

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.819 OF 2015

Mr.Suresh Umesh Ghanate ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Pawan Mali, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 17th JANUARY 2017.

P.C . :

1 This is an application by the accused invoking the provisions of Section 407 of the Code of Criminal Procedure with a prayer to transfer the criminal cases as mentioned in the chart-Exh.A to the Court of learned Judicial Magistrate First Class, Washi of CBD Belapur, Navi Mumbai.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the applicant/accused being an accused in eight cases pending before different Courts will have to attend each and every Court on several dates causing great inconvenience to him. The learned counsel further argued that all cases are arising out of the same transaction and, therefore, as

they are outcome of one series of acts, they needs to be tried together.

3 The learned Additional Public Prosecutor opposed the application by contending that convenience of witnesses needs to be considered while deciding such application.

4 I have carefully considered the rival submissions and also perused the documents placed on record. It is seen that in all ten criminal cases are registered against the applicant/accused on the basis of reports lodged by investors at various places. General averments against applicant/accused is to the effect that he is Director of a company and had floated two schemes by which representation was made that if certain amount is deposited with the Company, that would be used for purchasing car by obtaining loans. Those cars will then be given on the basis of hire and out of hire charges received, loan installments would be paid. After payment of entire installments cars so purchased would be returned to the customer. According to the prosecution case with such scheme, the applicant had cheated thousands of investors which ultimately resulted in registration of offences punishable under Section under Sections 406, 420 read with Section 34 of the Indian Penal Code against the applicant at several police stations. After investigation, on filing of charge-sheet eight criminal cases are registered against the applicant.

5 The learned counsel for the applicant drew my attention to earlier orders passed in the instant case and particularly orders dated 28/06/2016 and 09/08/2016. The learned counsel for the applicant submits that necessary orders may be passed in terms of these two orders. The learned Additional Public Prosecutor reiterated his submissions that witnesses are old and transfer would amount to prejudice to them.

6 Powers under Section 407 of the Code of Criminal Procedure can be invoked for general convenience of parties. Witnesses are supposed to attend the Court on being summoned for giving evidence and this contingency generally happens only once whereas the accused is required to attend the Court on each and every date.

7 It is seen that on 28/06/2016, this court expresses that cases at Pune will be transferred to single Court at Pune, case at Mumbai to Navi Mumbai and all cases at Nagpur would be clubbed together. On 09/08/2016, this court noted that the applicant/accused has no objection for clubbing pending cases for trial by the same Court.

8 It is seen that general convenience of the parties would be served if cases are assigned to one Court in the same District.

That will be advantageous to the prosecution as time of prosecution so also that of the Court would be saved. This course of action as expressed by this Court in order dated 09/08/2016 is also beneficial to the applicant/accused.

9 It is reported that both criminal cases pending on the file of the learned Judicial Magistrate First Class, Nagpur are assigned to the same Court. Hence, no further order is required for the cases pending at Nagpur.

10 It is seen that in Pune in all four criminal cases are pending. One of them is at Baramati. Out of remaining three cases two cases are pending on the file of learned Judicial Magistrate First Class at Pimpri whereas third one reported to be pending at the Court of learned Judicial Magistrate First Class, Pune.

11 One criminal case is reportedly pending on the file of the learned Judicial Magistrate First Class, Washi, Navi Mumbai whereas the another is pending on the file of learned Additional Chief Metropolitan Magistrate, 5th Court Dadar Bhoiwada. In that case, it appears that there are only 10 witnesses whereas in the case pending in the Court at Washi, there are about 40 witnesses.

12 Interest of justice would be served if the case pending

in the Court of the learned Judicial Magistrate First Class, Pune is transferred to the file of the learned Judicial Magistrate First Class, Pimpri, Pune and the criminal case pending on the file of the learned Additional Chief Metropolitan Magistrate, Mumbai is transferred to the file of learned Judicial Magistrate First Class, Washi. So far as the case pending at the Court of learned Judicial Magistrate First Class, Baramati is concerned, the applicant can move appropriate application to the Sessions judge at Pune.

13 In this view of the matter the following order :

- i) The application is accordingly allowed.
- ii) Regular Criminal Case No.405063 of 2008 pending on the file of learned Judicial Magistrate First Class, Pune is transferred to the file of the learned Judicial Magistrate First Class, Pimpri, Pune where Regular Criminal Case No.2101370 of 2009 and the Criminal Case arising out of Crime No.237 of 2008 is pending.
- iii) The Criminal Case No.500265 of 2013 is transferred from the file of learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Bhoiwada, Mumbai to the file of the learned Judicial Magistrate First Class, Washi, Navi Mumbai where Regular Criminal Case No.632 of 2010 is pending.

- iv) The applicant is liberty to move appropriate application to the Sessions Judge, Pune in respect of Regular Criminal Case No.329 of 2009 pending on the file of the learned Judicial Magistrate First Class, Baramati.
- v) With this, the application stands disposed of.

(A. M. BADAR J.)