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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 645 OF 2018

Sri Prakash Raghunath Shenai

.... Applicant.

V/s

State of Maharashtra and Others

..... Respondents.

Dr. Prakash R. Shenai, in person present.

Mr. Akash Menon a/w Ms. Gauri Tyagi for Respondent Nos. 3 and 4.

Mr. A.a. Palkar, APP for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 5, 2019

P.C.:-

1] This is an application under Sections 407 of Cr.P.C. with the following prayers :-

“(a) That this Hon’ble be pleased to transfer the above mentioned 3 Cases from 31st Metropolitan Magistrate Court, Vikhroli Mumbai, to 19th Addl Chief Metropolitan Magistrate’s Court in Esplanade, Mumbai – 400001 and fix 2 dates in a month of these 4 cases together and pass all pending Orders for calling witnesses, sending warrants to Accused,

calling documents from parties and expedite any passing Orders on pending applications under section 91 of Cr.P.C., seizure of Passport and ensuring the presence of the Accused and conducting Trial as per rules by 31st October 2016 by fixing 1 or 2 days fixed, say working Saturday 3.00 P.M. and complete trial by 31-12-2018 if possible, but strictly as per Criminal Procedure Code.

“(b) ALTERNATIVELY, THAT this Hon’ble Court be pleased to transfer the above mentioned 4 Cases to any one of the Courts situated in Esplanade Premises, Mumbai – 400 001, expedite by passing Orders on pending applications under section 91 of Cr.P.C., seizure of Passport and ensuring the presence of the Accused and conducting Trial as per rules and Complete Trial by 31st December 2018 by fixing 1 or 2 days fixed, say working Saturday 3.00 P.M. and complete Cases by 31-10-2016 if possible.”

“(c) The Ld. Magistrate to send report to Registrar of Bombay High Court on every 1st & 15th of month regarding progress of case and copy of Roznama.”

2] The case of the Applicant / original Complainant is, he is a

businessman and in 1994 and in 1996 has initiated certain complaint cases. According to him, there is a procedural irregularity in conducting the complaints referred to above in the prayer clauses and as such, there is inordinate delay in deciding the proceedings initiated by him. Therefore, prayer for transfer.

3] I have heard the party appearing in person.

4] This Court on 18/03/2019 passed the following order :-

“P.C.

1 Applicant-Mr. Shenai appears in-person.

2 By this application, the applicant seeks transfer of proceedings i.e. criminal case Nos. 146/S/94, 54/C/96 and 82/SW/2009, pending before the 31st Metropolitan Magistrate's Court, Vikhroli, Mumbai, to the 19th Additional Chief Metropolitan Magistrate's Court or any other Court in the Esplanade area.

3 Mr. Shenai states that no steps have been taken by the learned Magistrate to secure the presence of the respondents-accused till date. He further submits that despite the direction to the

respondents-accused to deposit their passports, the same has not been complied with by the respondents-accused. He submits that his trial is pending in the said Court for 10 years and no steps have been taken by the learned Magistrate to proceed with the same nor the application filed by him under Section 91 been decided till date.

4 As far as criminal case No. 54/C/96 is concerned, Mr. Shenai states that a revision application has been filed by him in the Sessions Court and that the proceedings have been stayed on his request.

5 Considering what is stated aforesaid, the Magistrate, 31st Metropolitan Magistrate Court, Vikhroli to submit a report with the reasons/cause for delay in proceeding with the trial in criminal case Nos. 146/S/94 and 82/SW/2009, including the steps taken to secure the presence of the respondents. The said report to be submitted within two weeks.

6 List on 1st April 2019.

7 Registry to forthwith communicate this order to the concerned Court by fax so as to enable it

to submit its report as aforesaid. “

5] Thereafter, record from the Magistrate was received. On 9/8/2019, another report was called for by this Court from the Magistrate, which order reads thus :

“P.C.:

1. Heard the applicant who appears in person. He invites attention of this Court to the averments in the application and submits that, though the three cases are pending for more than 20 years and directions are issued by the Sessions Court so also by the High Court from time to time that learned 31st Metropolitan Magistrate Court, Vikhroli, Mumbai the said cases are not decided yet. It is submitted during the course of arguments that, the case which has been decided by the learned Metropolitan Magistrate is without hearing the applicant and advocate appearing for the Accused. Therefore, the applicant who appears in person submits that, three cases may be transfer to some other Court of competent jurisdiction for Trial.

2. On the other hand learned counsel appearing for the contesting Respondent submits that now all three cases are fixed for recording evidence.

3. Be that as it may, Registrar (Judicial) to call the report and explanation from the learned 31st Metropolitan Magistrate, Vikhroli, Mumbai, as to why the aforesaid three cases in spite of directions by the Sessions Court, directions issued by the High Court and even directions issued by the learned Chief Justice are not decided for such a long period. Learned Registrar (Judicial) to ensure that such report and explanation is received by the Registry on or before 28th August, 2019.

4. List on 30th August, 2019 at 3.00 P.M.”

6] Needless to observe that, if the dates are fixed by the learned Magistrate for recording the evidence, this order passed today shall not be construed as an impediment to proceed with pending cases by the said Court.

7] On record, this Court could notice the communication issued by the Magistrate to the Applicant, calling upon him to attend the proceedings for final arguments before him as the applicant was appearing in person.

8] Pursuant to the aforesaid order dated 18/3/2019 passed by this Court, the Additional Chief Metropolitan Magistrate has forwarded his Report. The said Report reads thus :

“Hon’ble Ladyship,

1) As per your directions, I am submitting my progress report with reason/cause for delay in the proceeding the trial in criminal case No.146/S/94 and 82/SW/2009, including the steps taken to secure the presence of the respondents as under :-

2) Hon’ble Ladyship, I have joined as **Additional Chief Metropolitan 31st Court Vikhroli on 02-07-2018.**

About the old case No.146-S-1994 ie new case No-1619/SS/2007, the contention of the complainant that, this court not conducting the trial expeditiously, is baseless and unfounded. On the contrary, as per oral request of the complainant Mr. Prakash Shinoy, being old case and complainant is senior citizen, I have accommodated him on each working Saturday at 1.00 pm and next date fixed as per his convenience. It appears from the record that, main grievances of the complainant is that, accused should remain present on each and every date. Since the date of my joining as 31st Court, Vikhroli, I never come across that, the case adjourned because of abscond of accused or non-co-

operation of defence counsel. Defence counsel was remained present on each and every date and was and is ready to conduct the trial in absence of accused, expeditiously, and promptly submitted exemption application. In this case, there is no such order about deposit of Passport of accused. (such direction passed by Hon'ble Sessions Court in the case bearing No-1620/SS/2007 ie 54-C-1997 to passport Authority about seizer of passport except passport of accused No.3).

3) Report about New case no-1619-SS-2007 ie old case No-146-S-1994 :-

As per record in case **No.1619-SS-2007 / ie old case No.146-S/1994**, private complaint case filed by complainant for the offence u/s 420 of the I.P.C., against accused M. Ramchandra Raju, the examination-in-chief of complainant was recorded by my predecessor on 11-01-2018, and case fixed for cross-examination on 01-02-2018.

On 01-02-2018, and 27-02-2018 the complainant filed an application Exh-138 and Exh-139 sought an adjournment, case fixed on 28-05-2018.

On 28-05-2018, presiding officer was on leave, case fixed on 16-07-2018.

On 16-07-2018 the complainant was present, but his cross-examination was reserved, case was

adjourned for Evidence of complainant's witnesses on 21-07-2018 (Evidence before Charge recorded in 82/SS/2007).

On 21-07-2018 both parties were absent, case fixed on 18-08-2018.

On 18-08-2018, complainant not produced the witness, but filed an application for issuance of NBW against the accused, it was rejected, exemption of accused allowed, by an order that, counsel for accused is ready for conducting trial, presence of accused is not warranted, case was fixed on 21-08-2018.

On 21-08-2018 complainant submitted an application Exh-143 for issuance of NBW against witnesses, as case is old one, it was allowed, NBW was issued through Police Commissioner Hyderabad as well as through CMM Hyderabad, case fixed on 01-09-2018.

On 01-09-2018 the complainant and accused were absent, report awaited fixed on 15-10-2018.

On 15-10-2018, complainant was present and submitted an application Exh-145 for issuance of NBW against the accused and NBW against the witnesses, Exh-145 was partly allowed and fresh NBW issued against three witnesses and prayer for issuance of NBW against accused was rejected, as counsel for accused submitted exemption application Exh-146 which was allowed. Case fixed on 17-11-2018.

On 17-11-2018 complainant present, accused absent, Ld. Counsel for accused present. Warrant report of Commissioner of Police Hyderabad City Exh.147 was received, warrant not served, Application file by accused for exemption Exh-148 was allowed, complainant submitted an application Exh.149 by keeping it pending and passed an order as “Application be treated pending I have orally directed the counsel for accused to ask the accused and they should remain present on next date”, again application Exh.150- for issuance of NBW against the allowed through Police Commissioner Hyderabad and Secunderabad on payment of CF or on depositing postal envelope along with requisite postal stamp, complainant has liberty to take humdast” adj for evidence fixed on 18-12-2018. Humdust was promptly delivered to the complainant.

On 18-12-2018 complainant present, accused absent, no such report received, application Exh-150 filed by counsel for accused order passed as “on next date accused should remain present otherwise I will proceed against accused as per law” fixed on 03-01-2019.

On 03-01-2019 complainant remain absent, report not received accused present, case adjourned on 5-1-19.

On 5-1-2019 complainant present and submitted

an application Exh-154 for issuance of show cause to Commissioner of Police Hyderabad, it was allowed, notice was issued, case fixed on 08-01-2019.

On 08-01-2019 complainant present, accused absent, exemption application was allowed, NBW report from Police Commissioner Hyderabad and Secunderabad not received, case fixed on 19-01-2019.

On 19-1-2019 complainant absent, accused No.1 present, filed pursis Exh-156, case adjourn on 23-01-2019.

On 23-01-2019 complainant present, witness absent, case adjourn on 08-02-2019.

On 07-02-2019 as the complainant sent letter through post, case was taken on board and said application Exh-157 kept on record for hearing.

On 08-02-2019 complainant and accused absent, NBW report of Police Commissioner Hyderabad city was received as NBW not served. Case fixed on 12-02-2019.

On 12-02-2019, 16-02-2019, 26-02-2019, 02-03-2019, 07-03-2019, 12-03-2019 and 20-03-2019

complainant absent, step not taken, Case fixed on 02-04-2019. The Police Commissioner's report dt 27-08-2018 and 08-02-2019 are such that, since long witness Shri G. Pitchi Reddy already left / vacated the address. Since then, complainant failed to take steps. Case is pending for taking step by the complainant.

4) Report about case No.82/SW/2009 :

This case has been filed against three accused namely 1) Mr. Bobby Samuel, Power of Attorney holder of Mr. Subhash Unni, 2) Mr. Subhash S. Unni, Ex Manager of Crown Maritime, 3) Mr. S. Sujatan, Managing Director of Crown Maritime etc. I have recorded Evidence Before Charge on 16-07-2018, partly, near about four pages, thereafter, case adjourned for further examination-in-chief on 21-07-2018. since then, the complainant is not co-operating with the court for recording his further examination-in-chief. On 23-01-2019, the complainant was present, I have requested him to adduce his oral evidence in afternoon session, during the dictation of this order, he left the Court room saying that, in absence of accused, he will not lead the evidence, I have recorded this fact on below Exh-1. Till today, complainant is not ready to lead further examination-in-chief. The case is pending only because of non-co-operation of the complainant.

Hon'ble Ladyship, with most respectfully I am inviting the attention of the fact that, previously, my Ld. Predecessor Judge submitted progress report to Hon'ble Bombay High Court dt. 04-02-2013, as per order in criminal W.P. No.2179/2011 reference B.D. CR.0400542 dt 30-01-2013 and Report of presiding officer to Hon'ble Principal Judge, City Civil and Sessions Court, Mumbai Dt. 23-09-2015 as per order of Hon'ble High Court in Criminal application No.633/2014 in Appln. No.606/2013 in Session Court Cri. Revn Appln. No.800/2008 as per both these report, Esquire Presiding Officer submitted report that, that case has been prolonged because of complainant. It also appears from the record that, my Ld Predecessor Judge passed an order below Exh-82 dt. 22-11-2017 that, behavior of complainant is responsible for delay.

5) **So far as case No.54-C-1997 ie 1620/2007** is concern, said case is fixed for final argument, oral evidence of complainant is over. So far as allegations about his application u/s 91 not decided is concern, Mr. Prakash Shinoy submitted such application twice, to call R & P from Hon'ble Kerala High Court. Hon'ble Ladyship, on 11-07-2018 again on 08-01-2019 I have promptly passed an order that, calling the record from Hon'ble Kerla High Court is not necessary, he was

directed to obtain certified copies of said record and submit the same. For other prayer, to call the record of company registrar, notice was issued to concern officer of Company Registrar, and requested both parties to co-operate this Court for expeditious trial, but Mr. Shenoy not submitted the details of record sought from Company registrar's office.

Hon'ble Ladyship, with all due respect, I am submitting that, under the guidance of our Hon'ble High Court, I am fully co-operating all the litigant and senior citizen litigant for disposal of old matter expeditiously.

Submitted with great respect.

Sd/-

(A.A. Ghaniwale)

Date: 28.03.2019 Additional Chief Metropolitan Magistrate's
31st court Vikhroli"

9] The Court of the Additional Chief Metropolitan Magistrate, in the aforesaid report, has in detail described the conduct of the present Applicant in the matter of proceedings initiated by the Applicant before him.

10] Prima facie, it appears that there is no material on record to substantiate the claim of the Applicant that the Magistrate is at fault in

not deciding the proceedings. At least upto this stage of trial no illegality or material irregularity in conduct of the trial is brought to my notice. Rather, it is apparent that the proceedings are delayed by the Applicant, as he has not cooperated with the Magistrate in expeditious disposal of the complaint cases.

11] It appears from the record that applicant is in habit of writing letters to this Court and the Hon'ble the Chief Justice against the conduct of Magistrate in not deciding his complaint case as per his dreams and fancies. This Court is sensitive to the fact that applicant is a layman and is appearing in person, however, this Court cannot be oblivious to the procedure which is required to be followed by the Magistrate while deciding the complaint case. Applicant has also submitted that the atmosphere in the court room is not congenial as he feels uncomfortable in the said Court where his complaint case is pending. However, just because applicant is not comfortable in the Court premises or in the Court, by itself cannot be a reason for exercising powers under Section 407 of Code of Criminal Procedure, 1973.

12] As a consequence of above, in my opinion, no case for exercising powers under Section 407 of Cr.P.C. is made out. Application as such, fails and same is dismissed.

(NITIN W. SAMBRE, J.)