

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 316 OF 2017

SAGAR SHIRODKAR AND 5 ORS., ... Applicants

Versus

PUBLIC PROSECUTOR AND ANR., ... Respondents

Adv. Dharmanand R. Vernekar for the Petitioner.
Mr. S. R. Rivankar, Public Prosecutor for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 12th December 2017

Oral Order:

Heard Shri Vernekar, the learned counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the Respondents.

2. By this application under section 407 of the Code of Criminal Procedure 1978 (Code, for short) the petitioner is seeking transfer of Sessions Case No.55/2014 from the Court of the learned Principal District and Sessions Court, Panaji to any other Sessions Court at Mapusa. Admittedly, there is no separate sessions division at Mapusa. The incident in question has allegedly happened within the sessions division at Panaji. There are three Sessions Judges who are exercising jurisdiction within the sessions division at Panaji who sit at Mapusa. On account of

this it is contended by the learned counsel for the applicant that the sessions case be transferred to Mapusa on the ground that the accused no.2 is suffering from some kidney disorder and has difficulty in traveling to Panaji. Admittedly, the distance between Mapusa and Panaji is 15 kms.. The Sessions case is already part heard in which two witnesses are examined. Normally, this Court would be slow in transferring a part heard sessions trial. The learned counsel for the applicant and the learned Public Prosecutor submit that there is no question of identification of the accused involved in this case. It would be thus open to the petitioner to seek exemption from appearance of the concerned accused or the other accused persons.

3. The learned counsel for the petitioner has placed reliance on the following decisions:

(I) JHEBARMAL VS. STATE OF RAJASTHAN, 1990 0 SUPREME (RAJ) 144.

(II) RAM NAZAR TIWARI VS. STATE OF UTTAR PRADESH 1990 0 SUPREME (ALL) 750

(III) SMT. SUSHEELA B.S . VS. MARUTHI FERTO CHEMICALS LTD., HOSPET, 2002 0 CrLJ 2865.

(IV) STATE OF KERALA VS. RENY GEORGE AND OTHERS, 1981 0 SUPREME (KER) 138.

4. In my considered view the cases turn on their own facts.

There cannot be any manner of dispute with the proposition that convenience of the accused and the witnesses can be a ground for such transfer within the meaning of section 407 (1) (c) of the Code. However, the question of convenience would always be a question of fact peculiar to the circumstances as obtaining in each case. As noticed earlier, the distance between Mapusa and Panaji is only about 15 kms. The difficulty faced by the petitioner as to his medical condition of accused no.3 can be taken care of by permitting the petitioner to seek exemption. Considering the fact that the trial is part heard,I do not find that this is a case for exercising powers under section 407 of the Code. The application is accordingly dismissed.

5. The petitioners are at liberty to move for exemption before the learned Sessions Judge. If such an application is made the learned Sessions Judge shall consider the same in accordance with law.

C. V. BHADANG, J.

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