

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.763 OF 2016

Uday Nivrutti Laad & Anr.)...Applicants

v/s.

State of Maharashtra & Anr.)...Respondents

Mr. Kedar I. Patil, Advocate for the Applicants.

Mrs. M.R.Tidke, APP for the Respondent – State.

Mr. Kuldeep U. Nikam, Advocate for Respondent No.2.

CORAM : P N. DESHMUKH, J.

DATE : 18th OCTOBER 2016.

P.C. :

Heard learned counsel for applicants and for respondent no.2 as well as learned APP.

2 Challenge in this application is to the impugned order passed by the Sessions Judge, Sangli dated 21.6.2016 vide which Sessions Case No.61 of 2014, which was pending on the file of District Judge-1 and Additional Sessions Judge, Islampur was transferred to the Court of District Judge-3 and Additional Sessions Judge, Islampur. It is

the case of Respondent No.2 that she had filed an application with the learned Sessions Judge, Sangli in her capacity as complainant to transfer the Sessions Case No.61 of 2014 from the file of District Judge-1 and Additional Sessions Judge, Islampur to the Court of District Judge-2 & Additional Sessions Judge, Islampur. However, learned Sessions Judge noting that during the pendency of such application, as District Judge-3 & Additional Sessions Judge, Islampur was posted at Islampur, along with other cases, transferred Sessions Case No.61 of 2014 to said Court and accordingly, dismissed the application holding the same to be infructuous. Said order is challenged in the present application.

3 During the course of hearing, learned counsel for applicants has, however, specifically admitted that when application was made to Sessions Court for transfer of Sessions Case No.61/2014 from District Judge-1 to the Court of District Judge-2, trial has already commenced and in fact, evidence of 7 witnesses was recorded. The learned counsel for both sides even admitted that after transfer of said case on the file of District Judge-3, no further evidence is recorded in it.

4 Thus, it appears from the facts involved in this application that on application made by Respondent No.2 (Complainant) herein for transfer of Sessions Case No.61/2014 from the file of District Judge-1

to District Judge-2, he learned Sessions Judge, Sangli assigned the said case to newly formed District Judge-3, along with other files. The challenge as such is to the order of learned Sessions Judge, transferring the said case to District Judge-3 and not to District Judge-2 as prayed by Respondent No.2-Complainant. However, challenge itself does not without any legal basis, in view of admitted fact of Sessions Case No.61/2014 having been already commenced and evidence of 7 witnesses has been recorded by learned District Judge-1. Learned counsel for Applicants though has, requested to consider application on merits, there is no propriety to consider merits of the same as in view of established position in law that Sessions Court ceases with its power to transfer any proceedings from one Court to another after the trial is commenced. For this purpose, it is necessary to understand the scheme of Section 408(1) and 409(2) of the Cr.P.C.

“Section 408(1) reads as follows:-

“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.”

Sub-section (2) of Section 409 reads as

under:-

“At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal, which he has made over to any Additional Sessions Judge.”

In that view of the matter, plain reading of these provisions would reflect that there are two stages specified in above two provisions, one upto the stage of case and another where the case steps into the stage of trial, i.e. with the framing of the charge. Both these sections appear to be separate and independent and are not controlled or regulated by each other. However, Sub-section (2) of Section 409 specifically points out two stages in a case, i.e., one of pre-trial and once the charge is framed, i.e., the stage of commencement of trial.

5 Admittedly, evidence of 7 witnesses is recorded in Sessions Case No.61/2014 by District Judge-1 and Additional Sessions Judge, Islampur before it came to be transferred from his Court to newly established Court of District Judge-3 and Additional Sessions Judge, Islampur District: Sangli which fact is apparently contrary to above said provisions as under Section 409(2) of the Cr.P.C., once the trial commences, i.e., charge is framed, Sessions Judge has no power to

withdraw and transfer the case from that Court to any other Court though as Sessions Judge he has every power to withdraw any Sessions Case in which no charge is framed, either upon the application made by complainant or suo-motu.

6 In that view of the matter, it is found that in the case in hand, Sessions Judge has no power to transfer case as its trial has already commenced. In the circumstances, order dated 21.6.2016 passed by Sessions Judge, Sangli does not sustain and same is set aside.

7 Records and proceedings of Sessions Case No.61/2014 on the file of District Judge-3 & Additional Sessions Judge, Islampur be withdrawn and be placed on the file of District Judge-1 and Additional Sessions Judge, Islampur, which Court was already ceased with the matter at the time of passing the impugned order.

8 Application stands disposed of as dismissed.

(P. N. DESHMUKH, J.)