



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

926 CRIMINAL WRIT PETITION NO. 1310 OF 2023

1. Devidas S/o. Limbaji Khedkar,
Age : 41 years, Occ. Agri.,
R/o. Behind Government Godown,
Pathardi, Tq. Pathardi, Dist. Ahmednagar.
2. Ajinath S/O. Baburao Devadhe,
Age : 42 years, Occu. Agri.,
R/o. Mohoj Devade, Tq. Pathardi,
Dist. Ahmednagar.
3. Somnath S/o. Raosaheb Borude,
Age : 45 years, Occu. Agri.,
R/o. Kasba Peth, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
4. Dadasaheb S/o. Abasaheb More,
Age : 42 years, Occu. Agri.,
R/o. Shikshak Colony, Pathardi,
Tq. Pathardi, Dist. Ahmednagar
5. Ravi Mohan Garje,
Age : 39 years, Occu. Agri.,
R/o. Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar.

.....PETITIONERS
(Orig. accused)

VERSUS

1. The State of Maharashtra
2. Sarika Bhaskar Wandekar,
Age : 42 years, Occu. Service(Circle Officer)
Belapur Bk., Tq. Shrirampur,
R/o. Mohini Nagar, Kedgaon Devi,
Tq. & Dist. Ahmednagar.

.....RESPONDENTS
(Orig. Complainant)

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Mr. B Narayan Narwade, Advocate for the Petitioners
Mr. C.V. Bhadane, APP for the Respondent State
Mr. Vinod D. Dongre & Jayashri V. Dongre Advocate for R/2

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CORAM : Y. G. KHOBRAGADE, J.

RESERVE D ON : 11.12.2024
PRONOUNCED ON : 20.12.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. By the present Petition, the Petitioners take an exception to the order dated 17.08.2023 in Criminal Misc. Application. No.44/2023 passed by the learned Sessions Judge, Ahmednagar, thereby withdrew trial of R.C.C. No.67 of 2019 (State Vs. Devidas Limbaji Khedkar & Others) from the Court of Judicial Magistrate First Class, Court No.3, Pathardi and transferred to the Court of Chief Judicial Magistrate, Ahmednagar.

3. The learned counsel appearing for the Petitioners canvassed in vehemence that, R.C.C. No.67 of 2019 is pending against the Petitioners for the offence punishable under Section 354 (A) of the Indian Penal Code. On 23.02.2023, said matter was posted for evidence but on that day, the informant/Respondent No.2 filed an application below Exh.35 and showed inability to attend the Court because as per the order of the Tahsildar, Shrirampur, she was

required to go to attend the 'Copy-free campaign' (Malpractices Movement) to prevent malpractices in the 12th standard annual examination, hence, matter was adjourned. Thereafter, on 17.03.2023, Respondent No.2/informant submitted an application for adjournment on the ground that, when she attend the Court of J.M.F.C. Pathardi, on 23.02.2023 at about 10.30. a.m., the present Petitioners/accused persons obstructed her and issued threats to kill her son, due to which she was mentally disturbed, hence, went back without giving evidence. Then she visited the office of Superintendent of Police, Ahmednagar and lodged a report.

4. Thereafter, the present Respondent filed Criminal Misc. Application No.44 of 2023 before the Principal District and Sessions Court seeking transfer of trial of R.C.C. No.67 of 2019 to the file of Chief Judicial Magistrate, First Class, Ahmednagar for inquiry, trial and disposal of the matter. On 17.08.2023, the learned Sessions Judge, Ahmednagar passed the impugned order and transferred R.C.C. No.67 of 2019 to the file of learned Chief Judicial Magistrate First Class, Ahmednagar.

5. The learned counsel appearing for the Petitioners canvassed that the Petitioners have registered said application for transfer of trial on the ground that they never issued such threats. So

also, a crime No.516 of 2023 is registered against the present Respondent No.2/ informant for the offence punishable under Sections 12 and 7 of Prevention of Corruption Act. However, the learned Sessions Court passed the impugned order on the basis of false and concocted complaint lodged by the Respondent No.2 with the Superintendent of Police, Ahmednagar.

6. It is further canvassed that there would be no fair and impartial inquiry, trial of R.C.C. No.67 of 2019 before the learned Judicial Magistrate First Class, Pathardi, however, the learned Sessions Court passed the impugned order without considering grounds set out in the application. Since, the Non-applicant fail to set out grounds u/s 409 of Cr.P.C., therefore, the learned Sessions Court ought to have declined to transfer the trial of R.C.C No.67 of 2019.

7. It is further canvassed that initially the Respondent No.2 filed Exh.37 and sought for adjournment but she has not made any complaint with the Judicial Magistrate or the Police Station Pathardi, but she directly lodged a complaint with the Superintendent of Police, Ahmednagar. Therefore, allegations of issuance of threat to kidnap and to kill the Respondent's son is concocted, false, baseless, therefore, the learned Sessions Judge could have refused to transfer trial to the learned Chief Judicial Magistrate, Ahmednagar.

8. Per contra, the learned counsel appearing for the Respondent No.2 invited my attention to the complaint dated 23.02.2023, whereby the Respondent No.2 lodged a complaint with the Superintendent of Police, Ahmednagar stating that, since past 5 months she was working as a Circle Officer, Belapur Tq. Shrirampur and prior to that she was working with Tahsil Office, Pathardi. On 23.04.2016, a Crime No.140 of 2016 was registered against the present Petitioners for the offences punishable under Sections 294, 354-A(4), 504, 506 read with Section 34 of the Indian Penal Code on the basis of complaint lodged by her. On 23.02.2023, the matter was fixed for evidence and at about 10.30 a.m., when she visited the gate of the JMFC, Pathardi at that time the present Petitioners visited there in Innova Vehicle No. MH-12-JO-4265 and obstructed her from entering the Court premises. So also, the Petitioners are issued her threats and attacked on her character. Therefore, the Respondent No.2 filed the Criminal Misc. Application No.44 of 2023 under Section 408 of the Criminal Procedure Code and prayed for transfer of R.C.C. No.67 of 2019 to the file of Chief Judicial Magistrate, Ahmednagar. Therefore, considering life threats to the Respondent No.2 and her family members, the learned Sessions Court passed the impugned order and transferred the trial which does not appear illegal, bad in law, hence, prayed for dismissal of the Petition.

9. Mr. Santosh Ramchandra Mutkule, the Police Inspector of Pathardi Police Station filed a reply. He stated that the informant/ Respondent No.2 is a public servant and lodged a report on which basis crime No.140 of 2016 was registered against the petitioners. After due investigation, a charge-sheet has been filed, which is registered as R.C.C. No.67 of 2019 for the offences punishable under Sections 294, 354-A, 504, 506, 509 read with Section 34 of the Indian Penal Code. The P. I. also given narration of incident dated 23.02.2023 as narrated by the Respondent no. 2.

10. Needles to say that, the present Petitioners/ accused persons are charge-sheeted for the offences punishable under Sections 294, 354-A(4), 504, 506, read with Section 34 of the Indian Penal Code in crime No.140 of 2016 registered with Pathardi Police Station on the basis of report lodged by the present Respondent No.2. After filing the charge-sheet, the matter was posted on 23.02.2023 for evidence of the Respondent No.2/ informant. The material placed on record *prima facie* appears that, when the Respondent no. 2 visited at gate of the Court to give evidence, the present Petitioners visited there in Innova Vehicle bearing registration No. MH-12-JO 4265 and obstructed her from entering into Court premises. The Petitioners issued life threats and uttered words as under:

"Have you come to testify against us? If you give evidence against us in the Court, we will kidnap your child from the school, today we have sent Babasaheb Abasaheb More and Ravi Mohan Garje at Ahmednagar for that purpose and your arrangement has been made, so, don't be too smart, don't depose against us, if you do too smart, we won't let you and your family live forever, and we look at how your husband reaches Chinchpur Pangul on his way to school in Pathardi Taluka."

11. It is a matter of record that, on 24.02.2023, the Respondent No.2 lodged a complaint with the Superintendent of Police, Ahmednagar and reported incident occurred with her on 23.02.2023 in front of JMFC, Pathardi. It further appears that, on 23.02.2023, the Respondent No.2 filed Exh. 35 an application and sought adjournment on the ground that she was to attend the 'Copy-free' campaign of 12th standard examination to prevent malpractices. Accordingly, the learned Judicial Magistrate granted adjournment. However, fact of occurrence of incident at about 10.30 a.m., has not been reported by the Respondent to the Judicial Magistrate. Exh.35 application of adjournment does not speak that, the Respondent No.2 was entered in the Court room. Thereafter, on 17.03.2023, the Respondent No.2 filed Exh.37 and reported incident dated 23.02.2023. Therefore, ground set out in the application for transfer of trial can not be discarded.

12. Needless to say that the Respondent No.2/informant filed a Misc. Criminal Application No.44 of 2023 and prayed for transfer of R.C.C. Case No.67 of 2019 to the file of Chief Judicial Magistrate, Ahmednagar from the file of Judicial Magistrate First Class Court No.3, Pathardi due to issuance of threats at the hands of the petitioners. On 17.08.2023, the learned Sessions Judge passed the impugned order and transferred the trial of R.C.C. No.67 of 2019 to the file of learned Chief Judicial Magistrate, Ahmednagar for inquiry, trial and disposal of the matter in accordance with law.

13. Therefore, taking into consideration that the Respondent No.2/ Informant who is a Public Servant and as the threats were issued by the Petitioners/Accused as observed above, I do not find that the impugned order is perverse, illegal, bad in law and no interference is called at the hands of this Court. Hence, the Writ Petition is dismissed. Accordingly, rule is discharged.

(Y. G. KHOBRAGADE, J.)