



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1014 OF 2024

Uday S/o Shrikant Malte,
Age: 62 years, Occu: Legal Practitioner,
R/o Plot No.81, Sector-H, Cidco N-4,
B/H High Court, Aurangabad.

... **PETITIONER**

V/s.

Rajendra s/o Pandurang Phatke,
Age: 55 years, Occu: Advocate,
R/o Tirumala Complex, Plot No.24,
Near Shahnurmiyan Dargah,
Shahnoorwadi, Aurangabad.

... **RESPONDENT**

.....
Advocate for the Petitioner – PARTY IN PERSON
Advocate for the Respondent– PARTY IN PERSON
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 19.12.2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides at the stage of admission.
2. The present Petitioner is the original complainant and the Respondent is the original accused in SCC No.3048/2011. Needless to say that the Petitioner and the Respondent both are legal practitioners in the High Court and the subordinate Courts at Aurangabad and both of them are litigating before the trial Court in complaint SCC No.3048/2011 for the offence

punishable under Section 500 of the I.P.C., which was pending on the file of learned JMFC, Court No.20 (earlier preceded by Smt. S.S. Ghodke) but it is transferred to the Court of JMFC, Court No. 12 vide impugned order dated 05.04.2024 passed by the learned Principal District and Sessions Judge.

3. After the evidence affidavit is filed, the present Respondent/accused has filed Cri. M.A. No.332/2023 under Section 409 of the Cr.P.C. before the learned District and Sessions Judge, Aurangabad and prayed for transfer of SCC No.3048/2011 to any other Court from the file of JMFC, Court No.20 on ground that during course of cross-examination, the Petitioner/complainant sought adjournments on number of occasions and when adjournment was sought on behalf of the Respondent/accused as he was out of station, the learned Presiding Officer of JMFC Court No. 20 presided over by Smt. S.S. Ghodke imposed cost of Rs.500/- and adjourned the matter for next day. Therefore, the Respondent/accused apprehended that the Presiding Officer is biased against him.

4. On 05.04.2024, the learned Principal District and Sessions Judge passed the impugned order and withdrawn the proceeding of SCC No.3048/2011 (Uday Malte V/s. Rjendra Phatke) from the file of learned JMFC, Court No.20 and transferred it to the file of the learned JMFC, Court

No.12. Therefore, the Petitioner/original complainant instituted present petition for quashment of impugned order.

5. Needless to say that on 05.08.2024, the Coordinate Bench of this Court passed the following order:

“1. Heard learned counsel for the petitioner.

2. Issue notice to the respondent.

3. Learned counsel for the petitioner has impugned the order of the Principal District and Sessions Judge, Aurangabad dated 05.04.2024. It was the order passed on the application of the respondent for transferring the matter from the Court where the trial was pending on the allegations that the judicial officer is biased and he lost the trust. He would submit that bare reading of the application there may not be a reason for passing the impugned order. The order should be speaking and with reasons. The allegations against the judicial officer were baseless and serious. That apart, if such practice is allowed to be adopted, the respondent may take advantage to get the matter transferred from any Court and his ultimate goal to protract the trial would be gained. The petitioner is a legal practitioner. On these circumstances, the learned Sessions Judge ought to have considered the facts and recorded the finding particularly on the bias of the judicial officer. If such applications are allowed, the administration of justice may be disturbed and wrong practice may be observed.

4. Considering the submissions of the petitioner, application and the impugned order, the Court is of the view that this Court needs to look into the matter. Hence, there shall be stay to the impugned order dated 05.04.2024 passed by the learned Principal District and Sessions Judge, Aurangabad in Criminal Misc. Application No.332/2023 till the next date.

5. Learned counsel for the petitioner makes a statement that he requested the respondent to receive the copy, but he did not.

6. Stand over to 26.08.2024.”

6. Since this Court stayed the effect and operation of order dated 05.04.2024 passed by the learned Sessions Judge in Cri. M.A. No.332/2023, therefore, since then trial of SCC No.3048/2011 is stalled. However, prior to granting stay to the impugned order, cross-examination of the Petitioner/complainant was partly recorded by the learned JMFC, Court No.12.

7. In ***State of W.B. V/s. Shivananda Pathak; (1998) 5 SCC 513***, the Hon'ble Supreme Court has defined "Bias" as under:

"Bias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the Judge unable to exercise impartially in a particular case.

Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc."

8. In ***Rattan Lal Sharma V/s. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School; (1993) 4 SCC 10***, the Hon'ble Supreme Court held as under:

"A predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias."

9. Since the Respondent/accused raised issue of biasness on part of the Presiding Officer merely alleging that while granting adjournment cost of Rs.500/- was imposed and matter was fixed on next day. On perusal of

application u/s 409 of Cri. P. C. it is revealed that the Respondent/accused has not specified any instances whether there was existence of personal relations between the Presiding Officer and Petitioner/complainant or the Presiding Officer-JMFC, Court No.20 was personally benefited in any manner or in any kind.

10. It is submitted that nowadays, there is a growing tendency on the part of the lawyers as well as litigants to raise wild and baseless allegations of bias against the Presiding Officers/Judges, in case the Presiding Officer declines to grant adjournment or rejects the application for adjournment or grant adjournment subject to payment of certain cost. Therefore, such tendency is required to be deprecated. Further, raising such tendency about making allegations against the Judicial Officer about biasness certainly amount to demoralising confidence of the Presiding Officer without bringing such instances on record. So also, by making such wild allegations, it certainly cause mental agony and disturbance to such Judicial Officers, which amounts to interference in the administration of justice.

11. In the case in hand, the learned Sessions Judge passed the impugned order in a casual manner without considering the scope of Sec. 409 of Cr.P.C., which empowers the Session Judge may withdraw any case or appeal from, or recall any case or appeal which has made over to, any Assistant

Session Judge or Chief Judicial Magistrate subordinate to him. It is beyond doubt that, powers confirmed upon the Sessions Judge u/s 409 of Cri. P.C. to recall any case or appeal is purely administrative.

12. In *Radhey Shyam-vs-State of U.P.; 1984 (2) Crimes 50*, the Full Bench of the Allahabad High Court held that the power conferred on the Sessions Judge to recall any case or appeal which has made over to Additional Sessions Judge before the trial of the case or hearing of the appeal has commenced, is also purely administrative. In *Amrithappa-V-State of Kant., 1982 Cri. L.J. 1336*, the Division Bench held that, cases cannot be withdrawn and proceeded with u/s 409 of Cri. P. C. after the trial has commenced.

13. However, in the case in hand it appears that the Petitioner/complainant already filed evidence affidavit and on number of occasions, adjournments were granted to the Petitioner and when adjournment was sought on behalf of the Respondent it was granted with cost of Rs. 500/- and the matter was adjourned for next day only, hence, the Presiding Officer is biased against him. Therefore, considering the provisions of Section 409 of Cr.P.C., the reasons assigned for transfer of trial from the file of learned JMFC, Court No. 20 to the file of JMFC, Court No. 12 is not sustainable in the eyes of law. Therefore, the impugned order is liable to be quashed and set aside and

trial of SCC No. 3048/2011 needs to be remitted to the learned JMFC, Court No.20.

14. In view of above discussion, the present petition is allowed. The impugned order dated 05.04.2024 passed by the Sessions Judge in Cri. M.A. No.332/2023 is hereby quashed and set aside. The trial of SCC No.3048/2011 is remitted back to the the learned JMFC, Court No.20. Accordingly, Rule is made absolute in above terms.

[Y.G. KHOBRADE, J.]