

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.229 OF 2016

1) Smt. Annapurna d/o Janrao Bopate,
Aged about 46 years,
Occupation – Labour.

2) Namdeo s/o Wasudeo Bopate,
Aged about 63 years,
Occupation – Agriculturist,

Both R/o Gram Apatapa, Akola,
Tahsil and District Akola.

.... **APPLICANTS**

VERSUS

State of Maharashtra,
through its Police Station Officer,
Police Station Borgaon Manju,
District Akola.

.... **NON-APPLICANT**

Shri A.S. Mardikar, Senior Advocate assisted by Shri S.G. Joshi,
Advocate for the applicants,
Shri K.R. Lule, Additional Public Prosecutor for the non-applicant/State

CORAM : Z.A. HAQ, J.
DATED : 2nd APRIL, 2016.

ORAL JUDGMENT :

1. Heard Shri A.S. Mardikar, learned Senior Advocate assisted by Shri S.G. Joshi, Advocate for the applicants and Shri

K.R. Lule, Additional Public Prosecutor for the non-applicant/State.

2. **Rule.** Rule made returnable forthwith.

3. The applicants have approached this Court under Section 482 of the Code of Criminal Procedure challenging the order passed by the learned Sessions Judge, rejecting the application (Exhibit No.148) by which the applicants prayed that the proceedings of sessions trial be returned to the file of the learned Additional Sessions Judge.

4. The applicants are being prosecuted for offences punishable under Section 302 read with Section 34, Section 304-B read with Section 34 and Section 498-A read with Section 34 of the Indian Penal Code. As per the circular issued by the High Court on its administrative side, the trial of offences involving offences against women are to be assigned to the Sessions Court presided over by lady Judicial Officer. The learned Senior Advocate has submitted that as per the circular of July 2013, the Sessions Trial No.136/2011 was assigned to the Court of District Judge-1 and Additional Sessions Judge. It is submitted that the District Judge-1 and Additional Sessions Judge to whom the trial was assigned is now the Principal

District Judge and Sessions Judge. After the District Judge-1 and Additional Sessions Judge, Akola took over as the Principal District and Sessions Judge, Akola, she issued a general order on 02-03-2016 directing the nine sessions trial and one criminal appeal, details of which are given in the list annexed to the general order, stand withdrawn from the Court of District Judge-1 and Additional Sessions Judge and are made over to the Court of Principal District and Sessions Judge, Akola for disposal according to law. The applicants, being aggrieved by this general order, have filed this application.

5. The learned Senior Advocate has submitted that the general order issued by the learned Principal District and Sessions Judge on 02-03-2016 is not supported by any provision and the learned Sessions Judge has no power to withdraw the proceedings of sessions trial from the Court of Additional Sessions Judge and to make over the proceedings to the Court of Sessions Judge, once the trial has commenced. It is submitted that the provisions of Section 409(2) of the Code of Criminal Procedure empowers the Sessions Judge to recall any case or appeal made over to any Additional Sessions Judge, before the trial of the case or hearing of the appeal commences and once the trial commences, the Sessions Judge is divested of the power and

cannot recall the proceedings of sessions trial made over to the Additional Sessions Judge. In support of the submissions, reliance is placed on the judgment given by the Karnataka High Court in the case of *Amrithappa and another vs. State of Karnataka* reported in *1982 Cri.L.J. 1336*.

6. In the present case, when the proceedings of Sessions Trial No.136/2011 were made over to the Court of District Judge-1 and Additional Sessions Judge, Smt. V.N. Tambi presided as the District Judge-1 and Additional Sessions Judge. The trial commenced before Smt. V.N. Tambi and the recording of evidence of witnesses has been completed and the matter reached the stage of arguments. At this stage, Smt. V.N. Tambi has taken the charge as Principal District and Sessions Judge, Akola. Considering the fact that the entire trial is conducted by her, Smt. V.N. Tambi, Principal District and Sessions Judge has issued the general order dated 02-03-2016 directing that the sessions trial case is withdrawn from the Court of District Judge-1 and Additional Sessions Judge and made over to the Court of Principal District and Sessions Judge, Akola.

Considering these facts, in my view, the general order

issued by the learned Principal District and Sessions Judge on 02-03-2016 cannot be faulted with.

7. As I find that the withdrawal of sessions trial from the Court of District Judge-1 and Additional Sessions Judge and making it over to the Court of Principal District and Sessions Judge is not resulting in any prejudice or injustice to any of the parties and as no other ground regarding competence of the learned Sessions Judge to decide the sessions trial has been raised by the applicants, I refrain from exercising the jurisdiction under Section 482 of the Code of Criminal Procedure. In my view, as the impugned order cannot be said to be causing any prejudice or injustice to any of the party, the challenges raised on behalf of the applicants are not dealt with. The application is dismissed.

JUDGE

pma