

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.816 OF 2015

Rajiyabee Sherkhan Shaikh .. Applicant

Versus

Mumtaz Usman Mulla and ors .. Respondents

Mr.Ramdas A. Shelke, Advocate for the applicant.

Mr.Ashwin Kapadnis, APP for the Respondent State.

CORAM : PN. DESHMUKH, J

DATED : 26th SEPTEMBER 2016

P.C. :

1 This is an application for transfer of Criminal Case No.419/14 (newly registered as Regular Criminal Case No.293/14) from the file of learned JMFC, Akkalkot, Dist.Solapur to the file of learned JMFC Pune.

2 Heard learned counsel for the applicant and learned APP

3 In spite of service, respondent did not appear. Record reveals that since respondents were not present on the earlier dates, matter was adjourned so as to give opportunity to respondent to defend this application.

4 However, inspite of such opportunity, respondents failed to appear, and as such, do not appear to be interested in opposing the application. Learned counsel for the applicant has today placed on record medical certificate in respect of applicant dated 20th September 2016. Same is taken on record and is marked "X" for identification.

5 According to applicant, she has filed a private complaint u/s.120B, 420, 423, 467, 468, 471 r/w Section 34 of the IPC before the JMFC, Akkalkot, and said proceedings are pending before the said Court wherein affidavits of applicant's witnesses are placed on record and proceedings are fixed for evidence. It appears to be the case of applicant that she had initiated such proceedings before the learned Court at Akkalkot as the respondents are alleged to have created fabricated release deed, and on the strength of same, they sold the ancestral property. Applicant appears to be daughter and heir of one Daudsaab Mulla who was owner of land bearing Survey No.18/3, Gut No.33, admeasuring 6.17 acres. Applicant's father died leaving behind her and 3 daughters and one son.

6 Respondent no.1 is wife of son of Daudsaab Mulla and respondent nos.2 to 4 are sons and daughter of applicant's father. It is the case of applicant that though she is entitled for her share in the ancestral property, respondents deprived her of the same on the strength of false and fabricated release deed with the intention to grab said property alone.

7 It is submitted that applicant is old lady aged 66 years and is suffering from various ailments who is now residing in Pune with her family members. However, as the offence alleged in the complaint pending before the learned Magistrate's Court has taken place within the jurisdiction of learned Court at Akkalkot, said complaint was filed before the learned JMFC, Akkalkot. However, it is contended that due to the old age of applicant who is complainant in the case referred aforesaid and since is residing at Pune with her family members as she is unable to travel from Pune to Akkalkot which is 400 km away, present application is required to be filed. It is also case of applicant that due to her physical ailment, she is advised not to undertake any journey. Medical certificate placed on record supports the case of applicant.

8 Moreover, it is submitted that applicant no.3 for the purpose of service is residing in Pune, while applicant's witnesses are also from Pune who are also senior citizens aged between 60 to 70 years. It is therefore prayed that application be allowed.

9 Having considering facts as aforesaid and as respondents inspite of sufficient opportunity granted to them to defend application, failed to avail the same. Application is liable to be allowed in the interest of justice as per order below.

ORDER

Criminal Case No.419/14 (newly registered Regular Criminal Case No.293/14) pending on the file of learned JMFC,

Akkalkot, District Solapur, stands transferred from said Court to the competent Court of learned JMFC, Pune.

Parties to appear before the learned JMFC, Pune on 25th October 2016.

Application stand disposed off as allowed.

(PN. DESHMUKH, J)