

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.31 OF 2017

M/s.H.B.& Associates & Ors. ... **Applicants**

V/s.

Sunil Bebilal Sancheti & Anr. ... **Respondents**

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Mr.Satyavrat Joshi, Advocate for the Applicants.

Mr.R.D.Soni i/b. Ram & Co., Advocate for the Respondent No.1.

Ms.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 3rd MARCH 2017.

P.C. :

1 This is an application under Section 407 of the Code of Criminal Procedure filed by original accused in the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 filed against them by respondent No.1 Sunil Sancheti.

2 Initially the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was presented in the Court of the learned Judicial Magistrate First Class, Nashik, however, in view of the Judgment of the

Honourable Apex Court in the matter of ***Dashrath Roopsingh Rathore v. State of Maharashtra*** reported in (2014) 9 SCC 129, the said criminal complaint was transferred to the file of the learned Judicial Magistrate First Class, Pune. On considering all averments made in the complaint and after due verification, the learned Judicial Magistrate First Class, Pune on 16/06/2015 ordered issuance of process against present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. This order is challenged by applicants/accused by filing Revision Petition bearing No.137 of 2016 before the learned Sessions Judge, Pune.

3 Subsequently, in the light of Ordinance known as the Negotiable Instruments (Amendment) Ordinance, 2015, the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 came to be returned to the respondent No.1 vide order dated 11/02/2016 passed by the learned Judicial Magistrate First Class, Pune for presentation before the Court of competent jurisdiction. That is how the complaint instituted at the Court of learned Judicial Magistrate First Class, Nashik again returned back and came to be presented in the Court of the learned Judicial Magistrate First Class, Nashik.

4 The limited grievance which now remains for consideration is transfer of Revision Petition No.137 of 2016 filed

by present applicants/original accused challenging the order dated 16/06/2015 directing issuance of process against them for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. This Revision Petition is still pending on the file of the learned Sessions Judge, Pune, whereas the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 is now pending on the file of the learned Judicial Magistrate First Class, Nashik.

5 Heard the learned Advocate appearing for the applicants/original accused. He argued that for the convenience of the parties as well as for availability of record and proceedings, now Revision Petition of applicants needs to be transferred to the file of the learned Additional Sessions Judge at Nashik. The learned Advocate further argued that as the criminal complaint is pending for recording plea and in order to prevent the revision petition rendering infructuous, the applicant be protected for some time, as the process of transfer may require some time.

6 Heard the learned Advocate appearing for respondent No.1/original complainant. He argued that as the order directing issuance of process is passed by the learned Judicial Magistrate First Class, Pune, the appropriate revisional court would be the Court of Sessions at Pune. He further argued that considering the fact that the complaint is for the offence punishable under Section

138 of the Negotiable Instruments Act, 1881, which is required to be decided expeditiously, no stay should be granted, even if this Court comes to the conclusion that the revision petition needs to be transferred to the file of the learned Sessions Judge at Nashik.

7 I have carefully considered the rival submissions and also perused the material placed on record. It is trite that the party should not be put into inconvenience because of circumstances beyond their control, as such, change in law etc. In the case in hand, by operation of law, now the complaint is again transferred to the learned Judicial Magistrate First Class, Nashik, whereas the revision Petition is still pending in Sessions Court at Pune. General convenience of the parties requires that the revision petition should also be transferred to Nashik and that will ease the matter for calling of record and proceedings, if required, and would lead to expeditious disposal of the revision petition.

8 At the same time, as this Court is of the view that revision petition needs to be transferred from the Sessions Court, Pune to the Sessions Court, Nashik, the process would require some time, and in the meanwhile, there is every possibility of recording plea of accused persons rendering the revision petition infructuous. Interest of the original complainant can be taken care of by making the entire process time bound. Hence, the order :

- (i) The application is allowed.
- (ii) The Revision Petition bearing No.137 of 2016 pending at the Court of Sessions at Pune is transferred to the file of the Court of Sessions at Nashik.
- (iii) The learned Sessions Judge, Pune is directed to expedite the process of transferring the Revision Petition from Pune to the Court of Sessions at Nashik and complete it within a period of one month from today.
- (iv) As it is reported that the application for stay is pending for consideration in the Revision Petition, the learned Sessions Judge, Nashik is requested to dispose of the said application within a period of one month after receipt of record and proceedings of the Revision Petition in the Court of Sessions at Nashik.
- (v) The learned Sessions Judge is free to dispose of the Revision Petition itself within this prescribed time, if it is convenient to do so.
- (vi) Till the time granted for disposal of the petition for stay in the Revision Petition, the learned Judicial Magistrate First Class, Nashik should not proceed with

the pending Criminal Case No.747 of 2016 between the parties.

(vii) Both parties are directed to appear before the learned Sessions Court, Nashik on 1st April 2017.

9 Parties to act on authenticate copy of this order.

(A.M.BADAR J.)