

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 3297 of 2019

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RAMJIBHAI RAVJIBHAI SIYANI
Versus
STATE OF GUJARAT

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Appearance:

HCLS COMMITTEE(4998) for the Applicant(s) No. 1
MR. RADHESH Y VYAS(7060) for the Applicant(s) No. 1
LAW OFFICER BRANCH(420) for the Respondent(s) No. 3
MS MEGHA JANI(1028) for the Respondent(s) No. 4
MS TRUSHA K PATEL(2434) for the Respondent(s) No. 3
NOTICE SERVED for the Respondent(s) No. 2
MR LB DABHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 24/03/2023

ORAL ORDER

1. Heard Mr. Radhesh Vyas, learned advocate for the applicant, Ms. Megha Jani, learned advocate for respondent no.4, Ms. Trusha K. Patel, learned advocate for respondent no.3 and Mr. L.B. Dabhi learned APP for the respondent-State.
2. The applicant Ramjibhai Siyani is before this Court seeking transfer of the Criminal Case No.1411 of 2011 pending before Additional Judicial Magistrate First Class, Bhuj-Kachchh be transferred to the learned Judicial Magistrate First Class, Halvad, Dist: Morbi.
3. Mr. Radhesh Vyas, learned counsel for the applicant has

urged that, pursuant to the FIR for the offence punishable under Sections 504 and 506(2) of the Indian Penal Code, the applicant has been chargesheeted and the same had been culminated into Criminal Case No.1411 of 2011. The applicant was defending his case as party-in-person since no advocate was ready to defend his case. Even, the DLSA, Bhuj was unable to provide the services of the advocates in legal aid as the penal advocates were not willing to take up the matter of the applicant. The applicant was convicted and sentenced for a simple imprisonment of 1 year. An appeal was preferred against the order of conviction. Matter was remanded back, directing the trial Court to recall the witnesses and provide legal aid from the penal of District Legal Aid Committee, Kachchh.

4. In the aforesaid facts, Mr. Vyas, learned counsel would submits that, since long matter is pending before the trial Court and it could not proceed further because Bhuj Bar Association has passed a resolution that, no advocate shall have to render their services in defense of the applicant herein.
5. In such circumstances, Mr. Vyas, learned counsel has urged that, considering the compelling circumstances and to protect the fundamental right of the applicant to get fair trial, more particularly, right to consult and to be defended by the legal practitioner of the choice of the applicant, the criminal case may be transferred to

adjoining District: Morbi.

6. Ms. Jani and Ms. Trusha Patel, learned counsels have fairly conceded that, a fair and impartial trial is an essential requirement of dispensation of justice and therefore, in the interest of justice, Court may pass necessary orders to do complete justice to the applicant.
7. Having considered the contentions raised by learned counsels for the respective parties and on perusal of the material placed on record, it appears that, in the year of 2006, the President of District Bar Association, Bhuj wrote a letter to the Principal District Judge, Kachchh-Bhuj stating that, the applicant is in habit of making false allegations against the advocates and advocates of legal aid and therefore, no member of the Bar is willing to defend for an on behalf of the applicant. The Bar has also passed a resolution not to defend the applicant herein. Record further indicates that, Secretary, DLSA, Bhuj tried his level best to provide services of advocate in legal aid and had also asked to the applicant to suggest any name of the advocate, so that authority could issue appointment of the advocate.
8. In the case of transfer from one District to another, the law is very well settled by catena of decisions of the Apex Court. It is held by the Apex Court in its various decisions that the primary object of every procedural law to facilitate justice and further its ends. A fair and impartial

trial is an essential requirement of dispensation of justice. In the facts of the present case, the apprehension expressed by the applicant that, he will not get fair and impartial trial as no any advocate of the Bar is ready to defend his case. Considering the resolution of the Bar, the members were not satisfied with the conduct of the applicant herein. On earlier occasion also, he was convicted by the Court as he could not defend his case properly. Thus, the apprehension expressed by the applicant herein is reasonable and considering the peculiar facts and circumstances of the present case, this Court is of the opinion that, the grounds mentioned in the petition are substantial to necessitate the exercise of power of transfer, mainly on the ground of depriving the facility of competent legal aid to the petitioner.

9. For the foregoing reasons, the petition is allowed. The case being C.C. No.1411 of 2011 pending before learned Judicial Magistrate First Class, Bhuj-Kachchh is ordered to be transferred to learned Judicial Magistrate First Class, Halvad, Dist: Morbi. Direct service is permitted.

TAUSIF SAIYED

(ILESH J. VORA,J)