

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2887 OF 2022

Homelink Enterprises,
Proprietor
Bhupesh Omprakash Gupta

.... Applicant

Versus

Plasma Electronics,
Partner of
Priyanka Gokul Athre

.... Respondent

....

Mr. Dhanraj P. Munde, Advocate for the Applicant
Mr. Abhaysinh K. Bhosle, Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st December, 2022

ORDER :

1. By this application, filed under sections 407 and 482 of the Code of Criminal Procedure, the applicant seeks transfer of SCC No. 526 of 2020 filed by the respondent under section 138 of the Negotiable Instruments Act, in the court of the Judicial Magistrate, First Class, Ahmednagar to Judicial Magistrate, First Class at Pune on the ground that the proceedings of FIR at Crime No.0304 of 2019 lodged against the husband respondent are pending before the Pune court.

2. The applicant has lodged FIR with Samarth Police Station, Pune City, which is registered at Crime No. 0304 of 2022 for the offences punishable under sections 143, 147,

148, 149, 452, 307, 324, 323, 427 of the Indian Penal Code, wherein it is alleged that husband of the respondent and persons accompanying him assaulted the applicant with knife and helmet, vandalized his office, due to which he has suffered loss of Rs.7 Lacs. During the indecent, his lady employee's modesty was outraged.

3. In support of the application, the applicant contends that husband of respondent has criminal antecedents and he is a influential person. Due to his influence, nobody was ready to stand as surety for the applicant. The applicant was required to furnish cash security for his bail. The applicant therefore submits that he apprehends danger to his life at Ahmednagar, and therefore, since the trial of the offence registered at his instance is pending at Pune, the trial pending at Ahmednagar be transferred to Pune court.

4. Learned advocate for the respondent vehemently opposed the prayer of transfer by relying on the decisions in *Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani*, 1779 AIR (SC) 468 and *Satish Jaggi Vs. State of Chhattisgarh and others*, 2007 (3) SCC 62. He submits that no ground is made out by the applicant for transfer of the proceeding.

6. Heard the learned advocate for the applicant and the learned advocate for the respondent at length. Perused the grounds raised in the application, annexures thereto and the citations relied upon by the learned advocate for the respondent.

7. Pendency of criminal case lodged at the behest of the applicant at Pune cannot be a ground for transfer the trial pending at Ahmednagar to Pune. Except the case filed by the applicant against the husband of respondent, there are no other criminal cases pending against him. Thus, it cannot be said that husband of the respondent has criminal antecedents. There is absolutely no material to substantiate the contention of the applicant that, respondent's husband is influential person and that there is no congenial atmosphere at Ahmednagar.

8. The apprehension expressed by the applicant that he may not get a fair and impartial trial does not appear to be reasonable and appears to be based on conjectures and surmises.

8. In ***Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani*** (supra), it is held that, “Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

9. The ratio laid down in ***Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani*** (supra) is followed in ***Satish Jaggi Vs. State of Chhattisgarh and others*** (supra).

10. In the light of the above ratio, and considering the facts of the present case, no case is made out by the applicant for transfer of trail from Ahmednagar to Pune.

11. The application being devoid merits is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane