

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**924 CRIMINAL WRIT PETITION NO.943 OF 2021
WITH
APPLN/2040/2021 IN WP/943/2021**

Pralhad Kathalu Shejul,
Age 62 years, Occ; Agri,
R/o; Varkheda, Tq. & Dist. Jalna.

...Petitioner

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Sewli Police Station, Jalna.
2. Nitin Bhaskar Khade,
Age; 28 years, Occ; Agri,
R/o; Varkhed Sewli, Tq. & Dist. Jalna,
3. Rahul Bhaskar Khade,
Age; 26 yrs, Occ; Agri,
R/o; Varkhed Wewli, Tq. & Dist. Jalna. ...Respondents

...
Advocate for Petitioner : Mr.Radikar Akshay S.
APP for Respondent No. 1 : Mr.S.N.Morampalle
Advocate for Respondent No. 2 : Mr. V.D.Sapkal i/by Mr.Bhosle
Pratik A.
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 07th September, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The petitioner is challenging the order passed by the Principal District Judge, (Special Court) Jalna dated 05th August, 2021 whereby, the Sessions Case No. 63 of 2019 was transferred from Additional Sessions Court No.-4 to the Additional Sessions Court No. 6. It is contended that the accused has filed an application for transfer of Sessions Case No. 63 of 2019. The said application was considered by the Principal District Judge, Jalna and transferred the case without assigning any reason. It is contended that the said application is substantially part heard. The learned Additional Sessions Court No. -4 has recorded the entire evidence and the matter was listed for recording of statements under Section 313 of Cr.P.C. Therefore, the case ought not to have been withdrawn from the Court of learned Additional Sessions Court No.-4 by the Principal District Judge, Jalna, without assigning reasons for the transfer of the said case, which is not permissible. Hence it is prayed that the petition be allowed and the order passed by the learned Principal District Judge, Jalna be set aside.

3. Respondent Nos. 2 and 3 appeared in the petition and filed their reply, wherein, it is contended that they had filed application before the learned Additional Sessions Court No. 4 and placed on record the facts regarding the irregularities committed by the Court, while recording the evidence of witnesses. By the said

application respondent Nos. 2 and 3 had sought adjournment for preferring application for transfer of the case. The contents of the said application are also mentioned in the said transfer application. It is contended that the learned Principal District Judge, Jalna had obtained the say of prosecutor as well as the concerned Judge and thereafter in the interest of justice the case was transferred from the learned Additional Sessions Court No. 4 to the learned Additional Sessions Court No. 6. It is contended that to protect the interest of Judge as well as the respondent Nos. 2 and 3, the impugned order was passed, which is correct, legal and valid. There is no need to interfere with it.

4. Heard learned counsel for the petitioner. He submits that on perusal of impugned order it appears that the learned Principal District Judge, Jalna has not applied its mind and has not given any reason to transfer the case. Therefore, the order may be set aside.

5. To substantiate his case the learned counsel for the petitioner has relied on the ratio laid down in the case of **State of Orissa and Ors. Vs. Chandra Nandi – Civil Appeal No. 10690 of 2017, Supreme Court of India dated 01st April, 2019**, it is held by the Apex Court that

“This Court has consistently laid down that every

judicial or/and quasi-judicial order passed by the Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion. (See.- State of Maharashtra Vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, Jawahar Lal Singh Vs. Naresh Singh & Ors (1987) 2 SCC 222, State of U.P. Vs. Battan & Ors., (2001) 10 SCC 607, Raj Kishore Jha Vs. State of Bihar & Ors., (2003) 11 SCC 519 and State of Orissa Vs. Dhaniram Luhar, (2004) 5 SCC 568)."

6. On the other hand the learned counsel for Respondent Nos. 2 and 3 has relied on the ratio laid down in the case of **Radhey Shyam Vs. State of Uttar Pradesh – in Cri. Misc. (Transfer) Appln. No. 10069 of 1983**, wherein the District and Sessions Judge, Jabalpur has made reference to Hon'ble High Court of Allahabad, seeking permission to transfer Session trial pending before the Additional Sessions Judge. The **Full Bench of the Allahabad High Court** has observed that

"We are in respectful agreement with the view taken by the Delhi High Court Avinash Chandra Vs. The States.

For the reasons given above our answer to the question referred to us is that the Sessions Judge is empowered under Section 408 Criminal Procedure Code to transfer a part heard case or appeal from a court of an Additional Sessions Judge to another competent Court within his sessions division if it is expedient in the interest of justice and the limitations imposed under Section 409 (2) Criminal Procedure Code are not applicable in exercise of the power of transfer conferred under Section 408 Criminal Procedure Code.”

7. Admittedly on perusal of impugned order it appears that the learned Principal District Judge, (Special Judge) Jalna had considered the application submitted by respondent Nos. 2 and 3. The say of the learned APP was called. Similarly, the learned Principal District Judge, Jalna also called the report of learned Additional Sessions Court No. 4 and on the basis of the material available passed the order. It was observed by the learned Principal District Judge, Jalna that “In the instant transfer application instead of entering into controversy alleged by the applicant and denied by the other side, it will be appropriate and also will be in the interest of justice to withdraw Sessions Case No. 63 of 2019 from the Court of Additional Sessions Court No. 4, Jalna and transfer it to another Court having competent jurisdiction for its fair and proper disposal according to law.”

8. It appears that there was no prayer of respondent Nos. 2 and 3 that the matter may be transferred to a particular Judge but it was prayed that a Criminal Case be transferred to another Court at Jalna, therefore the Principal District Judge, Jalna has used her discretion judiciously by taking into account the allegations made in the application and on perusal of report of Judge concerned transferred the said case. Therefore, it can be said that the Principal District Judge, Jalna had applied her mind and then passed the order. Therefore, as per the ratio laid down in the case of **Radhey Shyam** (supra) under Section 408 of Cr.P.C. the Principal District Judge, can transfer a part heard case or appeal from a Court of having competent jurisdiction to another Court having competent jurisdiction, within a Sessions or Division. It is expedient in the interest of justice, the limitation imposed in Section 409 (2) of Cr.P.C. So it can be said that in the interest of justice the Sessions Case was transferred. Therefore, I do not find any illegality in the matter. Therefore, the petition has no merit, hence it is dismissed.

9. Rule is discharged.

10. Criminal Application No. 2040 of 2021 is also disposed of.

(SURENDRA P.TAVADE)
JUDGE