

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1430 OF 2014

Rajesh S/o Chandmal Varma
Age : 33 Yrs., Occ. Business,
R/o : Survey No. 3598/3,
Ishwar Colony, Near Shirish
D.Patil, Jalgaon, Dist. :
Jalgaon.

.... PETITIONER

V E R S U S

1. Shree Mahalaxmi Silver
Through its Proprietor
Mahendra Hiralal Jain,
Age : 44 Yrs., Occ.
Business, R/o : 175/2,
Polan Peth, Jalgaon,
Dist. Jalgaon.
2. The State of Maharashtra
Through its Principal
Secretary, Home
Department, Mantralaya,
Mumbai.

.... RESPONDENTS

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Mr. Sandesh R.Patil, Advocate for Petitioner.

Mr. K.C.Sant, Advocate for R – 1.

Mr. V.P.Kadam, A.P.P. for R -2 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 20th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner, the learned counsel for respondent No. 1 and the learned A.P.P. for State, taken up for final hearing.

2. Heard Mr. Sandesh R.Patil, the learned counsel for the petitioner, Mr. K.C.Sant, the learned counsel for respondent No. 1 and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 2 - State.

3. The learned Principal District Judge, Jalgaon exercised his powers u/s 408 of the Code of Criminal Procedure on the application filed by the original complainant

and transferred the proceedings initiated in respect of the provisions of Section 138 of the Negotiable Instruments Act, 1881 from the Court of the 4th Judicial Magistrate First Class [Mr. S.B.Deore] to the Court of 5th Judicial Magistrate First Class [Mr. A.M.Mankar] on the ground that partial cross examination of the complainant in S.C.C. No. 2048/2010 has been recorded by the learned Judge [Mr. A.M.Mankar] when he was 4th Judicial Magistrate First Class. The learned Principal Judge has allowed the application on the ground that since both the Judges are available on the same place and since there is no question of inconvenience to the witnesses.

4. Mr. Sandesh R.Patil, the learned counsel rightly pointed out Section 326 of the Code of Criminal Procedure. Admittedly, the present proceedings are not tried as summary cases, on the contrary, by specific order these proceedings were ordered to be tried as summons cases. Mr. K.C.Sant, the learned counsel pointed out the reported decision of Allahabad High Court in the case of Azeem S/o Mohd. Rasheed Vs. State of U.P. And Anr., 2006 CRI.L.J. 2956, in order to support the order passed by the learned Principal District Judge.

5. Merely because a particular Judge is transferred from 4th Court to 5th Court, that can not be a ground for transfer of case, which he has conducted partially when he was 4th Judicial Magistrate First Class. In view of the provisions of Section 326 of the Code of Criminal Procedure, the learned Principal District Judge ought not to have transferred the cases. Hence, the order passed by the learned Principal District Judge, Jalgaon dated 24/09/2014 in Misc. Application No. 87/2014 is hereby quashed and set aside and the Writ Petition is allowed.

6. Rule is made absolute.

Since the proceedings are initiated in the year 2010, the learned 4th Judicial Magistrate First Class, Jalgaon shall make endeavour to decide the proceedings as expeditiously as possible and preferably within a period of one year from the date of receipt of this Order.

[V.M.DESHPANDE, J.]