



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

914 CRIMINAL APPLICATION NO. 2199 OF 2024

SANJAY BABARAO KALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Tade Laxmikant R.

APP for Respondent/State : Mr. M.K. Goyanka

...
CORAM : **SHIVKUMAR DIGE, J.**

DATE : 20th June, 2024.

P.C.:

1. By this application, the applicant is seeking transfer of Special Case No.07/2015 pending in the Court of learned Principal District and Sessions Judge, Dharashiv to any other competent court.

2. It is contention of the learned counsel for the applicant that the applicant has attended the Court proceedings on almost all dates. On 22nd May, 2024, the applicant filed application below Exhibit-98 for examining the defence witnesses. The learned Judge allowed the said application on the same day after 5.30 p.m. by imposing costs of Rs.10,000/- and further directed to pay the costs amount on the same day. As the concerned office was closed till applicant approached to the Nazar Office. Applicant could not pay the cost as directed on the same day due to passing of order at late hours. The learned counsel further submitted that on 24th May, 2024, the applicant had filed application below Exhibit-99 with a prayer to permit the applicant to

pay the cost amount. Same was considered by the learned Judge and the said application was allowed by imposing cost of Rs.5,000/-. Further direction was issued to the applicant to deposit the amount of Rs.15,000/- on the same day. The applicant has deposited the said amount. The learned counsel further submitted that when the applicant moved the application for examination of the defence witnesses, the learned Court became angry and asked the applicant in open Court, when you have answered in your statement under section 313 of Cr.P.C. that you did not want to examine the defence witnesses, how you have filed such application. The learned counsel further submitted that the learned Judge prejudiced its mind as against the applicant, therefore, the applicant has lost faith on the said Court. The learned counsel further submitted that if matter is transferred to other Court, the applicant will argue the matter before the other Court on given date without giving any application for adjournment and direction can be given to dispose of the matter within 15 days. Hence he requested to allow the application.

3. Learned APP strongly objected to allow the application on the ground that offence under the provisions of Prevention of Corruption Act is registered against the applicant. Offence is registered in the year 2015. Since last 9 years the matter is pending before the said Court. Present matter is transferred to the Court of Principal District Judge in the month of January, 2024 and after transferring that matter, the

learned Principal District Judge has taken efforts to dispose of the matter as early as possible as it is old matter. The record shows that on one or other pretext the applicant has tried to prolong the matter. When the statement of the applicant is recorded under section 313 of the Cr.P.C., in the said statement, the applicant has not stated that he is going to examine the defence witnesses, but when the matter was kept for argument, the applicant has filed the application to examine the defence witnesses. The said application was allowed but thereafter the applicant did not deposit the costs amount. It shows that the applicant wants to prolong the matter. The learned APP further submitted that as per the directions of the Hon'ble Apex Court and this Court, as the matter was around 10 years old, the learned Judge has taken efforts to dispose of the matter so no question of prejudice against the applicant arises. Hence he requested to reject the application.

4. I have heard both the learned counsel. This Court has called the report from the concerned Principal District Judge. Perused the report.

5. It appears that the F.I.R. against the applicant is registered in the year 2015 under the provisions of the Prevention of Corruption Act. Since then the matter is pending before the trial Court. The matter transferred to the Principal District Judge in the month of January, 2024. As the matter was old, she has taken efforts to dispose of it. Imposing the cost while allowing the application cannot be a ground to

consider that the concerned Judge was prejudice against the applicant. It appears that the learned Judge has given sufficient opportunity to the applicant. It does not show her prejudice against the applicant. Considering this aspects, I am not inclined to allow the application and I reject the contention of the applicant about transfer of the case from the Court of Principal District and Sessions Judge, Dharashiv to any other Court. The applicant shall pay cost of Rs.2,000/- to the office of the Government Pleader for E-Library, within a week from today.

6. However, as the allegations are made against the Presiding Officer, the applicant is accused in the said case. If the said matter is tried before the same Court, it would cause discomfort to the concerned Judge and the applicant also will remain in constant fear that he may not get justice from the said Court. Considering these aspects, the learned Principal District Judge shall transfer the proceedings of Special Case No.07/2015 to any other competent Court. The concerned Court shall decide the said matter within one month after receipt of the said matter. The applicant shall not file the adjournment application before the said Court and as per oral undertaking given by the learned counsel for the applicant, on the immediate date before the concerned Court, the learned counsel for the applicant shall argue the matter.

7. The application is disposed of in above terms.

[SHIVKUMAR DIGE, J.]

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