

(1988) 09 BOM CK 0018

In the Bombay High Court

Case No : Criminal Writ Petition No. 696 of 1988 with Criminal Application No. 1760 of 1988

Modilal Kaluram Kachhara and etc.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 239, 240, 482
Evidence Act, 1872 — Section 165
Penal Code, 1860 (IPC) — Section 109, 379, 411

Citation : (1988) 09 BOM CK 0018

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Judgement

1. This writ petition under Article 227 of the Constitution of India and Section 482, Cr.P.C. has been filed by the petitioner, who is the accused No. 1 in Criminal Case No. 1278-P of 1987 pending before the Additional Chief Metropolitan Magistrate, 11th Court Kurla, Bombay, (presided over by Shri L. D. Motwani), for setting aside the order dated 30th June, 1988 passed by the Additional Sessions Judge, Greater Bombay, rejecting his Criminal Revision Application No. 145 of 1988 whereby he had challenged the order dated 25th April, 1988 passed by the Chief Metropolitan Magistrate, Esplanade, Bombay, in Criminal Case No. 20/TA of 1988 rejecting his application for the transfer of the criminal case from the 11th Court, Kurla, Bombay, to some other Court.

2. The facts giving rise to this petition are as under. There is a jewellery shop known as Madhura Jewellers at Chembur, Bombay. On the night between 5th and 6th May, 1987 house breaking and theft of gold ornaments and cash took place at the shop of Madhura Jewellers. Gold ornaments and cash worth more than Rs. 6,00,000/- were stolen. One Bhagwanlal Narayanlal Kumavat, who was an employee of Singhavi Jewellers - sister concern of Madhura Jewellers, was arrested in connection with this offence on 24th July, 1987. It transpired during

investigation that the theft was committed by the said Bhagwanlal at the instance of the petitioner accused No. 1 and hence the accused No. 1 was arrested on 8th August, 1987. Ornaments worth more than Rs. 2,75,000/- alleged to have been stolen from the shop of Madhuram Jewellers were recovered from the shop of the accused No. 1 on 10th August, 1987 and on 12th August, 1987 gold ornaments weighing 300 Gms. were recovered at his instance. Stolen property worth more than Rs. 4,68,000/- was recovered from the accused No. 1. The said Bhagwanlal, while in the police lock-up, committed suicide on 20th August, 1987. The Chembur police during investigation also arrested the other accused, namely, accused Nos. 2 to 4. The accused No. 4 Bhimsingh alias Zapatya was the watchman at Trimurti Building where the said Singhavi Jewellers was housed. Some stolen property was recovered from the accused No. 4. The other two accused, namely, accused Nos. 2 and 3, are the relatives of the accused No. 4 and are alleged to have assisted him in the commission of the crime. The accused No. 1 was released on bail. The accused Nos. 2 to 4 were also granted bail, but they could not avail of the same and they are in custody since their arrest. While the Chembur police were investigating into the crime, the accused No. 1 filed Criminal Writ petition No. 897 of 1987 in this Court (who is also the accused No. 1 in the present writ petition) for enquiry into the death of the said Bhagwanlal in the police lock-up by the Central Bureau of Investigation (C.B.I.), Bombay. He also prayed therein that the investigation in C.R. No. 166 of 1987 registered at Chembur Police-Station should also be handed over to the C.B.I. This Court on 16th December, 1987 directed an enquiry into the death of the said Bhagwanlal by the C.B.I. The request of the accused No. 1 to hand over the investigation of C.R. No. 166 of 1987 by the Chembur Police Station to the C.B.I. was not granted.

3. The charge-sheet against the petitioner-accused No. 1 and the other accused, namely, accused Nos. 2 and 3, was presented in the Court of the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Bombay (hereinafter for the sake of brevity referred to as "the learned trial Magistrate"), on 17th September, 1987. On the same day copies of police papers were furnished to the accused and the matter was adjourned to 1st October, 1987. On 1st October, 1987 the accused No. 1 applied for stay of the proceedings on the ground that he had filed a writ petition in this Court for making over of C.R. No. 166 of 1987 by the C.B.I. and that the investigation into the death of the aforesaid Bhagwanlal Narayanlal Kumavat in the police lock-up was pending in this Court in Criminal Writ Petition No. 897 of 1987. The learned Assistant Public Prosecutor was asked to give his say. He submitted his say on 14th October, 1987, to which date the case was adjourned on 1st October, 1987. The learned trial Magistrate did not grant the request of the accused No. 1 mentioned in his order that the matter was fixed for framing of charge and after the charge was framed, the matter naturally would be adjourned for hearing and the accused No. 1 could bring stay order from this Court. On that day learned trial Magistrate framed charge. It was explained to the accused and the accused pleaded not guilty. The learned trial

Magistrate directed summonses to be issued to witnesses and adjourned the case for hearing to 28th October, 1987. Criminal Writ Petition No. 897 of 1987 filed by the accused No. 1, as stated earlier, was allowed to the extent of enquiry into the death of the said Bhagwanlal by the C.B.I., and the request of the accused No. 1 to hand over the investigation in this crime to the C.B.I. was granted. After framing charge the matter was adjourned to 28th October, 1987. On that day supplementary charge-sheet, being No. 1507/P of 1987, was filed and the case was adjourned for charge against the accused No. 4 Bhimsingh alias Zapatya to 11th November, 1987. On 11th November, 1987 charge against the accused No. 4 was framed and was explained to him. He pleaded not guilty. His plea was recorded and the case was adjourned to 19th November, 1987 for hearing. On 19th November, 1987 the case was adjourned to 2nd December, 1987. The accused No. 1 filed Criminal Revision Application No. 60 of 1988 in this Court against the charge framed by the learned trial Magistrate against him. That petition was disposed of on the same day on which it was admitted, that is, on 2nd March, 1988. The learned Public Prosecutor Mrs. Manjula Rao fairly conceded that there was no material to sustain framing charge for the offence under Sections 379 and 109, I.P.C. against the accused No. 1, and hence that charge was quashed. Mr. A. G. Sabnis, learned Counsel for the accused No. 1, has no objection if the trial proceeded against the accused No. 1 on the second charge, that is, for the offence u/s 411, I.P.C. Accordingly, the order to proceed with the trial on the second charge against the accused No. 1 was passed and the rule was made absolute accordingly.

4. The applicants-complainants had applied for return of the property seized by the police to them. With the consent of the petitioner-accused No. 1 and the other three accused, the property was returned to the complainants as per the order passed by the learned trial Magistrate on 14th August, 1987.

5. The recording of evidence before the learned trial Magistrate commenced on 2nd December, 1987 and on that day applicant No. 2 complainant No. 2 Ganpatlal Kisanlal Bavel (P.W. 1), who had lodged the F.I.R., was examined. His examination-in-Chief continued on 4th January, 1988. On that day he was cross-examined and his cross-examination was continued on 18th and 19th January, 1988 and it was completed on 19th January, 1988. The recording of evidence of applicant No. 1-complainant No. 1 Ramohandra Lachhiram Mandovara (P.W. 2), a partner of the said Madhuram Jewellers, commenced on 28th January, 1988 and continued on 29th January, 1988, 17th February, 1988 and 18th February, 1988. Thereafter Criminal Revision Application No. 60 of 1988 was filed on 17th February, 1988 for quashing the charge framed against the petitioner-accused No. 1. As stated earlier, the charge for the offence under sections 379 and 109, I.P.C. against the accused No. 1 was quashed and the trial was ordered to be proceeded with against the accused No. 1 on the charge for the offence under S. 411, I.P.C. Thereafter on 10th March, 1988 the accused No. 1 filed an application for transfer of the criminal case from the Court of the learned trial Magistrate to any other Court, before the learned Chief Metropolitan Magistrate, Esplanade,

Bombay. The learned Chief Metropolitan Magistrate, after hearing on 25th April, 1988 rejected the application for transfer. Feeling aggrieved, the accused No. 1 preferred revision against the said order to the Court of Session, Greater Bombay, being Criminal Revision Application No. 145 of 1988. The learned Additional Sessions Judge who heard the said Criminal Revision Application No. 145 of 1988 dismissed it on 30th June, 1988. Feeling aggrieved, the accused No. 1 preferred this writ petition.

6. The learned Counsel for the petitioner-accused No. 1 urged three grounds for the transfer of the criminal case from the file of the learned trial Magistrate. These grounds are : (1) The learned trial Magistrate did not hear the defence Counsel before he framed charge on 14th October, 1987 find though the learned Counsel for the defence insisted insisted hearing before charge, his request was rejected and charge was framed. According to the learned Counsel, this was against the mandatory provisions of Sections 239 and 240, Cr.P.C. (2) The Roznama dated 1st October, 1987 shows that the accused No. 1 filed an application for discharge. According to the learned Counsel, the accused No. 1 did not make any application for discharge, but this false entry was dishonestly made by the learned trial Magistrate to show that he had heard the defence Counsel before framing charge. (3) The examination-in-chief of the witnesses was not done by the learned Assistant Public Prosecutor who appeared for the State, but it was all done by the learned trial Magistrate, and thought objected to by the learned Counsel for the defence, the objections were not recorded by the learned trial Magistrate.

The learned Counsel for the petitioner contends that on those three grounds the accused No. 1 entertained a reasonable apprehension that the learned trial Magistrate was biased against him and he was not likely to get justice at his hands. As stated earlier, the learned Chief Metropolitan Magistrate, Esplanade. Bombay, who initially heard the transfer application, and also the learned Additional Sessions Judge who heard the revision have found that there is no substance in the grounds raised by the accused No. 1. The learned Additional Sessions Judge who heard the revision petition observed that having perused the material discussed by him, he was of the opinion that the accused No. 1 has chosen to make a sinister interpretation on the innocent acts of the learned trial Magistrate. It is necessary to consider whether the grounds urged by the petitioner for transfer of the case are bona fide and on the basis of those grounds whether there can be reasonable apprehension that the accused No. 1 might not get justice at the hands of the learned trial Magistrate.

7. Regarding the first ground of not hearing the learned Counsel for the defence before the charge was framed and thereby, not complying with the provisions of Sections 239 and 240, Cr.P.C., the learned trial Magistrate in his report dated 20th/21st April, 1988 stated thus :

"Charge was framed in open Court and no grievance was made and thereafter for a long period evidence has been recorded. As a portion of the charge has been

quashed, it is not desirable for me to give any comments on that aspect of the matter."

It may be mentioned that in the trial Court the petitioner-accused No. 1 was represented by a senior Counsel Shri P. R. Patel. The charge was framed on 14th October, 1987 and the recording of evidence in the case commenced on 2nd December, 1987 and the evidence of one witness was completely recorded and examination-in-chief of the second witness commenced and it was continued for four days and at that stage on 17th February, 1988 the accused No. 1 moved this Court for quashing the charges framed against him and this Court while admitting the petition on 2nd March, 1988 quashed the charge for the offence under sections 379 and 109, I.P.C. and maintained the charge u/s 411, I.P.C. against the accused No. 1 and ordered the trial to go on. It is to be considered whether framing of wrong charge and the infraction of the provisions of Sections 239 and 240, Cr.P.C. can be considered to raise a reasonable apprehension in the mind of the accused No. 1 that the learned trial Magistrate is biased against him. In *Richhpal and Another Vs. State*, a learned single Judge of the Allahabad High Court considered this question and observed thus AIR 69 Cri LJ 87 :

"The circumstances in which a Magistrate disobeys a statutory provision vary from case to case and it is impossible to lay down one rule to meet all cases of disobedience of statutory provisions. The Legislature has mentioned the grounds in which a case can be transferred from a Court. Disobedience of statutory provisions is not one of those grounds. It is not for a High Court to add to the grounds. Therefore it cannot be laid down as a rule that a case must be transferred if a statutory provision is disobeyed by the Magistrate".

To err is human and Magistrates and Judges are not exceptions to that rule. The hierarchy of the courts exists because it is presumed that courts also commit mistakes. Therefore, if a Court commit mistake in framing a wrong charge, it cannot be inferred that the Court is biased against the accused. No reasonable man is likely to infer from a wrong framing of charge by the Magistrate that the Magistrate is biased against him. In the present case it appears that neither the learned trial Magistrate nor the Advocates were vigilant while framing the charge. Had the learned Assistance Public Prosecutor and the learned Counsel for the defence been vigilant and had noticed that there is some error in framing the charge, they would have certainly moved the learned trial Magistrate to reconsider it, but nothing was done in that direction and the recording of evidence commenced. It was only when the second witness was being examined that the accused No. 1 moved the High Court for quashing the charge framed against him. It may also be mentioned that at that time he never made any grievance that the learned trial Magistrate refused to hear his Counsel before framing the charge and he mala fide framed wrong charge against him. The charge has been corrected by this Court by deleting the charge under Sections 379 and 109, I.P.C. against the accused No. 1 and the learned Counsel for the accused No. 1 agreed to continue the trial against the accused No. 1 on the

charge for the offence u/s 411, I.P.C. On the facts mentioned above, I do not find that there is any substance in ground No. 1.

8. The second ground urged by the learned Counsel for the petitioner accused No. 1 is that the learned trial Magistrate dishonestly recorded in the Roznama dated 1st October, 1987 that the accused No. 1 made an application for his discharge, though no such application was made. The learned Counsel contends that the learned trial Magistrate by making such a wrong mention in the Roznama wanted to show that he had heard the Counsel for the parties before framing charge. According to the learned Counsel, this was clearly an indication of bias on the part of the learned trial Magistrate against the accused No. 1. Rozanamas are written by Court Sheristedars and the Magistrates put their signatures. On 1st October, 1987 the accused No. 1 had present an application for stay of the proceedings. A copy of that application is at p. 45 of the compilation filed with this writ petition. The learned Assistant Public Prosecutor was asked to give his say on 14th October, 1987 and on that day the learned trial Magistrate passed an order that the petitioner should bring stay order from this Court. The learned trial Magistrate in his report dated 20th/21st April, 1988 has stated thus regarding the aforesaid mistake in the Roznama dated 1st October, 1987 :

"In fact there is a mistake committed by the Judicial Clerk while writing Roznama and instead of the application for stay, he has written by mistake an application for discharge."

I find that this is a correct statement of fact made by the learned trial Magistrate. The accused No. 1 somehow wants to take advantage of a mistake committed by the Court Sheristedar in writing an application for discharge instead of an application for stay and on that basis a sinister motive is being attached to the learned trial Magistrate. In *Secretary of State v. Ghulam Mohd.* AIR 1937 Lah 410, the learned single Judge of the Lahore High Court considered the question of transfer of a criminal case from one Magistrate to another Magistrate and at page 415 of the report he observed thus :

"In my view, an accused is not entitled to have his case transferred from the Court of a Magistrate who is seized of it merely because he chooses to place a sinister interpretation on an innocent act of Magistrate. Otherwise, an accused person endowed with a suspicious nature will make the administration of justice impossible."

In the present case there is an honest mistake, and that too on the part of a Court Sheristedar of the learned trial Magistrate, in mentioning in the Roznama "an application for discharge" in place of "an application for stay" and such inadvertent mistake is being utilised by the accused No. 1 to make a baseless allegation against the learned trial Magistrate that he dishonestly wrote such a wrong Roznama in order to gag the mouth of the defence when the defence urges that the defence was not heard before the charge was framed. Without

commenting much on the point, I say that the learned Additional Sessions Judge was perfectly right in observing in his judgment dated 30th June, 1988 that the accused No. 1 had chosen to make a sinister interpretation on the innocent acts of the learned trial Magistrate.

9. The third ground urged by the learned Counsel for the petitioner-accused No. 1 is that the examination of the two witnesses examined by the prosecution was entirely done by the learned trial Magistrate and though objected to by the learned Counsel for the accused No. 1, the objections were not recorded by the learned trial Magistrate. On this point the learned trial Magistrate in his report dated 20th/21st April, 1988 observed thus :

"It is true that I had asked Court questions but at every stage during the course of deposition the remark "To Court" has been made as can be found from the record itself. The Court cannot remain as a silent spectator and sometimes the power invested u/s 165 of the Evidence Act has to be exercised in order that all the facts, whether it (sic) may go in favour or against any party, are brought on record."

The learned Counsel for the petitioner contends that the learned trial Magistrate in his report did not specifically deny the allegation made by the accused No. 1 at sub-para. (1) of paragraph 4 of his petition dated 10th March, 1988. He states that the accused No. 1 had alleged therein that the entire evidence has been dictated by the learned trial Magistrate himself by putting his own questions to the witnesses, without recording under a caption "Per Court" and sometimes prompting the witnesses and recording the evidence which was not uttered by the witnesses from the witness box at all, and when objections was raised to this effect by the learned Counsel, he had told that it has an imputation to the Court and objection was not at all recorded on the pretext that the defence would get an opportunity to cross-examine the witnesses. It must be remembered that when a report is called from a Magistrate, he is not supposed to answer it just like a defendant answering a plaint filed against him a court of law. He has only to make his comments. In the present case the comments made by the learned trial Magistrate and which have been reproduced above fully controvert the allegation made by the accused No. 1. The learned trial Magistrate has stated that he had put such questions to the witnesses and when he put such questions he wrote, "To Court". On going through the copy of the deposition of the applicant No. 1-complainant No. 1 Ramchandra Lacchiram Mandovara (P.W. 2). I find that there is no substance in the aforesaid allegation made by the accused No. 1. The learned trial Magistrate, whenever he put questions to the witness, has recorded, "To Court". He has recorded the questions which he had put and the answers given by the witness. He has also recorded the objections raised by the learned Counsel for the defence to the questions put by the learned Assistant Public Prosecutor during examination-in-chief and has recorded his decision on the objection. In this connection, reference may be made to paragraph 4 of the deposition of the said Ramchandra appearing at page 17 of the compilation. The

said paragraph 4 reads thus :

"4. The purchase bill book and the sale bill book are maintained and the receipts are issued to customers purchasing ornaments and also to the persons from whom he purchased gold. (Note :- The above question has been objected by the learned defence Counsel on the ground that nothing has been stated by this witness before police. Objection overruled, as the question is relevant to show that what ornaments are kept on the shop on the ordinary course of business.")

The reading of the deposition and the notes made by the learned trial Magistrate from time to time when objection was raised by the learned defence Counsel to the questions by the learned Assistant Public Prosecutor and also whenever he put Court questions clearly falsify the allegation of the accused No. 1 that the examination-in-chief was done by the learned trial Magistrate himself and he did not record the objections taken. I may again repeat that the accused No. 1 was represented by a senior Advocate and had the learned trial Magistrate himself examined the witnesses by putting question and had he overruled the objections raised by the learned Counsel for the defence without making a note in the deposition, the senior Advocate Shri Patel would not have failed to put this fact on record by submitting an application in writing. The allegation made by the accused No. 1 that the learned trial Magistrate recorded the examination-in-chief by putting questions to the witnesses himself and also failed to record the objections raised by his Counsel appear to be baseless and have been invented in order to serve his purpose to get the case transferred somehow or the other and protract the trial of the case. It may be mentioned that three other accused are in custody since long and it is in the interest of justice that the trial should be held as speedily as possible. Taking into consideration all those facts, both the learned Chief Metropolitan Magistrate and the learned Additional Sessions Judge rightly held that there were no sufficient grounds for transferring the case from the Court of the learned trial Magistrate to some other Court.

10. The learned Counsel for the petitioner-accused No. 1 and also the learned Public Prosecutor referred to the decision of the Supreme Court in *Manak Lal Vs. Dr. Prem Chand*, . In that case the appellant Advocate was arraigned before the Bar Council Tribunal u/s 13 of the Legal Practitioners Act. It was alleged that the appellant Advocate was guilty of professional misconduct and the respondent No. 1 complainant had requested that suitable action be taken against him. The appellant Advocate moved an application for transfer from the Bar Council Tribunal. At page 429 of the report their Lordships of the Supreme Court observed thus :-

"It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartial, objectively and without any bias. In such cases the test is not whether any fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to

a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said justice must not only be done but must also appear to be done. As Viscount Cave, L.C., has observed in *Frome United Breweries Co. v. Bath Justices* 1926 AC 586 (A) :

"This rule has been asserted, not only in the case of Courts of Justice and other judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others."

"In dealing with cases of bias attributes to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "*nemo debet esse iudex in causa propria sua* precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein."

(Halsbury's Laws of England, Vol. XXI, p. 535, para 952). In our opinion, there is and can be no doubt the validity of this principle and we prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

In *Ratilal Jasraj Vs. The State*, this Court at page 388 of the report laid down the law on the point of transfer of criminal cases from one Court to another thus :

"When dealing with applications for transfer, we are always reluctant to accede to the requests for transfer because in any cases litigants entertain apprehensions that they would not get a fair on flimsy, unreasonable or irrational grounds, and we do not encourage such transfer applications unless we are ourselves satisfied that there are some grounds on which the apprehensions of the litigant may be regarded as reasonable."

When the grounds urged by the accused No. 1 for transfer of the criminal case are considered in the light of the law on the point of transfer of cases, I find that the grounds urged by the accused No. 1 are all imaginary and he has attached sinister motive to the innocent acts of the learned trial Magistrate. In case it cannot be said that the apprehension of the accused No. 1 is reasonable on the facts mentioned above. The trial of the criminal case has started, evidence of one witness completely and substantially of the second witness has been recorded and three of the accused are in custody since long. Therefore, unless there is a reason to believe that the apprehension of the accused No. 1 is reasonable, the case cannot be transferred from the 11th Court to some other Court simply for

the asking of the accused No. 1.

11. The learned Counsel for the petitioner-accused No. 1 submitted that the applicants-complainants (P.Ws. 1 and 2) filed Criminal Application No. 1760 of 1988 for permitting them to join as party to these proceedings and for peremptory hearing of the petition filed by the accused No. 1 and in the alternative for vacating the stay and continuation of the criminal case indicate that the complainants are interested in continuing the proceedings before the same learned Metropolitan Magistrate. The learned Counsel contends that the complainants were satisfied that the learned trial Magistrate was against the accused No. 1 and, therefore, he wanted to continue the trial before the learned trial Magistrate. He submits that this should also be considered as an additional ground for transfer of the case. I am unable to agree with the learned Counsel. The complainants are interested in the case. Their shop was burgled and property worth more than Rs. 6,00,000/- was stolen from that shop. Therefore, there is nothing wrong in their approaching this Court and asking for speedy trial of the criminal case.

12. The learned Counsel for the petitioner-accused No. 1 also contends that the Investigation Officer N. R. Tambawekar had no business to file an affidavit in this case and the fact that he filed an affidavit in reply to the petition filed by the petitioner and wanted the petition to be dismissed clearly indicate that the Investigating Officer also is satisfied that in case the criminal case continues before the same learned Metropolitan Magistrate, he was likely to succeed in the prosecution launched by him and, therefore, this should also be considered as an additional ground for transferring the case. I am unable to agree with the learned Counsel. There is nothing wrong in the Investigating Officer filing an affidavit in reply when the petitioner has made wild allegations in the petition.

13. The learned Counsel for the petitioner-accused No. 1 has also submitted an application for prosecuting the said Investigating Officer Tambawekar for perjury. According to him, Tambawekar falsely stated in paragraph 5 of his affidavit that an application was filed on behalf of the accused No. 1 for his discharge from the case and the said application was rejected by the learned trial Magistrate and a subsequent charge was framed against the accused No. 1 on 14th October, 1987 in the learned trial Magistrate's Court, though no such application was made by the accused No. 1 on 1st October, 1987. He also submitted that Tambawekar had read the report of the learned trial Magistrate wherein he has stated that on application for discharge of the accused No. 1 was made and still he made the aforesaid false statement and as such he was liable to be prosecuted for perjury and he submitted that this Court should order his prosecution for the offence punishable under S. 193, I.P.C.

14. The reading of the Roznama dated 1st October, 1987 shows that the Court Clerk of the learned trial Magistrate while writing the Rozanama wrote therein that an application for discharge was made, and on the basis of that record the Investigating Officer Tambawekar made the impugned statement in paragraph 5

of his affidavit. The verification of the affidavit made by Tambawekar is on the basis of his personal knowledge and official record, which he believed to be true. It is not mentioned therein what portion out of the affidavit is to his personal knowledge and what portion thereof is on the basis of official record. While verifying an affidavit it is necessary that the dependent should invariably state therein what portion is to his personal knowledge and what is on the basis of the official record and in case some portion is on basis of the information received from someone else, he has to state therein that it was stated therein on the information received from particular source. In the present case it appears that on the basis of wrong record made by the Court Clerk while writing the Roznama dated 1st October, 1987 Tambawekar made the impugned statement in paragraph 5 of his affidavit. On those facts it cannot be said that Tambawekar knowingly and intentionally made a false statement. Consequently, I find that no action for perjury can taken against Tambawekar and as such the application made by the learned Counsel for the petitioner accused No. 1 for prosecuting Tambawekar for perjury is liable to be rejected and it is hereby rejected.

15. In the result, I find that the learned Additional Sessions Judge was perfectly right in passing the order dated 30th June, 1988 dismissing Criminal Revision Application No. 145 of 1988. The allegations made by the petitioner-accused No. 1 are mostly imaginary and no reasonable man on the basis of such facts can entertain a reasonable apprehension that he would not get justice at the hands of the learned trial Magistrate. On the facts mentioned above, it can never be said that fair and impartial trial of the accused No. 1 cannot be had before the learned trial Magistrate. The extraordinary jurisdiction of this Court under Article 227 of the Constitution and Section 482, Cr.P.C. has to be invoked to prevent the abuse of process of any court or otherwise to secure the ends of justice. Those powers cannot be invoked to transfer the case from one Criminal Court to another Criminal Court on imaginary and flimsy ground put forward by the petitioner.

16. In the result, there is no substance in the petition and it is hereby dismissed and the rule is discharged. The writ shall be immediately issued to the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Bombay, and the learned Metropolitan Magistrate shall proceed with the trial as expeditiously as possible.

17. Criminal Application No. 1760 of 1988 filed by the applicants-complaints does not survive in view of the aforesaid order and it stands disposed of.

18. At this stage, the learned Counsel for the petitioner-accused No. 1 applied for further stay of the proceedings in the Court of the learned Additional Chief Metropolitan Magistrate 11th Court, Kurla, Bombay for two weeks to enable him to approach the Supreme Court and also applied for leave to appeal to the Supreme Court. No legal question not decided by the Supreme Court is involved in this case and hence I do not think that this is a fit case for granting the certificate to appeal to the Supreme Court asked for by the learned Counsel.

Hence the application made by the learned Counsel for leave to appeal and also for stay of the proceedings is rejected.

19. Order accordingly.