
(2007) 09 BOM CK 0115
In the Bombay High Court
Case No : Criminal Application No. 1898/07

Ms. Sarika

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 468, 471

Citation : (2007) 09 BOM CK 0115

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.P. Kshirsagar, for the Appellant; R.P. Joshi, for the Respondent

Judgement

C.L. Pangarkar, J.—Rule. Returnable forthwith.

2. Heard Finally with consent of parties.

3. This is an application u/s 407 of the Code of Criminal Procedure.

4. The applicant is an accused in Criminal Case No.349 of 2002 before the Second Additional Chief Judicial Magistrate, Nagpur. She is facing trial under various Sections such as 468, 471 of Indian Penal Code. During the course of the trial, it is alleged that, she had made several types of applications which were rejected by the learned Magistrate and she apprehends that the Magistrate is prejudiced against her and she may not, therefore, get justice at his hands. She, therefore, had moved an application before the Sessions Judge for transfer of the said criminal case. The learned Sessions Judge rejected the prayer. Since the learned Sessions Judge rejected the prayer, the accused has approached this Court.

5. I have heard Shri Kshirsagar, learned Counsel for the applicant and Shri R.P.Joshi, learned Counsel for the non-applicants.

6. The applicant/accused attributes bias to the learned Magistrate. It is the

settled proposition of law that justice must not only be done but seen to have been done. However, when a transfer of a case is sought on ground of bias, it must be shown that the apprehension of the accused that he will not get justice is reasonable. Not any and every apprehension in the mind of accused can be ground for transfer. It is, therefore, necessary for applicant to place before the court the facts which give rise to such an apprehension so as to enable the court to determine if it is reasonable.

7. Shri Kshirsagar, learned Counsel for the applicant/accused, contended that the first such reason is the rejection of the application of the accused/applicant to provide legible copies to the accused. He submitted that inspite of passing an order directing prosecution to supply the copies, the learned Magistrate rejected the application and accused was required to approach the court of Sessions. He submitted that even after the court of Sessions Passed the order, the copies were not supplied. Here, it has to be borne in mind that it is the duty of the prosecution to supply the copy and the blame cannot be put at the door of the court. The learned Counsel for the prosecution, on the other hand, submitted that the grievance is unjustified. He submitted that firstly the court had passed an order on Exh.26 to supply the copies on 8/5/2006. There was, therefore, already an order and unnecessarily second application for supply of the copies was made. It is apparent from the pleadings of the applicant in this petition that the court had already passed an order for supply of the copies long back when the second application was rejected. Further it may be mentioned that the charge-sheet was supplied to the accused in the year 1999 and right from 1999 to 2006, the applicant did not make any grievance that the copies were not legible.

8. The next grievance made is in respect of issue of non-ailable warrant against the applicant/accused. He submitted that unnecessarily warrant was issued against the applicant and this further shows the prejudice in the mind of the court. Shri Joshi, learned Counsel, submitted that on the date the warrant was issued, neither the lawyer nor the accused was present and court was, therefore, justified in issuing the warrant. The record shows neither of them was present before the court and court was left with no other alternative but to issue a warrant. In no case, therefore, the order can be faulted with. In fact, it appears that the court had issued a warrant because the accused had left the country without seeking permission of the court. It is in that context, the order refusing to cancel the warrant was passed and such a judicial order could not be in fact a ground to make any grievance against a judge to show that he is prejudiced.

9. Mr. Kshirsagar, learned Counsel, then contended that the accused wanted justice Kazi's report to be placed before court and six weeks' time was sought and that application dated 2/2/2007 was arbitrarily rejected. The order shows that the application was not rejected as is contended but a short adjournment was granted. It also appears that after filing this application neither the accused nor the counsel was present. Mr. Kshirsagar sought to make capital out of order

on application for adjournment dated 5/6/2007. The accused states in this application that she has lost all hopes of getting fair justice and again sought six weeks" time. It appears that on 2/2/2007, six weeks" time was sought and matter was not heard till 5/6/2007 i.e. for almost three months. In any case, therefore, on 5/6/2007 the accused did get more than six weeks time to file a report. It was not filed and yet the allegations were made against the judge that accused would not get justice. Therefore, the grievance as put by Mr.Kshirsagar carries no weight and shows attitude of the accused to anyhow stall the matter. It seems from the record the petition itself and the reply filed by the prosecution that right from 2006 and even prior to that the only attitude of accused was to stall the proceedings on one or the other ground. It appears to me that the judge had acted fairly. The accused had applied for permanent exemption and it was granted by the court on the same day. Even an application for permission to leave the country was also granted on the same day by the learned judge. Now, had the judge had any kind of grudge against the accused, he would not have granted both the applications without any hesitation. Insistence of the judge to hear the matter in no case can be treated as showing any unfairness. Not only these two applications were granted without hesitation but even on other occasion time was granted though not as much as was sought by the accused. It appears that the accused is in England and it is difficult for her to come back and that appears to be the reason why there is an attempt to protract the proceedings. Mr. Khirsagar has relied on a decision of the Supreme Court reported in *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*, . The facts of the reported case and this case cannot at all be compared. In the reported case, the matter was transferred out of the State itself because it was found that atmosphere in the State was not conducive for the trial of the case in that State. All the same, the court did look into the fact that the apprehension was reasonable or not. The court had also observed that the state of mind of the person who entertains the apprehension no doubt is a material factor but not the only determinative or concluding factor. Obviously, mere apprehension is not enough. Mr.Kshirsagar had also relied on a decision of Supreme Court in *R. Balakrishna Pillai Vs. State of Kerala*, . Almost similar are the observations of the Supreme Court which I quote here

The petitioner"s second contention also deserves to be rejected. It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before transferring the case, the court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appears to the court to be reasonable, genuine and justifiable. In the present-day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons.

Yet another decision of the Supreme Court reported in Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, placed before me to show what is meant by bias. In the case at hand, I do not think that there is anything to suggest that the approach of the judge is biased. He has been acting fairly. The matter is being adjourned on the one or the other count right from 2006. It is a part-heard matter. He had granted permanent exemption and permission to leave the country without hesitation. Simply because a few orders are adverse, an inference of bias cannot be drawn. It would be inappropriate on the part of higher courts to transfer the cases from one court to another on the ground that a few adverse orders are passed against the party. If that is done, perhaps no judge would ever be able to finally dispose off any case. The learned Sessions Judge has rightly rejected the application. I too find that there is no ground to transfer the case at all. The application is rejected.

The learned Counsel for the applicant contended that the proceedings before the trial court be continued to be stayed for period of six weeks to enable the party to approach the Supreme Court. The trial court shall not proceed with the trial for another four weeks.