

Anand

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

CRIMINAL APPLICATION NO. 267 OF 2022

Vishal Ramesh Mandlik

.Applicant

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. Akshay Bankapur, Advocate, for the Applicant

Mrs. G. P. Mulekar, APP, for the Respondent No. 1 – State

Mr. Vivekanand V. Krishnan, Advocate, for Respondent Nos. 2, 3, 5, 6, 8, 10, 12, 13, 19 & 20

Mr. V. V. Gangurde, Advocate, for Respondent Nos. 7, 9, 11, 14, 15, 17 & 18

Mr. Suryawanshi, API, Gangapur Police Station, Nashik present

CORAM : AMIT BORKAR, J.

DATE : 13.10.2022

P. C.

1. This is an Application for transfer of Spl. (MCOCA) Case No. 237 of 2021 in connection with FIR bearing C. R. No. 37 of 2021 dated 17.02.2021 registered with the Gangapur Police Station, Nashik for the offences punishable under Sections 302, 120B, 201, 115, 109, 419, 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code and Sections 3(1)(i)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Act.

2. According to the Applicant, averments made in the Application raises a reasonable doubt in the mind of the victim that he would not get justice from the presiding officer. In support

of his averments, the Applicant has relied on the complaint filed by a person to the Registrar General of this Court.

3. The law with regard to transfer of cases is well settled. Apex Court in *Gurcharan Das Chadha v. State of Rajasthan* [AIR 1966 SC 1418] held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. The Apex Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension. It is also well settled that for transfer of a complaint based on the allegations against the Judicial Officer, without there being justifying material, the complaint cannot be transferred, as it would create doubt on the integrity or competency of the Judicial Officer. Mere filing of a complaint against the Judicial Officer is not sufficient to transfer the case from one Court to another Court.

4. Since the Applicant has failed to substantiate allegations made against Judicial Officer, the Application for transfer cannot be granted on the basis of allegations.

5. At the same time, it is well settled principle of law, justice must be not only be done but must be seem to be done. If

there is reasonable apprehension in the mind of litigant that he would not get justice from the Court based on such Application, the proceeding can be transferred to another Court.

6. I am sure that the present Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless to ensure that justice is not only done, but also seen to be done and in the peculiar facts of the case, I feel that it will be appropriate the case is transferred to some other Sessions Court in Nashik itself. I make it clear that the transfer shall not be construed as casting any aspersion on the learned Sessions Judge.

7. Taking into over all circumstances, I am satisfied in the interest of justice and fair trial, the proceeding in Spl. (MCOCA) Case No. 237 of 2021 needs to be transferred to another Judge in the same District. I, therefore, proceed to pass the following order.

ORDER

Spl. (MCOCA) Case No. 237 of 2021 pending on the file of learned Special Judge (MCOCA), Nashik be transferred to learned Additional District Judge, Nashik, who is having powers to decide cases arising out of the MCOC Act.

8. The Application stands disposed of accordingly.

(AMIT BORKAR, J.)