

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.305 OF 2018

M/S.AKAY ORGANICS LIMITED AND ORS.)...APPLICANTS

V/s.

VENKATRAMAN SWAMINATHAN AND ANR.)...RESPONDENTS

Mr.S.V.Marwadi i/b. Ms.Mallika Ingale, Advocate for the Applicants.

Mr.Rishi Bhuta a/w. Mr.Ujjwal Gandhi, Advocate for the Respondent No.1.

Mrs.M.R.Tidke, APP for the Respondent No.2 - State.

CORAM : A. M. BADAR, J.

DATE : 8th JANUARY 2019

P.C. :

1 An unusual request is made in this transfer application moved under Section 407 of the Code of Criminal Procedure. The applicants, who are original accused and who have filed revision

petition challenging order of issuance of process against them want their revision petition to be transferred from the file of the learned Additional Sessions Judge, Dindoshi, Mumbai, to the file of Shri. V.D.Nimbalkar, Additional Sessions Judge at Latur, on the ground that the matter was heard for sometime before the said learned Additional Sessions Judge when he was presiding over the court of Additional Sessions Judge at Dindoshi, Mumbai.

2 Facts in brief are thus :

A private criminal complaint for the offence punishable under Section 420 read with 34 of the Indian Penal Code came to be filed by respondent no.1 Venkatraman Swaminathan against the applicants who are M/s.Akay Organics Limited and its Managing Director Lachman Satramdas Pardasaney and an independent Non-Executive Director Ramesh Anant Prasad Bakshi as well as other accused persons. Feeling aggrieved by the order of issuance of process in that private criminal complaint bearing no.CC/505/2014 by the learned Metropolitan Magistrate, Andheri, the applicants invoked revisional jurisdiction of Sessions

court of Mumbai at Dindoshi by filing Revision Petition No.148 of 2015. The order issuing process was challenged by that revision petition.

3 From perusal of roznama of the Revision Petition bearing No.148 of 2015 filed by the applicants before the learned Additional Sessions Judge, Dindoshi, Mumbai, it is seen that initially some interim order was granted. The roznama of 19th November 2016 and 29th July 2017 shows that the co-accused in Criminal Case No.505 of 2014 had preferred a writ petition before this court challenging the order of issuance of process and this court had also granted interim stay in the matter. Relying on that stay order, it appears that Shri V.D.Nimbalkar, learned Additional Sessions Judge, Dindoshi, Mumbai, had continued the interim order in Revision Petition bearing No.148 of 2015 filed by the applicants. The roznama of the said revision petition further reveals that the revision petition was then transferred to the file of Shri D.K.Bhende, learned Sessions Judge, Mumbai, and on an application by the applicants, the learned Additional Sessions

Judge, Mumbai, had again transferred the revision petition to the file of Shri V.D.Nimbalkar, Additional Sessions Judge, Dindoshi, Mumbai. Ultimately, it is seen that in the Annual General Transfer of May 2018, Shri V.D.Nimbalkar, Additional Sessions Judge, is transferred to Latur, and the applicants want their revision petition to be transferred to the file of Shri V.D.Nimbalkar, Additional Sessions Judge at Latur.

4 Heard the learned counsel appearing for the applicants/original accused/revision petitioners. He vehemently argued that the revision petition was sought to be adjourned from time to time by the respondent therein i.e. the original complainant on the pretext that the matter is being settled out of the court. My attention is drawn to the roznama of 5th May 2018 to demonstrate that on the ground of pendency of the writ petition before this court, adjournment was sought by the original complainant in the said revision petition filed by the applicants/accused and the Presiding Officer was pleased to grant adjournment by way of last chance. On 10th May 2018, as seen

from roznama, again the learned advocate appearing for the original complainant sought adjournment to work out the matter though it was part heard. With this, the learned counsel argued that the revision petition was adjourned deliberately by the original complainant though it was a part heard matter and this practice needs to be deprecated. My attention is drawn to the judgment and order dated 13th March 2018 passed in Revision Petition No.212 of 2016 to 215 of 2016 preferred by the accused in Criminal Case No.783 of 2012 which was at the instance of the present applicants. It was demonstrated that the same Presiding Officer Shri V.D.Nimbalkar was pleased to allow this revision petitions partly by discharging the accused therein for some offences. With this, it is argued that as the Revision Petition bearing No.148 of 2015 was heard substantially by Shri V.D.Nimbalkar, the then Additional Sessions Judge, Dindoshi, Mumbai, the same needs to be transferred to his file in the court of Additional Sessions Judge, Latur, presided over by him.

5 I have heard the learned counsel appearing for the respondent no.1 as well as the learned APP appearing for the State.

6 The Presiding Officer of the court, where the Revision Petition bearing No.148 of 2015 filed by the applicants was pending, is transferred in the Annual General Transfer of May 2018. The roznama of 10th May 2018 shows that Shri V.D.Nimbalkar, learned Additional Sessions Judge, has categorically mentioned that he is transferred to other court and arguments in the revision petition could not be completed, therefore, he is not in a position to decide the revision petition by tomorrow. With this, the Presiding Officer, on 10th May 2018, was pleased to adjourn the revision petition to 20th June 2018. Now, transferring the revision petition from the court of competent jurisdiction at Mumbai to the court of the learned Additional Sessions Judge at Latur, where the Presiding Officer is now functioning, would give a wrong signal of Bench hunting. No allegations, whatsoever, are there against the Presiding Officer

before whom the revision petition is pending. Only because some arguments were heard before the Annual General Transfers by the concerned Presiding Officer, the matter cannot be transferred to a remote place where such Presiding Officer is transferred. If this mode is adopted, then it would give rise to similar such applications in all and sundry matters causing disturbance of the functioning of the court.

7 In this view of the matter, no case for transfer is made out. The application is, therefore, rejected.

(A. M. BADAR, J.)