

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 2352 OF 2021

Preeti Paresh Shah ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondent s

Mr. Yashpal M. Thakur, for the Petitioner.

Mr. A. D. Kamkhedkar, A.P.P for the Respondent No.1– State.

Ms. Kejeshri Thakkar a/w Mr. Adil Parsurampur, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th JANUARY 2022

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 12th March 2021, passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, in Transfer Application bearing Case No.76/TA/2019.

3. Learned Counsel for the petitioner submits that the learned Magistrate failed to consider that the facts in both the cases i.e. Case No.699/PW/2008 and Case No.147/PW/2007 were different. He submits that the learned Magistrate has passed the impugned order of transfer of Case No.147/PW/2007, pending before the 16th Court, Ballard Pier, Mumbai to 19th Court, Esplanade, Mumbai, without hearing the respondent No.1 – the State of Maharashtra i.e. the prosecuting agency. According to the learned counsel, the allegations in both the cases were different and distinct and as such cannot be tried together nor decided simultaneously. He submits that the learned Magistrate before passing the impugned order, ought to have heard the prosecution on the said aspect.

4. On 2nd July 2021, notice was issued to the respondent No.2. Learned Counsel for the respondent No.2 has filed an affidavit-in-reply opposing the said petition. According to the learned counsel for the respondent No.2, the allegations in both the cases are identical and same, hence necessitating that both the cases be heard by the same Court. Learned APP has also filed an affidavit of Vishal Kishan Jadhav, Assistant

Police Inspector, attached to the Economic Offence Wing, Mumbai. In the said affidavit in para 5, it is stated that the learned Magistrate before transferring the case had not heard the prosecution or the public prosecutor. According to the affidavit, both the cases are separate and the evidence involved in the cases are also different and as such have also objected to the joint trial of both the cases.

5. Be that as it may, without going into the merits of the petition as to whether both the cases i.e. Case No.699/PW/2008 and Case No.147/PW/2007 are similar or not, it would be appropriate to remit the case back to the trial Court, for deciding the same afresh, after hearing all the parties. Admittedly, the prosecution was not heard before the impugned order was passed.

6. Considering the aforesaid, without going into the merits of the petition, it would be appropriate to quash and set aside the impugned order dated 12th March 2021, passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, transferring Case No.147/PW/2007 to the 19th Court, Esplanade, Mumbai. Accordingly, the

matter is remitted back to the Court of the learned Magistrate for deciding the application filed by the respondent No.2 seeking transfer of the case, afresh, on its own merits, after hearing all the parties i.e. the petitioner, respondent - State of Maharashtra as well as the private respondent.

7. Petition is allowed in the aforesaid terms and is accordingly disposed of.

8. All parties to appear before the learned Magistrate on **17th January 2022 at 02:30 p.m.**

9. It is made clear, that this Court has not gone into the merits of the case and as such all contentions of all parties are kept open.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.