

(2015) 01 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 911 of 2014

Dhammadina

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 408
Penal Code, 1860 (IPC) — Section 143, 323, 34, 342, 395

Citation : (2015) ALLMR(Cri) 1054 : (2015) 2 BomCR(Cri) 426

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : Rajendra Deshmukh, for the Appellant; S.A. Ambad, APP and S.C. Bhosale, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—Rule. Rule made returnable forthwith. Heard finally, with the consent of the parties. On the basis of First Information Report lodged by present petitioner, Crime bearing C.R. No. 8/08 is registered with Police Station, Bhokar, Dist. Nanded against the present Respondent Nos. 2 to 31 for the offences punishable under Section/s 395, 143, 342, 323, 504, 506 read with 34 of the Indian Penal Code.

2. After completion of usual investigation, the Investigating Officer has filed charge-sheet in the court of law. The learned Judicial Magistrate, First Class in whose court charge-sheet is presented found that offence is exclusively triable by the court of Sessions, therefore, necessary order of committal appears to have been passed and the case is committed to the Court of Sessions. Case is pending on the file of the learned Additional Sessions Judge, Bhokar vide Sessions Case No. 39/10.

3. During pendency of said Sessions Case, O.M.C.A. No. 72/12 under Section 408 of the Code of Criminal Procedure is filed by the present petitioner before the learned Sessions Judge, Nanded for transfer of Sessions Case No. 39/10 from the

file of Additional Sessions Judge, Bhokar to another Additional Sessions Judge, Nanded. The reason for filing application for transfer by the present applicant is that, she is apprehending life threat to her and her husband. Said application was decided by the learned Sessions Judge, Nanded on 10th March, 2014 and the learned Sessions Judge, was pleased to reject the application filed under Section 408 of the Code of Criminal Procedure.

4. The learned counsel for the petitioner urged before me that the applicant has made out good ground for transfer of Sessions Case No. 39/10 from the file of learned Additional Sessions Judge, Bhokar. He further submitted that he has filed on record the complaint/s filed by some other witnesses which according to him, were also under perception of threat. He submitted that these facts are not at all considered by the learned Sessions Judge, therefore, this court should exercise writ jurisdiction and directs transfer of Sessions Case No. 39/10 from the file of learned Additional Sessions Judge, Bhokar to the learned Additional Sessions Judge, Nanded.

5. Per contra, Mr. S.A. Ambad, learned Additional Public Prosecutor for Respondent No. 1 and Mr. S.C. Bhosale, learned counsel for accused supported the order passed by the learned Sessions Judge, Nanded and submitted that no case is made out by applicant for transfer.

6. After hearing the learned counsel for the petitioner, it is clear that the petitioner is seeking transfer of Sessions Case No. 39/10 from one court to another court on the apprehension that there is threat to her and her husband. Thus, the foundation for moving application under Section 408 of the Code of Criminal Procedure is threat perception. Mere perception is not adequate or it cannot be a reason for transferring particular criminal case from one court to the another court. The foundation must have some basis. In order to buttress his argument and to show that foundation has basis, he relied upon various complaints filed by the witnesses before the authority. The learned counsel for the petitioner also relied upon the decision of Hon''ble Apex Court in case of Mrudul M. Damle and Another Vs. C. B.I., New Delhi, . Said case in my opinion has no bearing in the context of facts and, therefore, said case is of no use to the applicant.

7. With the assistance of learned counsel, I have gone through those complaints, which clearly show that those are filed much earlier. Further no case is made out by the petitioner to show that in view of threat given to other witnesses, the prosecution case is likely to be prejudiced. Mr. S.A. Ambad, learned Additional Public Prosecutor has submitted that there is no threat perception as could be clout from the available material on record. Further if really any of the eye witness and/or present petitioner were receiving life threats, it is/was open for them to file appropriate application for cancellation of bail of accused persons, either independently or through the Public Prosecutor. No such steps are taken, therefore, grounds as canvassed by the learned counsel for the petitioner, in respect of threat, it is merely apprehension without there being any basis.

Apprehension without basis cannot be a ground for transfer. In that view of the matter, no illegality in the order impugned. The learned Sessions Judge has considered the application correctly and has reached to the correct conclusion by rejecting such prayer of transfer. Writ Petition failed and it is dismissed. Rule discharged.