

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION (WP) NO. 779/2019

Kesari S/o Manohar Dhole and ors.

..VS..

State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N. T. Gwalwansh, Advocate for the petitioners
Mrs. S. V. Kolhe, APP for the respondent

CORAM : Z. A. HAQ & M. G. GIRATKAR, JJ.

DATED : 06/12/2019

1] Heard.

2] This petition is filed by seven accused who are being prosecuted for the offences punishable under Sections 302, 396, 449, 120B and 202 of the Indian Penal Code. The facts on record show that the trial was before Principal District and Sessions Judge, Bhandara and recording of evidence started on 19.06.2017. Some incidents occurred on 17.04.2019, as a fall out of which, learned Principal District and Sessions Judge passed an order on 26.04.2019, and transferred the Sessions Trial to the Court of District Judge-1 and Additional Sessions Judge, Bhandara. The relevant paragraphs of the order passed by learned Principal District and Sessions Judge on 26.04.2019 are self speaking and, therefore, are reproduced below:

“4. On 17.04.2019 this case was Fixed For recording of evidence. Adv. Shri Madane and Adv.

Shri Lingayat for the accused were present. When recording of evidence was going on, accused were talking with each other. They were orally warned. Some of the accused were frequently going to urinate. Therefore, Court felt doubt as to why accused are frequently proceeding to urinate within half an hour. Therefore, the police escorts, who produce the accused in the Court, were directed that, unless the Court permits, the accused shall not be allowed to go to urinate during recording of the evidence. They were permitted from time to time to go to urinate. Because of this, the accused were enraged.

5. *While examination-in-chief of PW No. 44 was going on, Adv. Shri Lingayat objected to point out the accused to witness as he was not able to identify the accused. The fact of pointing out the accused by Spl.PP is also noted as occurred during the examination-in-chief. However, Adv. Shri Lingayat suddenly submitted that the accused be hanged immediately. Therefore, he was strictly warned orally.*

6. *When the cross-examination of P.W. No.44 was going on and was not over, Adv. Shri Lingayat prayed that the copy of his chief-examination be given to him in the pen-drive. The Court said that his deposition is not yet checked and Court time is over. He was present during recording of examination-in-chief. This Court said to him that unless the copy of deposition is checked, it cannot be given. Other advocates were absent.*

7. *The Advocates for the accused were absent on 17.04.2019. Therefore, this Court passed an order below Exh.1 that only last witness I.O. is remained to be examined and considering*

ensuing summer vacation, there shall not be any adjournment of trial. The order was read over by Adv. Shri Lingayat. He said that he is going to withdraw his Vakalatnama. He submitted that he cannot attend the Court on holiday. The Court said to him that O.K., no problem, we will not conduct the cases on holiday. This trial was only conducted on Saturday and Sunday and on 19.04.2019 (Good Friday) with the permission of all advocates.

8. Considering the said order passed below Exh.1, on the second day, the accused have filed an application Exh. 361-A expressing that they have no faith in this Court. The allegations made in that application Exh. 361-A are false. Therefore, it was filed. The Adv. Shri Lingayat submitted that he does not know what is written in the application Exh. 361-A. Therefore, say of defence counsels was called. But after reading the application, he did not file say. Noting that fact, again detailed order was passed on Exh. 361-A. That time Adv. Shri Lingayat and Adv. Shri Madane submitted that they are ready to conduct the case. The fact of rejecting of the application was told to the accused and recording of evidence of witnesses was continued.

9. On 19.04.2019 again an application Exh. 366 was filed that Adv. Shri Kale and Adv. Shri Pande for the accused are not coming in the Court today. It was rejected as the last witness No.45 I.O. was present. He came from Nashik. That time, Adv. Shri Madane for the accused submitted that he is ready to conduct the matter. Rest of the Advocates remained absent. All the accused were present. The examination-in-chief of last witness I.O. Shri Bhohite (S.P. Nashik) (PW-45) was started. Adv. Shri Madane for the accused was present. In

the afternoon again one application Exh.374 was moved submitting the fact of rejecting application Exh. 361-A was not informed to the accused and they want to proceed against the said order in the Hon'ble High Court. That time also Adv. Shri Madane for the accused No.3 submitted that he is ready to conduct the case. That adjournment application Exh. 374 was allowed by mentioning these facts occurred.

10. Today Adv. Shri Kale and Adv. Shri Pande for the accused are submitting that there is misunderstanding in the minds of accused and they will convince them. The accused are not produced. However, considering the facts and circumstances of this case, particularly allegations made against this Court, that the accused have no faith in the Court and to decide this under trial prisoner's case expeditiously, it would be proper to transfer this case from this Court to the Court of District Judge-1 and Additional Sessions Judge, Bhandara, so that it shall be decided expeditiously as directed in the inspection notes of District Court and inspection of the Hon'ble High Court. Hence, the following order.

ORDER

- 1) The Sessions Trial No. 24/2014 is transferred to the Court of District Judge-1 and Additional Sessions Judge, Bhandara for hearing and for disposal according to law.*
- 2) Inform the accused accordingly.
(Dictated and pronounced in the open Court.)”*

3] Before transfer of Sessions Trial, pursis dated 05.04.2019 was filed by the Advocate representing

accused nos. 1, 2 and 4 stating that there were some variations in the copy of deposition which was supplied earlier and copy of deposition supplied in PDF format. This pursis was not signed by the Advocate representing accused nos. 1, 2 and 4. Another pursis dated 18.04.2019 was filed by the Advocate representing accused no. 7 stating that there were some variations in the deposition supplied in PDF format and the certified copy of deposition of PW No.14. Learned trial Judge noted the contents of pursis, which is evident from the endorsement put by him on the pursis.

Now, the present petition is filed with the following prayers:

“PRAYERS

It is therefore most humbly prayed that this court may kindly be pleased to pass following order

A. That hon’ble court be pleased to call for records and proceedings of Session Trial No. 24/2014 being State of Maharashtra vs Shahanawaz & others, tried by Learned district and addl Sessions Court-1 Bhandara.

B. That this hon’ble court be pleased to direct for an enquiry into the tampering of depositions through the registrar of Bombay high court under the supervision of any senior judge of this Hon’ble high court as serious prejudice had been caused to the petitioners/Accused in Session Trial No. 24/2014.

C. That this hon’ble court be pleased to transfer the trial from the district court Bhandara to any other District in the interest of the justice.

D. That this hon'ble court be pleased to grant stay to the proceeding tried by learned district and addl Sessions Court-1 Bhandara. Till the pendency of enquiry.

E. That this hon'ble court be pleased to allow the video recording of the proceedings by the lower court in the interest of the justice.

F. Pass any other relief, order, judgment in the best interest of justice

G. As to cost."

4] Learned Advocate for the petitioners - accused has not been able to point out that the procedure as per Section 138 of the Indian Evidence Act was followed or not. Learned Additional Public Prosecutor has pointed out that the procedure as laid down by Section 138 of the Indian Evidence Act came to be followed. The petitioners have not produced anything on record on the basis of which, serious allegations made by the petitioners can be considered. From the conduct of the petitioners, as recorded earlier, it is clear that every possible attempt has been made to protract the trial.

5] We have given sufficient time of about 20 minutes to the learned Advocate appearing for the petitioners to point out the grounds for seeking transfer of Sessions Trial from District Court, Bhandara to any other district. Initially, learned Advocate for the petitioners pointed out paragraph no. 12 of the petition, which is as follows:

"12. It is further submitted that, the prosecution had also adopted the wrong procedure while refreshing the memory of prosecution witnesses by

giving the panchnama in hand of the witness and witness was reading the content of the panchnama. Same was recorded in the examination-in-chief. The pursis in this regard was placed before the hon'ble sessions court by the petitioners/Accused and defence counsel of the petitioner/Accused which is at exhibit- 259, 260, & 261 respectively is attached hereto and collectively marked as ANNEXURE-E."

6] On query, learned Advocate for the petitioners submitted that the incidents referred in paragraph no. 12 are in respect of the events which occurred at the time of recording of panch witness i.e. PW-32.

According to the learned Additional Public Prosecutor, the evidence of PW-32 was recorded and completed on 12.02.2019 before Principal District and Sessions Judge i.e. before Sessions Trial came to be transferred. So, this cannot be a ground for seeking transfer from District Court, Bhandara to any other District Court.

7] Confronted with the above situation, learned Advocate for the petitioners relied on the averments made in paragraph no. 25 of the petition, which is as follows:

"25. Since, the case had been already been transferred from Principal District & Sessions judge to the court of district judge-1 & additional Session judge Bhandara. But without proper enquiry of tempering of deposition, it would not be just to continue trial in Bhandara District. There might be chances that the trial may get vitiated. Hence the transfer of trial from one court to another within

same district might also affect the fairness of trial. The learned Trial court ought to have transferred the case to the neutral place i.e. to other district apart from Bhandara.”

The averments made in the above paragraph show that the petitioners are making every possible attempt to create obstacles in the smooth trial, and it is done with the evil design of protracting the trial. Such attempts to tarnish the image of Judicial Officer cannot be tolerated. At one stage, we proposed to issue notice for criminal contempt to the petitioners. However, as they are facing trial, we are not taking this step. But, we cannot let go the petitioners for making unwanted, baseless and unwarranted allegations and seeking directions for enquiry by the Registrar of this Court against the concerned Judicial Officer. Hence, dismissing the Criminal Writ Petition, we impose costs of Rs.1,00,000/- (Rs. one lakh) to be deposited by the petitioners before the Sessions Court. After deposit of the amount as per this order, it be transmitted to the “Victim Compensation Fund” under the Maharashtra Victim Compensation Scheme, 2014.

JUDGE

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