

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

CRIMINAL APPLICATION NO. 165 OF 2017

Smruti Tukaram Badade	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. R. V. Bansode a/w Ms. Sheetl Ubale I/b Mr. Rahul Sudhakar Kulkarni
for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent No.1-State

Mr. M. K. Kocharekar a/w Mr. Saurabh Butala I/b Mr. Harshad Bhadbhade
for the Responent No. 2

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY. 20th MARCH 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks transfer of her
case i.e. Sessions Case No. 234/2015, from the file of the learned
Additional Sessions Judge, Thane to the Court of the learned Sessions
Judge, Mumbai.

3 Learned counsel for the applicant submits that the applicant apprehends that she will not get justice from the Judge conducting the trial as well as the Additional Public Prosecutor ('A.P.P') conducting the case on behalf of the State. The applicant has made several allegations both as against both, the trial Judge as well as the A.P.P. He submits that the respondent-accused are politicians and are influential in Thane City and as such, are likely to influence the conduct of the prosecution.

4 Learned A.P.P opposes the application. He submits that the allegations made against the learned Judge as well as the A.P.P are unfounded, baseless and completely misplaced and are not borne out by any material. He further submits that 11 witnesses have been examined till date including the mother, father and brother of the prosecutrix (applicant). He submits that when the prosecutrix (applicant) was to be examined as PW 12, she refused to step into the witness-box, as she had filed an application seeking transfer of the proceedings before the High Court and as the said application was pending.

5 Perused the papers. The applicant (prosecutrix) has filed the aforesaid application seeking transfer of her case, in this Court in March 2017. A perusal of the said application shows that allegations were made as against the learned Judge conducting the trial as well as the learned A.P.P, on the premise, that the learned Judge was acting hastily and hurriedly and the A.P.P appearing for the State was biased. Being aggrieved by the conduct of the trial Judge as well as the A.P.P, the applicant filed the aforesaid application, seeking transfer of her case from the Sessions Judge, Thane, to a Sessions Court in Mumbai.

6 Today, the grievance of the applicant does not survive, inasmuch as, the learned Sessions Judge who was conducting the said case has retired and the A.P.P appearing in the said case has also changed and one Mrs. Ujwala P. Moholkar has been appointed to appear as an A.P.P in the said case. It is not in dispute that 11 witnesses have been examined in the said case, including the prosecutrix's (applicant's) mother, father, brother, the Medical Officer, panch witnesses and other witnesses.

7 Learned A.P.P has also filed an affidavit of Smt. Ujwala P. Moholkar, APP stating that the case has now been allotted to her and she will perform her duties without fear or favour in accordance with law.

8 Learned counsel for the applicant has not been able to show, as to in what manner the accused are influencing the Court or the Prosecutor. Simply making allegations as against the Court or the A.P.P will not suffice and merely because the accused are so-called influential persons, would not warrant transfer of the case from one Court to another, in the absence of any material to support the same.

9 Considering what is stated aforesaid, the application seeking transfer of the case from Thane Court to Mumbai Court, being devoid of merit, stands rejected.

10 The trial Court shall conduct the said case on its own merits in accordance with law as expeditiously as possible, since 11 witnesses have already been examined in the said case.

11 At this stage, learned counsel for the applicant requests for stay of the order. Considering the fact that 11 witnesses are already examined and the case is pending since 2016 and only 2 more witnesses are left to be examined, the request for stay is rejected.

REVATI MOHITE DERE, J.