

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3565 OF 2019

DILIP GOVIND PINGALE & ORS. ... PETITIONERS.

VERSUS

THE STATE OF MAHARASHTRA AND ANR... RESPONDENTS.

Mr.Vikrant A.Desai, Advocate i/b Mr.S.M.Kamble, for the
Petitioner.

Mr.RM Pethe, Additional Public Prosecutor for the State.

CORAM : A. M. BADAR, J.

DATE : 6TH MARCH 2020.

P.C.:

1. Petitioners herein are the accused in Regular Criminal Case No.1210/2014 for the offence punishable under Section 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code pending on the file of the learned Judicial Magistrate First Class, Bhiwandi. They are challenging order dated

14.5.2019 passed by the learned Sessions Judge, Thane by which application under Section 408 of the Criminal Procedure Code came to be rejected. By this application, they have sought for transfer of the said criminal case to the Court of learned Judicial Magistrate First Class at Thane.

2. I have heard the learned counsel appearing for the petitioner/original accused. He argued that there is no bar for transferring the Part Heard cases from one Court to another Court. It is argued that the petitioner no.1 is serving in a private company and his Employer has warned him to stop from going on frequent leaves. It is further urged that the petitioner no.2 is suffering from ailments and as they are the residents of Khalapur, Raigad, they generally take time of 3-4 hours for attending the Court at Bhiwandi. Therefore, for convenience of the parties, the case ought to have been transferred to the file of the learned Judicial Magistrate, First Class, Thane.

3. I have considered the submissions so advanced and also perused the impugned order.

4. Perusal of the application moved before the learned Sessions Judge makes it clear that the Regular Criminal Case which is sought to be transferred, is a Part Heard case. This implies that the learned Judicial Magistrate, First Class, had an opportunity to witness demeanour of the witnesses examined by him. The learned Sessions Judge, primarily rejected the application for transfer on the ground that the case is a Part Heard case. I see no infirmity in the said order rejecting the application for transfer of the subject criminal case. Convenience of all parties is required to be seen while transferring the cases and not only that of accused person. Convenience of the victim and the convenience of witnesses cited by the prosecution is also an aspect which is required to be kept in mind. There is nothing on record to show that even the victim and the witnesses will be benefited by such transfer as is sought by the petitioners. The petition

as such is devoid of merits and the same is therefore, dismissed. However, as the impugned order shows that the subject criminal case is a Part Heard criminal case, the learned Judicial Magistrate, First Class, Bhivandi is directed to expedite the hearing of the said case and to decide the same as early as possible.

Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)