

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

In the matter of an application to
transfer Case No: HC 39/2016 from
the High Court of Embilipitiya,
under and in terms of Section 46(1)
of the Judicature Act .

1. Kankanamge Prageeth Manjula

No: 72, 1st Lane,

Nawagampura, Ampara.

High Court of Embilipitiya

Case No: HC 39/2016

2. Wellawatte Arachchige

Kalyanasiri,

No: 43,

Adarshagama Batahira,

Thunkama.

Accused –Petitioners.

Vs.

Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Respondent.

C.A Transfer 01/2018.

High Court of Embilipitiya

Case No: 39/2016

BEFORE: P.PADMAN SURASENA, J(P/CA) &

A.L. SHIRAN GOONERATNE, J

COUNSEL : Saliya Peiris P.C with Lisitha Sachindra for the
Petitioner.

Randima Fernando S.C for the Respondent.

Supported &

Decided on : 29.01.2018.

P.PADMAN SURASENA, J (P/CA)

Court heard the submissions of the learned President's Counsel in support of his application. Court also heard the submissions of learned State counsel who opposed this application. Learned President's counsel on behalf of the Petitioners brought to the notice of this court several instances where the learned High Court Judge has made certain orders. It is his position that the cumulative effect of the said

orders would point to the fact that the accused petitioners will not be afforded a fair and impartial trial before this particular High Court Judge.

The first instance adverted to by the learned President's Counsel relates to refusal of an application made by the learned counsel who appeared for the accused petitioners for postponement of the trial on the basis that he was not ready. When considering the dates on which the indictment had been served and the date fixed for trial, there is no justification for the accused petitioners not to be ready for trial on the date fixed for it. This court is of the view that it is the duty of the accused petitioners to take all necessary steps to retain a counsel who is able to appear for him on the date of trial. The fact that the learned High Court Judge had refused a postponement on that basis does not indicate any bias on the part of the Judge.

Learned President's counsel for the Petitioners next brought to the notice of this court that the accused petitioners had been placed in

remand by the learned High Court Judge. This court observes that it was a temporary order and the accused petitioners had been placed in remand pending the conclusion of the evidence of lay witnesses. The accused petitioners have subsequently been released on bail as soon as the recording of evidence of lay witnesses was concluded. Therefore there is nothing turns out from that instance to support the petitioners application.

Learned President's Counsel for the Petitioners also brought to the notice of this court the order made by the learned High Court Judge with regard to the custody of the information book which the petitioner's counsel had wanted kept in courts custody. Even if that order is to be termed as an inappropriate order, mere making an inappropriate order by a Judge cannot be a ground by itself for a transfer of the whole case out of that court.

Learned President's counsel for the Petitioners also brought to the notice of this court several other instances where the learned High

Court Judge had made certain orders. These orders are not illegal orders as such. As pointed out by the learned State Counsel in those circumstances those grounds would at their highest be only grounds for an appeal.

This court is mindful that this is an application for transfer and not an application for revision. There is no basis for this court to come to a conclusion that it should invoke the jurisdiction vested in it by virtue of section 46 of the Judicature Act to transfer this case out of this particular High Court.

Learned State Counsel brought to the notice of this court that the evidence of all the lay witnesses have now been concluded. This shows that this trial is at its tail – end. Learned State Counsel also brought to the notice of this court that this trial pertains to an incident of triple murder and robbery and the learned trial judge endeavours to conclude the trial as soon as possible. This court is of the view that such endeavours by Judges should not be interpreted as any bias on

their part. This court is mindful of the struggle a judge has to engage in to conclude a trial. In those circumstances, this court is of the view that there is no merit in this application for transfer. Hence this court decides to refuse to issue notices on the Respondents. The application must stand dismissed.

PRESIDENT OF THE COURT OF APPEAL.

A.L. SHIRAN GOONERATNE, J

I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-