

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 457 OF 2024

Rajkumar U Bhansali

.. Applicant

Versus

Dixita Ankit Bhansali @Dixita Kantilal Mehta

.. Respondents

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- Ms. Smita Gaidhani a/w Kevin Gala, Advocate for Applicant.
 - Mr. Maniram Gaud a/w Mr. Usman Menon, for Respondent No.1.
 - Ms. Manisha R. Tidke, APP for Respondent-State.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2024

P.C.:

1. Heard Ms. Gaidhani, learned Advocate for Applicant, Mr. Gaud, learned Advocate for Respondent No.1 and Ms. Tidke, learned APP for the Respondent-State.

2. This is an Application seeking transfer of proceedings filed by the Applicant who is Original Respondent No.2 in the said proceedings. The subject proceeding is D.V. Application bearing No.33 of 2023 currently on the record and file of Court Room No. 69 of the learned J.M.F.C., Mazgaon, Mumbai. The ground in the Application is allegation of bias against the learned Judge. Though it is stated in words that Applicant has no hope of getting justice, nothing further is elaborated to qualify this allegation. It is seen that reason for such grievance is that in a companion parallel proceeding between the same parties, the learned Judge has passed order dated 19th July 2024

and it is the case of Applicant that on that date despite his Advocate remained present in Court during the morning session, the matter was kept back and at about 4:15 pm, the learned Court passed the order without hearing his Advocate. The Applicant naturally being aggrieved with the said order has filed appeal before the learned Sessions Judge which is numbered as Revision Application No. 618 of 2022 with Mazgaon Sessions Court. Keeping the above episode in mind, Applicant has filed the present Application on 17th August, 2024 on the ground of bias. Though Ms. Gaidhani, learned Advocate would also inform the Court that parties be referred to mediation as she has instructions from Applicant to enter into mediation but Mr. Gaud, learned Advocate appearing for Respondent No.1 would inform the Court that he has no such instructions and this is nothing but to prolong the hearing in the pending matters. In his reply he informed the Court that Applicant is residing in the USA and admittedly between him and the Respondent No.1 there are matrimonial disputes. he would inform the Court that he has already procured a decree of divorce from the US Court which according to his instructions is by misrepresentation to the said Court. He would next inform the Court that present Application also concerns family members of the husband. He would submit that for the last 9 months i.e. since March, 2024 the Application for grant of interim maintenance amount to the Respondent No.1 wife has been heard and pending for

orders but no orders have been passed thereupon. One of the reasons for pendency of the same is this Application which was filed in August, 2024. He would submit that every attempt is made in the book by Applicant before the Court to ensure that the Court does not pass order in the interim Application regarding maintenance. He has informed the Court that interim Application is listed for orders tomorrow before the said Court. Considering Application made by the learned Advocate for the Applicant qua sending the parties to mediation, this Court cannot force the reluctant party to go for mediation. The present Criminal Application before me is an Application for transfer of proceedings to another Court simplicitor on the allegation of bias. the bias as alleged emanates from the aforesaid incident as delineated above. The Applicant has already challenged the said order and the revision is pending before the Sessions Court. Hence there cannot be any reason for Applicant to allege bias against the concerned Magistrate. One of the submission made by Ms. Gaidhani is that the interim Application be permitted to be re-heard because the learned Judge may not remember the submissions made while arguing the matter in March, 2024 when it was closed for orders. I reject this request. It should be best left to the concerned judge seized of the matter to decide the matter. I cannot countenance this submission made by Ms. Gaidhani as it would unnecessarily cast an imputation on the learned Judge who is seized of the matter. Every learned Judge

hearing the matters in any Court of law is well aware about the matters that are heard by him and he should determine his course of action and dispose of the same. In view of the above, the present Application is not sustainable and deserves to be dismissed as no case of bias whatsoever is made out by the Applicant.

3. However, since the Applicant has made a grievance regarding order dated 19th July, 2024 passed by the same judge but since Criminal Application against the said order is pending before the Sessions Court, I direct the Sessions Court to decide Criminal Revision Application No. 618 of 2024 as expeditiously as possible and in any event within a period of 8 weeks from today. Needless to state that all contentions of both the parties are expressly kept open in all proceedings before the concerned Court.

4. Needless to state that this Court has not opined on any of the merits of the matter. The submissions made by Ms. Gaidhani and Mr. Gaud have been delineated in this order, but it is clarified that when the concerned Court is passing any order in the D.V. Application or the Sessions Court in the challenge to the order dated 19th July, 2024, they shall not be influenced by any of the findings and observations in this order as they are not on the merits of the matter.

5. With the above directions, Application stands disposed.

[MILIND N. JADHAV, J.]