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IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE  
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)  
ON THE 22<sup>nd</sup> OF NOVEMBER, 2022

**MISC. CRIMINAL CASE No. 42393 of 2022**

**BETWEEN:-**

DHARMENDRA SINGH PARIHAR S/O SHREE  
PREM SINGH PARIHAR, AGED ABOUT 22  
YEARS, OCCUPATION: AGRICULTURE CHAPEDA  
SATGANV TEHSIL AND DISTRICT SHAJAPUR  
(MADHYA PRADESH)

.....PETITIONER

(SHRI GOURAV SHRIVASTAVA, LEARNED COUNSEL FOR THE  
PETITIONER .

**AND**

1. NARAYAN PRASAD PANDEY S/O LATE SHREE  
MADANLAL PANDEY, AGED ABOUT 73 YEARS,  
OCCUPATION: ADVOCATE 91 YOGESH BHAWAN  
NAI SADAK SHAJAPUR (MADHYA PRADESH)
2. DISTRICT BAR ASSOCIATION S/O DISTRICT  
BAR ASSOCIATION SHAJAPUR, DISTRICT  
SHAJAPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI PRANAY JOSHI, LEARNED COUNSEL FOR THE  
RESPONDENT NO.1 AND NONE FOR RESPONDENT NO.2  
THOUGH DULY SERVED.

.....  
*This PETITION coming on for ADMISSION this day, but with  
the consent of parties, heard finally and the court passed the  
following:*

**ORDER**

This petition has been filed under Section 407 of Cr.P.C. for  
transfer of the complaint case registered as SCNIA No.133/2021  
pending before the Court of JMFC, Shajapur (M.P.) to any other nearby

situated Court.

Facts of the case are that non-applicant/respondent has filed a complaint under Section 138 of N.I. Act alleging that the cheques bearing numbers 610702 and 610703 of Rs.2,00,000/- each were issued by the applicant in lieu of a financial liability against the non-applicant. The cheques were presented for encashment before the bank, but were dishonored due to insufficiency of funds in the accounts of the applicant. The said complaint was registered as SCNIA No.133/2021 pending before the JMFC, Shajapur. The respondent is a practicing advocate at Shajapur and hence, in view of the resolution of District Bar Association Shajapur dated 27.05.2022 that no advocate enrolled in their association can be engaged in any case against the advocates and, hence, the petitioner and his counsels have also moved an application for engaging another counsel. On 25.06.2022, the learned trial Court has rejected applications of the applicant and framed the charges against the petitioner under Section 138 of N.I. Act. In view of the resolution dated 27.05.2022 and ignoring the facts the learned Court has passed the order dated 25.06.2022 which affects the fundamental rights of the petitioner and hence, the present petition has been filed for transfer of the case to nearby Court.

Learned counsel for the petitioner submits that the resolution passed by District Bar Association, Shajapur as well as the order of learned trial Court dated 25.06.2022 are in violation of general rule of

law 'right to defend' which is available to the applicant/accused as guaranteed under Article 20 and 21 of the Constitution of India. The prayer of the petitioner was very limited to adjourn the case only for a short period and in view of the resolution, the advocates appearing on behalf of the petitioner have withdrawn their vakalatnama. The learned trial Court has erred in passing the order while there were no advocate on behalf of the petitioner and the petitioner was under apprehension that as the respondent is also an advocate and due to the resolution of Bar, no advocate will appear in his case. It is further submitted that in case the trial is commence in absence of the Advocate for the petitioner, the petitioner will suffer irreparable losses and unlawful hardships. Hence, prays for transfer of the case to the adjacent place/Court.

Learned counsel for the respondent no.1, on the other hand, has opposed the prayer by submitting that the notice issued by the District Bar Association, Shajapur has already been withdrawn and there is no hardship in hearing the matter at Shajapur and prays for dismissal of the petition.

I have heard the counsel for the parties and perused the record.

It is evident from the record that District Bar Association, Shajapur has given notice (Annexure A/4) to the advocates appearing on behalf of the petitioner on 27.05.2022 and the advocates appearing on behalf of the petitioners have prays for withdrawal of their vakalatnama by filing an application (Annexure A/3). It is also evident that District

Bar Association, Shajapur has passed the resolution that no member of the District Bar Association will appear in any case which is filed against any Member of District Bar Association, Shajapur. Such resolution is illegal. **It is fundamental right enshrined by the Constitution of India to every citizen to avail legal assistance from any Advocate/Lawyer, Firm or authorized person. Such resolution is not only unconstitutional but also against the ethics of professional advocacy as well as against the concept of Articles 14, 20, 21 and 22(1) of Constitution of India. Legal profession is one of the honourable profession. Every litigant should be at liberty to find out for himself as to which lawyer will render him the best services.**

Such resolution is also against the law laid down by Hon'ble Apex Court in the case of **A.S. Mohammad Rafi vs. State of Tamilnadu reported in AIR 2011 SC 308** wherein the Hon'ble Apex Court has held as under:

*32. Professional ethics requires that a lawyer cannot refuse a brief, provided a client is willing to pay his fee, and the lawyer is not otherwise engaged. Hence, the action of any Bar Association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist,*

*rapist, mass murderer, etc. is against all norms of the Constitution, the Statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of the Gita.*

In the case in hand, it is clear that the District Bar Association has given notice to the advocates appearing on behalf of the petitioner to withdraw their vakalatnama. Hence, to avoid any prejudice and in the interest of justice, it is a fit case for transfer. Resultantly, the petition is allowed and the case bearing SCNIA No.133/2021 pending before the Court of JMFC, Shajapur (M.P.) is transferred to the Chief Judicial Magistrate, Dewas who may also assign the case to the JMFC having proper jurisdiction.

A copy of this order be sent to the Principal District and Sessions

Judge, Shajapur for necessary compliance.

A copy of this order be also sent to the CJM, Dewas for necessary information and action.

With the aforesaid, the petition stands disposed off.

Certified copy as per rules.

**(RAJENDRA KUMAR (VERMA))**  
**JUDGE**

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