

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

CRIMINAL APPLICATION NO. 694 OF 2016

Ahmad Asif Fakhri.	... Applicant.
Versus	
State of Maharashtra.	... Respondent.

Mr. Fouzi, advocate for applicant.

Ms. K.H. Rajani, advocate for original complainant.

Mr. S.R. Agarkar, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 11, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned Counsel for the respondent No. 2.

2 Being aggrieved by the order dated 21st March, 2016 passed by the Sessions Judge, Thane the applicant who is the original accused in Sessions Case No. 284 of 2010 has filed this application. The applicant had filed an application under section 409 of the Code of Criminal Procedure, 1973 before the learned Sessions Judge at Thane seeking transfer of the Sessions Case No. 284 of 2010 to any other

court. It was stated in the said application that in the course of recording evidence, the learned Sessions Judge seized with the trial was not recording the evidence properly and therefore, the same had caused prejudice to the accused.

3 The first objection was that the complainant who happens to be P.W. 1 had sought permission to produce CT Scan and X-ray on record as she was injured and admitted to Jupiter Hospital on 12/2/2010 and was discharged on 18/2/2010. The applicant had objected to production of the said CT Scan and X-ray report as the same did not form part of the charge-sheet and secondly that the applicant had no knowledge about the same.

4 It is further contended that in the course of recording of evidence of P.W. 8 Abid Momin who was the panch witness for seizure of the car, the learned Sessions Judge had not recorded the evidence as was stated. According to the applicant in the examination in chief the panch had stated the registration number of vehicle as MH-04-CB-5184. The learned Counsel for the applicant submits that

in the cross-examination the witness was confronted with the same. The learned Counsel for the applicant had repeatedly asked the witness about the registration of the vehicle and he had reiterated as per examination in chief. According to the learned Counsel for the applicant the correct number of the car was 5148, whereas the number stated in the examination in chief was 5184 and the correct number was 5148. According to the learned Counsel he had brought it to the notice of the learned Sessions Judge and submitted that it is a typographical error and it would be necessary to correct the number. According to the learned Counsel there was no enquiry made by the learned Sessions Judge. It was further submitted that the complainant was attending the proceedings on each and every day and was seen in the company of the prosecution witnesses and that she had influenced them. In fact, the complainant had engaged the advocate to assist the prosecution and it was fair enough that she was attending the proceedings as she was acquainted with the facts and was instructing her advocate. It is also submitted that the doctor had placed on record the photo copies of the injury certificate which was not permissible. It was also submitted that the certificates were not

issued on prescribed formats but were issued on the letter heads. Besides this, the learned Counsel for the applicant submits that all these aspects have caused prejudice to the accused.

5 It is pertinent to note that the order dated 21st March, 2016 was challenged in November, 2016. The matter was not circulated. It appeared before the Hon'ble Shri Justice A.M. Badar on 27/1/2017 when the Court had recused from hearing the said matter. Thereafter, the matter appears today on board as it has been circulated by the learned Counsel for the complainant after a lapse of more than one year it would not be appropriate to transfer the matter from the concerned Sessions Court as it would cause serious prejudice since almost all witnesses have been examined and the investigating officers have to be examined.

6 The learned Counsel for the respondent has submitted that the pendency of this petition was being construed as a stay to the proceedings and therefore, she was constrained to circulate the matter. Needless to say that unless there is speaking order, the

Sessions Court ought not to have stayed the proceedings. The applicant is at liberty to raise all these issues at the time of arguments and the same be considered in accordance with law and inconsonance with the evidence adduced in the matter. The Petition stands dismissed.

7 At this stage, the learned Counsel for the applicant prays for interim relief and the same is rejected.

8 The learned Sessions Court seized with the Sessions Case No. 284 of 2010 is hereby directed to expedite the proceedings as far as possible and ensure presence of the accused on each and every date failing which the learned Sessions Judge may take appropriate action.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)