

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE,
ESPLANADE, MUMBAI
(I/c Presiding Officer – Smt. S. T. Dande)
Case No. 40/TA/2021
(CNR:-- MHMM-11-005848-2021)
(Date:-- 21.10.2021)

Ms. Kangana Ranaut

having address at 5th Floor, DB Breeze, 9, 16th
Road, Khar (W), Mumbai- 400 052.

.... Applicant

Versus

1. Javed Akhtar

having address at 702, Sagar Samrat, Green
Fields, Opposite Juhu Police Station, Juhu,
Mumbai- 400 049.

.... Respondents

2. The State of Maharashtra

Order Below Exh-1

1. The Application is filed u/sec. 410 of Cr. P. C for transfer of Criminal Complaint No. 2575/SS/2020 pending before Metropolitan Magistrate, 10th Court, Andheri, Mumbai to any other Court. Brief facts of the application are as follows:--

2. It is averred in the application that, the Applicant is an accused in C. C. No. 2575/SS/2020 filed by the Respondent No. 1 u/sec 499, 500 of Indian Penal Code, 1860.

3. It is further averred in the application that, Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai is misusing his powers to cause injury to the Applicant. He is intentionally causing prejudice to the rights and liberties of the Applicant with a biased mind.

Despite of guidelines issued by the Hon'ble High Court in the case of *Bhaskar Sen V/s State of Maharashtra And Ors* dated 01.09.2004. The Magistrate without giving any sufficient cause and reasons in writing, is forcing the Applicant to remain present on each date and is completely ignoring the fact that the Applicant has been continuously represented through her Advocate on every date after receipt of summons. It is alleged that the Ld. Magistrate is also ignoring the fact that the discretion given to him is not an arbitrary power and is to be exercised cautiously and judicially.

4. It is further averred in the application that, the Ld. Magistrate has intentionally caused injury to the mind and reputation of the Applicant by announcing in an open court on two different occasions before the media that "if the Applicant is not present for hearing on the next date, an arrest warrant will be issued against her". Such act on the part of the Magistrate was not only unwarranted and uncalled for but also largely proved that he is trying to cause injury to the name and reputation of the Applicant on every given opportunity, even before the trial. Hence prayed that, Complaint bearing C. C. No. 2575/SS/2020 be transferred from Metropolitan Magistrate, 10th Court, Andheri, Mumbai to any other Metropolitan Magistrate Court.

5. The Respondent No. 1 Mr. Javed Akhtar has filed his reply and resisted the application. It is contended that the transfer petition is devoid of any merits and is liable to be dismissed. In Criminal Complaint No. 2575/SS/2020 the Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai after taking the cognizance of the offence,

issued process vide a detailed and reasoned order dated 01.02.2021. After issuance of summons the accused was directed to appear on 01.03.2021 for recording of her plea as per procedure laid down in section 251 of Cr. P. C. However, the Applicant has willfully remained absent on each and every date of hearing. Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai accommodated the Applicant/Accused on each and every occasion by allowing the exemption applications by the Applicant.

6. It is further contended that, the Applicant has filed an application seeking permanent exemption u/sec 205 of Cr. P. C., the same has never been argued by the Applicant until date. The Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai gave a number of opportunities to the Applicant/Accused to appear. However, Applicant failed to appear before the Court. The procedure followed by the Ld. Metropolitan Magistrate, Mumbai has been confirmed and upheld by the Sessions Court as well as Bombay High Court while rejecting the Revision Petitions filed by the Applicant.

7. It is further contended that on 27.07.2021 the Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai given direction to the Applicant to appear and adjourned the matter on 01.09.2021. On 01.09.2021 as per mutual consent again the matter was adjourned to 14.09.2021. However, on 14.09.2021 accused failed to appear before the court. Hence Ld. Metropolitan Magistrate was constrained to pass an order directing the Applicant/Accused to appear on 20.09.2021 failing which a warrant would be issued. Once Magistrate has exercised

the judicial discretion, the same should not be interfered with or substituted with that of the High Court or the Supreme Court. It is further contended that the present transfer application has been filed with the sole intention to delay the proceeding and to harass Respondent No. 1. Hence, prayed that transfer application be rejected.

8. The following points arose for my determination, my findings thereon with reasons are as under:--

Sr. No.	Points	Findings
1	Whether there are reasonable grounds for transfer of Case No. 2575/SS/2020 from Metropolitan Magistrate, 10 th Court, Andheri, Mumbai to any other court?	No
2	What Order ?	Application is rejected

REASONS

9. I have called remark of Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai on 01.10.2021. Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai has filed his remark on 14.10.2021 and denied the allegations leveled against him.

10. Perused documents filed with the application. It shows that on 03.11.2020 complaint was filed by Mr. Javed Akhtar Respondent No. 1 before Metropolitan Magistrate, 10th Court, Andheri, Mumbai. On 03.12.2020 verification statement of the complainant was recorded. On 19.12.2020 Juhu Police was directed to investigate u/sec 202 of Cr.P.C. since the accused was residing beyond the jurisdiction of Andheri Court.

On 16.01.2021 Police sought further time to investigate. On 01.02.2021 Ld. Metropolitan Magistrate issued process against accused. The order of issuance of process passed by Ld. Metropolitan Magistrate is upheld by the Hon'ble Sessions Court and Hon'ble High Court. Despite of receipt of summons Applicant/Accused Ms. Kangana Ranaut remained absent and also not applied for exemption. Therefore on the application of Complainant/Respondent No. 1 Bailable Warrant of Rs. 1000/- was issued against the Applicant. On 25.03.2021 Applicant applied for taking the case on board for cancellation of warrant. Accepting her request, Bailable Warrant was cancelled and Applicant was released on personal bond and surety of Rs. 15,000/- with alternate cash security.

11. Further, record also shows that, on 26.03.2021 the Applicant/Accused remained absent and applied for exemption which was allowed. Thereafter on various dates Applicant/Accused remained absent. On 25.06.2021 the Applicant/Accused applied for exemption which was granted. Thereafter on 27.07.2021 again accused remained absent and the Ld. Advocate for Respondent No. 1 / Complainant filed application for issuance of Non-Bailable Warrant against Applicant/Accused and she again applied for exemption. After hearing both the sides Ld. Metropolitan Magistrate, 10th Court, Andheri rejected the application of the Complainant i. e. Respondent No. 1 for issuance of Non-Bailable Warrant and granted exemption to accused. Thereafter on 01.09.2021 again accused remained absent. Thereafter on 14.09.2021 the accused remained absent and filed exemption application. At the same time complainant has also filed application for issuance of Non-Bailable Warrant. The application of complainant for issuance of Non-Bailable Warrant was rejected and again exemption of

accused was granted by a common order. Record shows that Ld. Metropolitan Magistrate, 10th Court, Andheri never rejected any exemption application filed by the Applicant/Accused. However, he has rejected several applications of complainant filed for issuance of Non-Bailable Warrant against Accused/Applicant. It shows that Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai has given fair opportunity to the accused to remain absent by granting all her exemption applications. He has not acted against Applicant/Accused and neither had any bias towards Accused/Applicant.

12. Ld. Metropolitan Magistrate has specifically denied the allegations regarding interaction with media persons. I have perused all the orders passed by Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai. He has passed orders judiciously. Moreover order dated 01.02.2021 passed by Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai was confirmed by the Hon'ble Sessions Court in Criminal Revision Application No. 77/2021. Further the Hon'ble High Court has also dismissed the Criminal Application No. 545/2021 filed by the Applicant. It shows that Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai has acted judiciously and is not biased against the Applicant. Merely because the Court proceeds with the case by following the procedure of law, it does not mean that Court is bias against the Applicant/Accused. Unless some positive, concrete case is made out showing that, there is reasonable apprehension of not getting fair trial or fair justice from the concerned court, the proceeding cannot be transferred from one court to another on mere vague and general allegations.

13. In the case of Usmangani Adambhai Vahora and Captain Amarinder Singh reported in 2016 (3) SCC 370, the Hon'ble Supreme Court has categorically laid down that transfer of trial from one court to the other at the behest of a party can be ordered only if a finding is reached that there is a reasonable apprehension that justice will not be done in the matter, but for such order of transfer. It has been emphasised that such an apprehension has to be seen from the state of mind of person or party who entertains such an apprehension, but at the same time, the court must come into a conclusion that such an apprehension is a reasonable apprehension.

14. It is settle position of law that the proceeding cannot be transferred from one court to another on mere apprehension. The Applicant has failed to make out positive, concrete case to show that her apprehension is reasonable. If on the basis of false allegation, matter is transferred, it will affect the morale of Presiding Officer. There are no grounds made out for transfer of C. C. No. 2575/SS/2020 from Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai to any other Court. Hence I answer point No. 1 accordingly.

Point No. 2:-- In view of discussion in point No. 1, I pass the following order:--

ORDER

Transfer Application No. 40/TA/2021 is rejected.

Sd/-

(Smt. S. T. Dande)

Addl. Chief Metropolitan Magistrate,
19th Court, Esplanade, Mumbai.

I/c Chief Metropolitan Magistrate, Mumbai.

Date:--21/10/2021