



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

981 CRIMINAL WRIT PETITION NO. 1771 OF 2023

Dilipsinh Gopalsinh Thakur And Others

VERSUS

The State of Maharashtra

...

Advocates for the petitioners : Ms. Rashmi Gour with Mr. A.S. Bayas,
S.R. Mantri and Mr. S.S. Gangakhedkar

APP for Respondent: Mrs. Pratibha J. Bharad

.....

WITH

CRIMINAL APPLICATION NO. 294 OF 2024

IN

CRIMINAL WRIT PETITION NO. 1771 OF 2023

Avinash Venkartrao Shinde

versus

The Superintendent of Police and others

.....

Advocate for the applicant: Mr. S.S. Gangakhedkar
A.P.P. for respondent No.1 : Mrs. Pratibha J. Bharad

Advocate for respondents: Mr. A.S. Bayas

CORAM : SANJAY A. DESHMUKH, J.

DATED : 23rd JANUARY, 2024.

PER COURT :-

1. The criminal writ petition No. 1771 of 2023 is directed against the impugned order dated 30.9.2023 passed in Misc. criminal application No. 30 of 2023 which was filed under Section 408 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") for transferring the Sessions Case No. 93 of 2016 pending before the Additional Sessions Judge-1 Nanded to another court. A criminal application No. 294 of 2024 is filed seeking same relief in writ petition No. 1771 of 2023 to add the applicant as respondent in criminal writ

petition and that he be permitted to participate in this writ petition. He also prayed that the Special (Atrocity) Case No. 7 of 2018 be transferred from Additional Sessions Judge-1, Nanded to any other Court.

2. Learned advocates for the petitioners in writ petition No. 1771 of 2023 pointed out the conduct of the Presiding Officer of the Sessions Case No. 93 of 2016 that he is not proceeding with the trial as per the provisions of law. It is pointed out that the Presiding Officer is conducting the trial with biased mind and it is not fairly acting with the petitioners. The example quoted is that prosecution panch witness P.W.2 turned hostile. Some questions were put to the witness by the court. However, in the last para of his deposition, the trial court directed to that witness (PW-2) to submit bond to secure his presence assuming that he had given false evidence and ultimately bond of Rs.5000/- was executed. Learned advocate further submitted that in earlier Sessions Case No. 358 of 2019, decided on 11.4.2023, the applicant was convicted, however, copy of that judgment was not given on the day of the judgment and therefore, by filing a writ petition, directions were sought against the same Court. Even after direction of the High Court also, the copy of the judgment was not made available to these petitioners-accused. Therefore, explanation was called from that Court. Thereafter, the copies were supplied. Learned advocate for the petitioners lastly pointed out the complaint about the behaviour of the same Presiding

Officer, made by 222 advocates of the Nanded Bar Association praying for taking action against him. It is lastly prayed that the petitioners will not get justice from that Presiding Officer, therefore, said case deserves to be transferred.

3. Learned advocate in criminal application No. 294 of 2024 submitted that special Atrocities case No. 7 of 2018 is pending before the same Presiding Officer. An application was moved by the applicant for transfer of the case from the same Presiding Officer to the Principal District and Sessions Judge, Nanded. The said Presiding Officer when he was in charge Principal District and Sessions Judge, Nanded, submitted report to facilitate the rejection of the said transfer application by compelling the Superintendent of District Court, Nanded to submit the report dated 20.10.2023 and therefore, that application is not yet decided. Learned advocate further submitted that the prayer for recalling some of the witnesses was made. However, that was turned down by the same Presiding Officer. With similar grievance a criminal writ petition No. 477 of 2022 was filed and it was allowed by giving directions to the Presiding Officer to recall the witnesses. He pointed out that the said Presiding Officer when he was acting as Principal District and Sessions Judge, Nanded, called the say from the Superintendent of the District Court and the same was submitted for decision of transfer of the case. The application is not yet decided, which was filed on 21.8.2023. Learned advocate for the petitioners has pointed out that

the application submitted by the applicant accused making grievance about the same Presiding Officer for transfer of the case to another Court is not decided for months together. He submitted that the applicant will not get justice as the Presiding Officer is prejudiced and acting with bias.

4. Learned advocate for the applicant has pointed out that some documents like report, test identification parade were directly exhibited without giving an opportunity to the defence. He pointed out the said order. All these conducts of the Presiding Officer lead to inference that the Presiding Officer is not fair with the accused while conducting trials in aforesaid both the cases. He therefore prayed that it is necessary to transfer the said case to another Court.

5. Mr. Gangakhedkar, learned advocate for the applicant placed reliance on the following authorities:-

- i) **C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and others**, reported in (1995) 5 SCC 457, in which in para 23 the Hon'ble Supreme court held as under:-

“23. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings

and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.”

- ii) **P.D. Dinakaran (I) vs. Judges Inquiry Committee and others**, reported in (2011) 8 SCC 380, in which in para 41, it is held that:-

“41. In this case, we are concerned with the application of first of the two principles of natural justice recognized by the traditional English Law, i.e., *Nemo debet esse judex in propria causa*. This principle consists of the rule against bias or interest and is based on three maxims: (i) No man shall be a judge in his own cause; (ii) Justice should not only be done, but manifestly and undoubtedly be seen to be done; and (iii) Judges, like Caesar's wife should be above suspicion. The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a

bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.”

- iii) **Subrata Roy Sahara vs. Union of India and others**, reported in (2014) 8 SCC 470, in which the Hon'ble Supreme Court in para 15, held as under:-

“15. By the time a Judge is called upon to serve on the Bench of the Supreme Court of India, he understands his responsibilities and duties.....and also his powers and authority. A Judge has the solemn duty of deciding conflicting issues between rival parties. Rival parties inevitably claim diagonally opposite rights. The decision has however to be rendered in favour of one party (and against the other). That, however, is not a cause for much worry, because a Judge is to decide every dispute, in consonance with law. If one is not free to decide in consonance with his will, but must decide in consonance with law, the concept of a Judge being an individual possessing power and authority, is but a delusion. The saving grace is, that only a few understand this reality. But what a Judge is taught during his arduous and onerous journey to the Supreme Court is, that his calling is based on, the faith and confidence reposed in him to serve his country, its institutions and citizens. Each one of the above (the country, its institutions and citizens), needs to be preserved. Each of them grows to prosper, with the others' support. Each of them has duties, obligations and responsibilities.....and also rights, benefits and advantages. Their harmonious glory, emerges from, what is commonly understood as, “the rule of law.” The judiciary as an institution, has extremely sacrosanct duties, obligations and responsibilities. We shall, in the succeeding paragraphs, attempt to express these, in a formal perspective.”

6. Learned advocate for the petitioners in criminal writ petition No. 1771 of 2023 placed reliance on the judgment of the Supreme Court in the case of ***Zahira Habibullah Sheikh (5) and Another vs. State of Gujarat and others, reported in (2006) SCC 374***, and more particularly para 36 thereof, which is reproduced as under:-

“36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

7. Heard learned A.P.P. for the respondent-State.
8. The remarks were called from the Principal District and Sessions Judge, Nanded. The Principal District and Sessions Judge, Nanded communicated that the said Presiding Officer is having workload and the tension. However, he is sincere and therefore, there is no substance in the grievances raised against him and these are baseless. Though 222 members of the Bar had raised grievance against the same Presiding Officer that he is not behaving properly about which the Principal District and Sessions Judge has not made any remark.
9. The grievances of the Bar Association, Nanded cannot be the ground for allowing this writ petition and the application for transfer of the case.
10. It appears from the record itself that panch witness (PW-2) who turned hostile was threatened by the Presiding Officer about his deposition. He was compelled to execute bond about future action of giving false evidence. This view of the Presiding Officer shows bias to the petitioners accused. As per Section 344 of the Cr.P.C. the trial court has to come to the conclusion at the time of giving judgment that the witness has deposed falsely or fabricated evidence. Then only further action can be taken against such witness. There is no

provision in law to punish the witness who turned hostile unless and until it is concluded in the judgment that the witness has deposed falsely or fabricated the false evidence/ documents. This witness cannot be compelled to execute bond. Such view of the trial court is bias and premature. This conduct of the Presiding Officer shows that he is prejudiced and he is unfair with the accused/petitioners. It is sufficient ground for transferring the case from that court to another court.

11. While exhibiting some documents, the Presiding Officer has not given any reasons. He cannot pass such order mechanically. Thus, he failed to consider that the reasons are soul of the judgment and such course of action is unfair resulting into illegality, by which prejudice is caused to the petitioners-accused.

12. In the case of ***Subrata Roy Sahara vs. Union of India and others (supra)***, the Hon'ble Supreme Court has held that the Judge has a solemn duty of deciding conflicting issues between the rival parties. He must act fairly and impartially. The conduct of this Presiding Officer is contrary to the directions and guidelines of the Hon'ble Supreme Court's precedents cited supra.

13. Considering all the above, it appears that the Presiding Officer is not acting impartially and he is not free from bias against these accused-petitioners and applicant. Their trials are not fairly

conducted. They will get justice from the said Presiding Officer. Considering all these aspects, serious prejudice is certainly caused to the petitioners and the applicant and their right to fair trial is certainly affected as contemplated under Articles 19 and 21 of the Constitution of India. Therefore, the writ petition as well as the civil application deserve to be allowed in the interest of justice. The same are allowed with the following directions:-

- I. The Principal District and Sessions Judge, Nanded is directed to transfer both the cases i.e. Sessions Case No. 93 of 2016 and Special (Atrocity) case No. 7 of 2018 from the Court of Additional Sessions Judge No.1 Shri S.E. Banger to the Additional Sessions Judge No.2 Shri C.V. Marathe. He shall try and conclude the case as expeditiously as possible.
- II. The learned Principal District and Sessions Judge, Nanded is directed to report accordingly to the Registrar (Judicial) of this Court.
- III The Registrar (Judicial) of this Court to communicate this order to the concerned and report the compliance of this order.

(SANJAY A. DESHMUKH, J.)