

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1179 OF 2022

Narayan Venkatraman Iyer ...Petitioner
vs.
The State of Maharashtra and Another ...Respondents

VISHAL
SUBHASH
PAREKAR

Mr. M.K. Kocharekar, for the Petitioner
Mr. A.R. Patil, APP for the Respondent-State.

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VISHAL SUBHASH
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CORAM : N. J. JAMADAR, J.
DATE : APRIL 19, 2022

P.C.:

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to an order passed by the learned Sessions Judge, Thane in Criminal Misc. Application No. 5 of 2020 whereby the prayer of the petitioner/applicant seeking transfer of the prosecution, bearing RCC Nos. 338 of 1999, 332 of 1999, 667 of 1999 and 666 of 1999 pending on the file of the learned JMFC, Bhiwandi to the Court of Chief Judicial Magistrate, Thane or any other Judicial Magistrate, First Class at Thane, came to be rejected.
3. In the aforesaid cases, the indictment against respondent No. 2 - accused therein, is that he practiced as an advocate in Bhiwandi Courts from 1992 to 1999 without having a degree in law and sanad from Bar Council. The petitioner who is also a practicing advocate and has represented the Bar Associations, appears to be a witness

in RCC No. 338 of 1999.

4. The petitioner has preferred an application for transfer of the proceedings from the Court of learned JMFC, Bhiwandi to the Court of Chief Judicial Magistrate or any other Judicial Magistrate, First Class, at Thane. In the impugned order, the learned Sessions Judge has culled out the grounds on which the transfer was sought by the petitioner, in paragraph 4, which read as under:

4] Broadly speaking the transfer of cases has been sought on the following grounds:-

- i) The offence has been committed in Bhiwandi Court before the Judicial Magistrate First Class, Bhiwandi and other judges of Bhiwandi Court working at relevant time. The offence is in respect of administration of justice.
- ii) Two judges before whom the accused/non-applicant No. 3 has appeared as an advocate, have dealt with and decided bail applications of non-applicant No. 3 which is embarrassment for due administration of justice.
- iii) The statement of various Presiding Officers before whom the non-applicant No. 3/accused appeared have been recorded.
- iv) In couple of cases the advocate who was to appear as witness has filed vakalatnama on behalf of non-applicant No.3.
- v) Section 352 of Criminal Procedure Code provides that certain Judges and Magistrate not to try certain offences when committed before themselves. The principle *Nemo Judex in causa sua* applies in this case.
- vi) In all the four cases, the practicing advocate of Bhiwandi Court are witnesses and the place of offence being Bhiwandi Court the cases ought to be tried by any Judicial Magistrate, First Class, Thane for a fair trial and for giving just decision, maintaining purity of administration of justice.
- vii) In all cases charges have been framed only under provisions of IPC but no charge has been framed under section 45 of Advocates Act, 1961.

5. After an elaborate analysis, on facts as well as the governing precedents, the learned Sessions Judge found that the application seeking transfer was wholly unjustifiable. The learned Sessions Judge further recorded that no convincing ground was put forth even when the petitioner was asked during the course of argument as to what necessitates the transfer of the proceedings.

6. The proceedings are pending before the learned Magistrate since the year 1999. The trial has commenced. The reasons ascribed by the petitioner, as culled out above, do not singularly or collectively sustain exercise of the power to transfer the proceedings. Those reasons do not even remotely give rise to an apprehension that fair trial would be a casualty, if proceedings are conducted before the jurisdictional Court. I do not find that there is a real apprehension that there would be miscarriage of justice, if transfer is not ordered.

7. The learned Sessions Judge has applied the correct tests to consider the prayers for transfer of proceedings and arrived at a justifiable finding. Hence, no interference is warranted in exercise of extraordinary writ jurisdiction.

8. Hence, the petition stands dismissed.

(N. J. JAMADAR, J.)