

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5120 OF 2018

Girimon P.T. & anr.

..Petitioners.

V/s.

Murtaza Merchant & ors.

..Respondents.

Mr. Pandit Kasar, advocate for petitioners.

Mr. J.A. Udaipuri I/b. Udaipuri and Co., for respondent No. 1.

Mr. S.H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 28, 2018.

P. C. :

1 Heard the learned Counsel for the petitioners and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 This petition is filed under section 406, 407 and 408 of the Code of Criminal Procedure, 1973 seeking transfer of Criminal Complaint No. 734 of 2016 pending before the Metropolitan Magistrate, 48th Court, Andheri(East), Mumbai to any other Metropolitan Magistrate's Court in Mumbai. Needless to mention that in the present case, the trial is

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completed, in as much as the statement of the accused who is present petitioner has been recorded under section 313 of the Code of Criminal Procedure, 1973.

4 The learned Counsel for the petitioners submits that for non-appearance of the accused/petitioner before the said Court, non-bailable warrant was issued, which was challenged before this Court(Coram: P.D.Naik, J). An undertaking was given to the Court that the Petitioner would remain present before the trial Court on the next date of hearing i.e. 31/8/2018 and would make requisite application for setting aside the order of proclamation and cancellation of the non-bailable warrant. The matter was kept pending and next scheduled date was 3/9/2018. Pursuant to the undertaking, the Court had directed the present petitioners to appear before the trial Court on 31/8/2018 and had further directed the Court to decide the application in accordance with law and the execution of the non-bailable warrant was stayed till the next date of hearing i.e. 31/8/2018. The petitioner had not caused his presence before the learned Magistrate Court, which was an in-charge court and the application seeking cancellation of non-bailable warrant was rejected vide order dated 3/9/2018. On 3/9/2018, the petitioner was taken into custody. He had filed an application seeking enlargement

on bail. The same was rejected on 7/9/2018. On 6/9/2018 itself learned Magistrate had recorded the statement under section 313 Cr. P.C. That the applicant was enlarged on bail by the Sessions Court on 21/9/2018. The petitioner had filed an application for recalling the defence witness i.e. accused himself. The said application was allowed on 7/9/2018 and the accused No. 2 i.e. petitioner was directed to adduce oral evidence for defence.

5 According to the learned Counsel for the petitioners, it is clear that the Court is prejudiced against the petitioners, in as much as the application seeking bail was rejected on 7/9/2018 and the statement under section 313 of the Code of Criminal Procedure, 1973 is recorded on 6/9/2018. According to the learned Counsel for the petitioners, petitioner was defendant in Special Summary Suit No. 25 of 2015 and there were heated arguments in the court room, due to which learned Magistrate is annoyed with the petitioner and that would reflect in the Judgment of the present case.

6 The learned Counsel for the respondent i.e. original complainant has drawn attention of this Court to various orders passed by this Court on 7/10/2015, 9/12/2015, 22/1/2016 etc., by which this

Court had saddled heavy cost upon the petitioners for non-compliance of the order.

7 Be that as it may, it appears that on 16/10/2018, the petitioners had filed an application before the learned Magistrate stating therein that the application is filed before the learned Chief Metropolitan Magistrate seeking transfer of C.C. No. 734 of 2016 pending before the said Court and that the applicant/present petitioner is also filing criminal application for contempt of court before the High Court for sending the applicant/present petitioner to jail even though there was a stay by the Hon'ble Court to proclamation warrant and issuance of non-bailable warrant. It is clear from the said application that the petitioner has not left any stone unturned to intimidate the Magistrate. The said application was rejected on 17/10/2018 by the learned Metropolitan Magistrate directing the petitioners to get an order of stay or any effective order in respect of the present lis from the Higher Authority, failing which the matter will be posted on 24/10/2018. It is pertinent to note that the present petition is filed on 15/11/2018. On 24/10/2018 the petition was also not filed in the High Court and yet petitioner had filed second application before the learned Magistrate intimidating him on the same grounds.

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8 In view of the above observations, it cannot be said that the petitioners have made out a case for transfer of the matter from the Metropolitan Magistrate, 48th Court, Andheri to any other Metropolitan Magistrate Court. Not only that it is clear that the petitioners have in fact, shown that they have no faith in the judicial system and have taken all possible steps to intimidate the Court, which by itself would amount to contempt of court. It is in these circumstances that the cost of Rs. 2,000/- is imposed upon the petitioners for filing applications intimidating the Court of Magistrate. The costs to be deposited in the Court of Metropolitan Magistrate within one week from today.

9 It is made clear that the learned Magistrate shall not be influenced by the observations made in this petition while delivering the judgment in C.C. No. 734 of 2016 and shall pass an order in accordance with law and in consonance with the evidence which is recorded during the trial.

10 The cost of Rs. 2,000/- is besides the costs, which were imposed by the learned Magistrate on earlier occasions. All the costs shall be deposited in the Court of Metropolitan Magistrate within one

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week from today.

11 The Petition stands dismissed and Rule is discharged. The
Petition is disposed of accordingly.

The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]