

Bombay High Court

Shivaji vs The State Of Maharashtra on 28 July, 2009

Bench: Shrihari P. Davare

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

AURANGABAD BENCH, AURANGABAD

CRIMINAL APPLICATION NO. 3288 OF 2008

- 1 Shivaji s/o Dnyanoba Sable,  
age 23 years, occ. Driver,

r/o Dhanewadi, Tq. Palam,  
Dist. Parbhani  
ig

...Applicant  
(Orig.complainant)

VERSUS

- 1 The State of Maharashtra,  
  
2 Mahadu s/o Ramchandra Dongre,  
age 37 years,occ. Agril.,

r/o Dhanewadi, Tq. Palam,  
District Parbhani,

- 3 Munjaji s/o Pandurang Dongre,  
age 35 years,occ. Agril.,

r/o Dhanewadi, Tq. Palam,  
District Parbhani,...Respondent

- 4 Ram s/o Sadhu Dongre,  
age 25 years,occ. Agril.,

r/o Dhanewadi, Tq. Palam,  
District Parbhani,

- 5 Rangnath s/o Marotrao Dongre,  
age 70 years,occ. Agril.,  
r/o Dhanewadi, Tq. Palam,  
District Parbhani,

- 6 Waman s/o Rangnath Dongre,  
age 35 years,occ. Agril.,  
r/o Dhanewadi, Tq. Palam,  
District Parbhani,

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- 7 Prabhu s/o Nivrutti Dongre,  
age 40 years,occ. Agril.,

r/o Dhanewadi, Tq. Palam,  
District Parbhani,

- 8 Gunaji s/o Gangaram Dongre,

age 30 years,occ. Agril.,

r/o Dhanewadi, Tq. Palam,  
District Parbhani,

...Respondents  
(Orig. accused nos. 2 to 8)

ig .....  
.....

Shri P.N.Kalani, advocate for the applicant  
Shri B.J.Sonwane, A.P.P.for respondent no.1  
Nobody for respondent nos. 2 to 8, since they have  
refused to accept the notices

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CORAM : SHRIHARI P.DAVARE, J.

DATED : 28th JULY, 2009.

ORAL JUDGMENT :

1 Perused.

2 Rule. Rule made returnable forthwith and by consent of

the learned respective counsel for the parties, this application is taken up for final hearing.

3 The applicant (original complainant) has preferred the present application requesting that Sessions Case No. 51 of 2005 pending before the learned Additional Sessions Judge, Kandhar, District Nanded be transferred to any other court for disposal in accordance with law.

4 The applicant is the original complainant in the offence registered with police station, Mukhed, District Nanded bearing No. 45 of 2005 on 19.4.2005. The charge sheet came to be filed before the learned Judicial Magistrate, First Class, Mukhed, District Nanded after the completion of

investigation under Sections 302, 201 r/w 34 of the Indian Penal Code therein against respondent nos. 2 to 8. Thereafter the said case was committed to the court of Sessions, Kandhar, District Nanded and it was numbered as Sessions Case No. 51 of 2005. Accordingly, charge was framed against respondent nos. 2 to 8 and matter was posted for evidence.

5 The applicant (original complainant) sought adjournment as he was not feeling well, but the learned Additional Sessions Judge imposed heavy costs upon him on two occasions. The applicant submits that he is a poor person and was unable to pay the said costs. The applicant further submits that the approach of the learned Additional Sessions Judge was not proper and, therefore, the applicant lost his confidence in the Additional Sessions Judge. Hence, he filed Miscellaneous Application No. 14 of 2008 before the learned Sessions Judge, Nanded for transfer of Sessions Case No. 51 of 2005, contending that there was no possibility of impartial inquiry, since the applicant has lost confidence in the Additional Sessions Judge, and also contended that the court at Kandhar is not convenient for the witnesses and the accused persons. It is further submitted that the court of Additional Sessions Judge, Gangakhed is convenient for all. However, said Miscellaneous Application No. 14 of 2008 came to be rejected by the learned Sessions Judge, Nanded on 28.8.2008. Hence, the applicant has preferred the present application challenging the validity and legality of the said order, with a prayer that Sessions Case No. 51 of 2005 pending before the learned Additional Sessions Judge, Kandhar, District Nanded be transferred to any other court for disposal in accordance with law.

6 Heard learned counsel for the respective parties.

7 At the out set, considering the rival submissions, it is pointed out that the learned Additional Sessions Judge, who imposed the costs upon the applicant has been already transferred and, therefore, there is no substance in the present application. Besides that, the learned counsel for the applicant submitted that he has no grievance against the present Additional Sessions Judge, Kandhar and, therefore, also nothing survives in the present application.

8 Apart from that, even considering the factor of convenience, it is for the accused persons to prefer application for transfer, if any inconvenience is caused to them, and the applicant (original complainant), in fact, has no basis therefor.

9 Besides that, the learned Sessions Judge, Nanded has rejected the application of the applicant vide order passed in Miscellaneous Application NO. 14 of 2008 on 28.8.2008 by way of reasoned order and on perusal of the contents of the said order, I am of the view that there is no necessity to interfere therein in the present application.

10 It appears that since the earlier Additional Sessions Judge imposed the heavy costs upon the applicant herein, the applicant herein preferred the application for transfer, but now the said cause does not subsist since the said Additional Sessions Judge has already been transferred as afore said.

11 It is the contention of the applicant that the court of Additional Sessions Judge, Kandhar is not convenient for the witnesses, but it is for the prosecution to consider the said aspect and to take

suitable steps, if required, and not for the applicant (original complainant) herein.

12 In the circumstances, the present application bears no substance and same is devoid of any merits and same is required to be rejected.

13 In the result, the present application fails and same stands dismissed. Rule stands discharged accordingly.

(Shrihari P.Davare J.) dbm/crap3288.o8