

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 2954 OF 2023

Delta Irrigation LLP
Limited Liability Partnership Firm,
Through its Partner
Shri Nilesh Vijay Panjwani
Age 35 Years, Occu. Business,
Office address : T-9, Crystal Plaza, 38A,
E Ward, Tarabai Park, Kolhapur.

.....Petitioner

Versus

1. The State of Maharashtra
2. Pramod Yashwant Desai
Age 44 Years, Occu. Business,
R/o. B-12, Rajshree Shahu Society,
Satara Road, Bibwewadi,
Pune 411 037

.....Respondents

WITH

CR. WRIT PETITION NO. 2953 OF 2023

Delta Irrigation LLP
Limited Liability Partnership Firm,
Through its Partner
Shri Nilesh Vijay Panjwani
Age 35 Years, Occu. Business,
Office address : T-9, Crystal Plaza, 38A,
E Ward, Tarabai Park, Kolhapur.

.....Petitioner

Versus

1. The State of Maharashtra
2. Pramod Yashwant Desai
Age 44 Years, Occu. Business,
R/o. B-12, Rajshree Shahu Society,
Satara Road, Bibwewadi,
Pune 411 037

.....Respondents

-
- *Mr. Bhushan Deshmukh (Through V.C.) a/w. Mr. Satyajeet Shirke for the Petitioner in both Petitions.*
 - *Mr. C.D. Mali, A.P.P. for the Respondent No.1-State.*
 - *Mr. Amit Icham for the Respondent No.2.*
-

Coram : ASHWIN D. BHOBE, J.

Date : 6th October 2026.

ORAL JUDGMENT :

1. Heard, Mr. Bhushan Deshmukh, learned Advocate for the Petitioner, Mr. Mali, learned A.P.P. for the Respondent No. 1-State and Mr. Amit Icham, learned Advocate for the Respondent No. 2.
2. Mr. Bhushan Deshmukh, learned Advocate for the Petitioner, Mr. Mali, learned A.P.P. for the Respondent No. 1-State and Mr. Amit Icham, learned Advocate for the Respondent No. 2, state that the subject matter of both these Petitions is common and that both the Petitions be taken up together and disposed of by a common order. At their joint request, both the Petitions are taken up together.

3. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

4. In Writ Petition No. 2954 of 2023, the Petitioner has sought the following substantive relief in prayer clause 7A, as set out verbatim:

“a. That this Hon'ble Court may be pleased to allow the present Petition and quashed and set aside the order dated 11/04/2022 passed below Exh. 15 in S.C.C. No. 4377 of 2021 passed by the Ld. 5th JMFC, Kolhapur.”

5. In Writ Petition No. 2953 of 2023, the Petitioner has sought the following substantive relief in prayer clause 7A:

“a. That this Hon'ble Court may be pleased to allow the present Petition and quashed and set aside the order dated 11/04/2022 passed below Exh. 15 in S.C.C. No. 4375 of 2021 passed by the Ld. 5th JMFC, Kolhapur.”

6. The orders dated 5th September 2023 and 11th December 2024 passed in these petitions are relevant, as such, reproduced:-

a. Orders dated 5th September 2023:-

“1. The Petitioner is the original complainant in S.C.C.No.4377 of 2021, as well as, in S.C.C.No.4375 of 2021 pending before the J.M.F.C. Court No.5, Kolhapur. Both these cases are filed against

the Respondent No.2 U/s.138 of the Negotiable Instruments Act. Though, the parties in both these cases are the same, the cheques were different and, therefore, two separate cases were filed.

- 2. During the course of proceeding in S.C.C.No.4377 of 2021, the Respondent No.2-original accused made an application U/s.219 of the Cr.p.c. for the prayer that the offence under the present case and the offence under the other case i.e. S.C.C.No.4375 of 2021 may be charged together as per the provision of Section 219 of the Cr.p.c. and be tried in single trial.*
- 3. The petitioner-complainant opposed this application. However, the learned J.M.FC. while passing the order dated 11.04.2022 below Exhibit-15 in S.C.C.No.4377 of 2021 allowed that application and directed that S.C.C.No.4377 of 2021 and S.C.C.No.4375 of 2021 be clubbed together.*
- 4. Learned counsel for the petitioner submitted that, this order is not correct in law. Section 219 of the Cr.p.c. is wrongly used. Though, the Charges were same, the cheques were different and, therefore, causes of action were totally different. The application of Section 219 of the Cr.p.c. is entirely misplaced. Therefore, it was not permissible to try both these cases as one single trial. The Negotiable Instruments Act provides for special procedure under sections 142 and 143 of the said Act. The said sections start with the non obstante clause mentioning that the procedure is applicable notwithstanding anything contained in the Code of Criminal Procedure, 1973.*
- 5. Considering these submissions, it is necessary to hear the other side. Learned counsel for the Petitioner has made out a case for grant of ad-interim relief.*

6. Hence, the following order:

ORDER

i) Issue Notice to the Respondents, returnable on 05.12.2023.

ii) Stand over to 05.12.2023.

iii) Till then, the order passed by the J.M.F.C., Court No.5, Kolhapur, on 11.04.2022 below Exhibit-15 in S.C.C.No.4377 of 2021, is stayed.”

b. Order dated 11th December 2024:-

“1. Mr. Amit Icham, learned Counsel appears for the Respondent No.2 and seeks time.

2. A learned Single Judge by order dated 5th September 2023 has stayed the order dated 11th April 2022 passed by the learned JMFC, Court No.5, Kolhapur below Exhibit-15 in S.C.C. No.4375 of 2021. Thus, it is clear that the trial has not been stayed.

3. At the request of Mr. Amit Icham, learned Counsel appearing for the Respondent No.2, stand over to 20th January 2025.

4. Till next date, ad-interim relief granted by the learned Single Judge of stay to the said order dated 11th April 2022 shall remain in operation.”

7. Mr. Bhushan Deshmukh, learned Advocate for the Petitioner, submits that in view of the order dated 5th September 2023 read with the order dated 11th December 2024 passed by this Court, the proceedings in S.C.C. No. 4375 of 2021 and S.C.C. No. 4377 of 2021, pending before the Court of the Judicial Magistrate First Class, Court No. 5, Kolhapur (“Trial Court”), are

being adjudicated separately. To clarify, he submits that the Trial Court is considering both cases independently.

8. In view of the above statement made by Mr. Bhushan Deshmukh, learned Advocate for the Petitioner, Mr Amit Icham, learned Advocate for Respondent No. 2, submits that appropriate orders be passed.

9. Mr Amit Icham, learned Advocate for Respondent No. 2 submits that, though not to be clubbed, the Trial Court be permitted to take up the proceedings in S.C.C. Nos. 4377 of 2021 and 4375 of 2021 separately, however, on the same day. Mr. Bhushan Deshmukh, learned Advocate for the Petitioners, does not oppose this request.

10. For the reasons recorded in the order dated 5th September 2023, these Petitions are allowed in terms of prayer clause (a), consequently, the orders impugned in both these petitions are set aside. It is clarified that the proceedings in S.C.C. No. 4375 of 2021 and S.C.C. No. 4377 of 2021 shall be decided separately.

11. Rule made absolute in the above terms. No order as to costs.

12. Criminal Writ Petition No. 2953 of 2023 and Criminal Writ Petition No. 2954 of 2023 are disposed of.

Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2026.10.07
10:36:21
+0530

[ASHWIN D. BHOBE, J.]