

VRJ

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

CRIMINAL APPLICATION NO.111 OF 2023

Sanjay Mishrimal Punamiya ... Applicant

V/s.

The Senior Inspector of Police and Ors. ... Respondents

Mr. Rizwan Marchant with Mr. Dilip Shukla for the Applicant.

Mr. M.G. Patil, APP for the respondent No.3/State.

Mr. Girish Kulkarni, Senior Advocate i/by Jitendra Pathade for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2023

P.C.:

1. The applicant has filed a present application challenging order dated 27th January 2023, passed on Miscellaneous Application No.2686 of 2022, seeking transfer of proceedings filed by respondent No.2 and revision filed by the applicant to another Court. The transfer is sought broadly on the following grounds.

(i) The application under section 340 of the Code of Criminal Procedure, 1973, filed in the revision of respondent No.2, has not been decided before hearing of the revision application of respondent No.2 despite the attention of the learned judge was drawn to the judgment of the Apex Court requiring him to decide the application under section 340 of the Code of Criminal

Procedure, 1973.

(ii) The learned Judge is proceeding with the hearing of the revision application filed by respondent No.2 and adjourning other revisions filed by the parties. Grant of such preference to the revision filed by respondent No.2 creates apprehension of likelihood of bias.

(iii) Contrary to the well-settled principle of law that the victim cannot be made party to the original proceeding, the learned Judge has directed the applicant to add the victim as a party to the revision application under section 340.

(iv) Without deciding the issue of maintainability of the revision application of respondent No.2, the learned Sessions Judge is proceeding with the hearing of the revision application of respondent No.2 on merits.

2. Therefore, according to the applicant, the factors mentioned above cumulatively and individually raised apprehension of the real likelihood of bias.

3. The learned Judge rejected the transfer application recording a finding that the material to support apprehension of a reasonable likelihood of bias is absent.

4. The learned advocate for the applicant invited my attention to paragraph 11 of the impugned order, which according to him, is factually incorrect reason as the application under section 340 is pending before the learned Sessions Judge.

5. The law in relation to the apprehension of bias and, in

particular, relating to the criminal proceedings is well settled in view of the judgment of the Apex Court in the case of **Amarinder Singh Vs. Parkash Singh Badal & Ors.**, reported in (2009) 6 SCC 260. The Apex Court, in paragraphs No.15 to 17, has laid down the parameters for entertaining such applications for transfer in relation to criminal trials.

“15. In **Abdul Nazar Madani v. State of T.N.** [(2000) 6 SCC 204: 2000 SCC (Cri) 1048], the issue dealt with was for transfer of a criminal case from one State to another. In the said decision, it was reiterated that: (SCC p. 210, para 7)

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. [However,] no universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition.”

After perusing the figures furnished and considering all the materials, it was concluded that the transfer petitions were totally misconceived and dismissed the same.

“16. In ***Jayendra Saraswathy Swamigal (II) v. State of T.N.*** [(2005) 8 SCC 771 : (2006) 1 SCC (Cri) 1] this Court has held that: (SCC p. 790, para 22)

“22. ... If there is reasonable apprehension on the part of a party to a case that justice may not be done, he may seek transfer of the case.” It also held that: (SCC p. 790, para 22)

“22. ... The apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.”

17. It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence, does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of a miscarriage of justice and the likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by the exercise of power under Section 406 CrPC.”

6. In light of the above principles, let us analyse the transfer application and determine whether the revisions will be transferred to another Court.

7. The first ground raised before this Court is the pendency of the application under section 340. In my opinion, the manner of disposal of the proceedings is within the exclusive domain of the Court. Non-observance of procedure contemplated under the statute may entitle the aggrieved party to challenge such exercise of power before the Superior Court; however, non-exercise of power of discretion in a particular manner cannot be a ground which may create a reasonable apprehension of bias amongst the

litigant. If the applicant is aggrieved by the exercise of power contrary to either procedural law or substantial law, the remedy of application is to approach the appropriate Court by way of appropriate proceedings.

8. The next ground for transfer is proceeding with the hearing of the revision application filed by respondent No.2 only, without hearing other revision applications between the parties. In my opinion, the exercise of such power by the Court will fall within the domain of judicial discretion of the court. Against such exercise of judicial discretion, the aggrieved party may approach the Superior Court. However, such an exercise of judicial discretion is by itself not sufficient to raise the ground of reasonable apprehension of a miscarriage of justice and likelihood of bias. The same reason applies to the transfer on the grounds of passing an order to add the victim as a party to the application under section 340. The applicant can also raise the issue of maintainability of the revision application along with the decision of the main revision application if it goes against the applicant.

9. The learned Sessions Judge is seized of the proceedings challenging the common order passed by the learned Magistrate. It is within the judicial discretion of the learned Magistrate to decide whether to adjudicate the issue of maintainability of the revision before finally hearing the revision or to be decided along with the revision application. Exercise of such discretion is always based on facts of each case, and no strait jacket formula can be laid down. Moreover, the exercise of such discretion can be challenged before the Superior Court.

10. The Apex Court has held in the case of **Satish Sakharam Mangle vs State of Maharashtra** reported in (2020) 18 SCC 617 that mere zest by a judge to expedite the proceeding is no ground to transfer such proceedings on the ground of reasonable likelihood of bias.

11. In the case of **Jaswant Singh v. Virender Singh**, AIR 1995 SC 520, where certain unfounded allegations were levelled by an Advocate, who could not get the desired relief from a Judge, their Lordships of the Supreme Court held as under:—

“The transfer petition cast aspersions on the Judge of the High Court in the discharge of his judicial functions and had the tendency to scandalise the Court. It was an attempt to brow-beat the Judge of the High Court and cause interference in the conduct of a fair trial. It also tend to bring the authority and administration of law into disrespect. It was most unbecoming for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him was fair and reasonable. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

12. The law is well settled that a litigant cannot choose a court of his choice. It is only in circumstances where the existence of “bias” or “likelihood of bias” is proved that the Court invokes its discretionary powers to transfer the hearing of a case to another Court of competent jurisdiction. In the absence of an allegation of pre-existing bias, the power to transfer a case can be invoked only

sparingly.

13. Therefore, on overall consideration of the allegations made against the learned Judge, in my view, no case to raise a presumption of reasonable likelihood bias has been made out. The impugned order, therefore, requires no interference.

14. The criminal application is dismissed. No costs.

15. The learned Principal Judge shall decide on pending application in accordance with the law.

(AMIT BORKAR, J.)