the applicant and the learned APP for the respondent
no.1.

2 By this application, the applicant is
challenging the order dated 12th February, 2016,
passed by the learned Chief Metropolitan Magistrate,
Esplanade, Mumbai in case No.7/TA/2016 by which
criminal case no.872/PW/2014, pending before the
Court of the learned Additional Chief Metropolitan
Magistrate 9th Court Bandra, Mumbai is transferred

to the Court of the learned Metropolitan Magistrate 17th Court, Borivali, Mumbai.

3 The applicant herein, is the original complainant. It is contended that by an administrative order dated 11th January, 2016, the learned Chief Metropolitan Magistrate, Esplanade, Mumbai had transferred the said criminal case from the file of the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali, Mumbai (incorrectly mentioned as Esplanade, Mumbai) to the learned Additional Chief Metropolitan Magistrate 9th Court, Bandra, Mumbai. It is contended that in such circumstances the learned Chief Metropolitan Magistrate could not have passed the subsequent order dated 12th February, 2016 again re-transferring the matter to the Court at Borivali. It is contended that the order dated 11th January, 2016 is not set aside or recalled. It is next submitted that the applicant had addressed two communications dated 7th December, 2015 and 31st December, 2015, seeking transfer of the case from Borivali Court to any

competent Court at Esplanade Mumbai or Bandra Mumbai inasmuch as the accused persons are influential persons and the accused and their advocates are staying near the Borivali Court and, therefore, the applicant apprehends that he will not get justice and fair trial.

4 I have considered the submissions made. At the outset, it is necessary to mention that by the impugned order the substantive rights or controversy is not decided. The impugned order merely transfers the criminal case from the Court of the learned Additional Chief Metropolitan Magistrate, 9th Court Bandra Mumbai to the learned Metropolitan Magistrate 17th Court Borivali, Mumbai. It appears that the earlier order dated 11th January, 2016 was passed on the administrative side on the basis of a letter dated 17th December, 2015 from the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali, Mumbai, requesting for transfer of the said case on the ground that the said Additional Chief Metropolitan Magistrate had taken part in mediation

proceedings. It can thus be seen that the order dated 11th January, 2016 was merely passed on the administrative side on the basis of a communication from the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali, Mumbai.

5 By the impugned order, the learned Chief Metropolitan Magistrate has noticed that accused and witnesses are residing near Kandivali, Borivali and Dahisar. The learned Chief Metropolitan Magistrate has also considered the report of the Senior Police Inspector Charkop Police Station, which shows that the witnesses are residents within the vicinity of Borivali Court. The learned Magistrate has further noticed that the matter is proceeded at Borivali till the time of mediation and even thereafter. The learned Chief Metropolitan Magistrate has found and to my mind rightly so, that merely because the accused and their advocates are staying near Borivali Court cannot be a reason to give rise to an apprehension that the applicant shall not get justice or a fair trial before the Borivali Court.

6 In that view of the matter, I do not find that any case for interference is made out in exercise of the jurisdiction under Section 482 of the Code of Criminal Procedure. In the result, the criminal application is rejected.

(C. V. BHADANG, J.)