

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1146/2018

Mr. Shyamrao Vithoba Pillare

..VS..

State of Maharashtra, Thru PSO, PS Gadchiroli, Dist. Gadchiroli

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Vyas, Advocate for the applicant
Shri J.Y. Ghurde, APP for the non-applicant

CORAM : Z.A.HAQ, J.
DATED : 13/12/2018

Heard.

The accused is being prosecuted for the offences punishable under Sections 354B, 294, 509 and 506 of the Indian Penal Code. The prosecution is lodged against the applicant because of the incident which allegedly occurred on 25/04/2016 and was reported on 27/04/2016. The charge-sheet was filed before the Chief Judicial Magistrate on 18/10/2016. On 23/11/2016, the prosecution filed an application under Section 216 of the Code of Criminal Procedure praying for addition of charge under Section 353 of the Indian Penal Code. The learned Chief Judicial Magistrate allowed this application by the order dated 03/01/2017 and accepted the prayer made on behalf of the prosecution for framing the charge under Section 353 of the Indian Penal Code against the accused. The charges came to be framed on 06/01/2017. The examination of the witness of the prosecution started on 17/01/2017. At the stage of

examination of the first witness on behalf of the prosecution, the learned Chief Judicial Magistrate passed an order on 19/10/2018 and committed the case to the Sessions Court. On 01/12/2018, the accused filed an application (Exh. 10) praying that the trial be remitted to the Court of Chief Judicial Magistrate. The applicant contended that amendment of Section 332 and Section 353 of the Indian Penal Code and amendment of Section 309 and amendment of Ist Schedule of the Code of Criminal Procedure by the Indian Penal Code and the Code of Criminal Procedure (Maharashtra Amendment) Act, 2017 (hereinafter referred as “the Maharashtra Act No. 40/2018”) is not with retrospective effect and therefore the trial cannot be committed to the Sessions Court. Relying on the Maharashtra Act No. 40/2018, this application is dismissed by the learned Sessions Judge by the impugned order.

The learned advocate for the applicant argued that if amendment to the relevant provisions by the Maharashtra Act No. 40/2018 is considered to be with retrospective effect, then it will mean that the accused can be sentenced for the enhanced punishment as provided by the amendment and this is not permissible and would be violative of Article 20 (1) of the Constitution of India. It is further submitted that the trial has already commenced in as much as recording of the evidence of the witness on behalf of the prosecution has begun and committal of the case at this stage would not be permissible.

The learned APP has supported the impugned order.

The submission made by the learned advocate for the applicant that amendment to Section 332 and Section 353 of the Indian Penal Code enhancing the punishment which can be imposed on the accused cannot have retrospective effect, has to be accepted. It is well settled that a person cannot be subjected to penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence and if the amendment act enhances the punishment, the enhanced punishment prescribed by the amendment cannot be inflicted.

Shri J.Y. Ghurde, learned APP has fairly pointed out the judgment delivered by the Hon'ble Supreme Court in the case of T. Barai vs. Henry Ah Hoe and another reported in (1983) 1 S.C.C. at page 177.

However, the submission on behalf of the applicant that change in forum by the Maharashtra Act No. 40/2018 also cannot have retrospective effect, cannot be accepted. In the judgment delivered in the case of Ramesh Kumar Soni vs. State of Madhya Pradesh reported in (2013) 14 S.C.C. at page 696, this issue is considered. In this judgment, it is laid down that any amendment shifting the forum of the trial, on principle, has to be retrospective in nature unless there is any indication in the amendment act to the contrary. The accused cannot claim a vested right in respect of forum for his trial, as such right is not recognized or conferred by law. Same view is reiterated in the judgment given in the case of Securities and Exchange Board of India vs. Classic Credit Ltd. reported in 2017 (9) SCALE at page 458.

The submission on behalf of the applicant that the learned Chief Judicial Magistrate should not have committed the trial after recording of the evidence of the witness commenced also cannot be accepted considering the provisions of Section 323 of the Code of Criminal Procedure. These provisions enable the Magistrate to commit the trial to the Court of Sessions at any stage of the proceedings before signing the judgment. Even otherwise, in the facts of the present case, the accused has not been able to point out the prejudice that may be caused to him because the trial is committed by the learned Chief Judicial Magistrate to the Court of Sessions after recording of the evidence of the first witness on behalf of the prosecution has started.

In the above facts, I do not find any illegality or error of jurisdiction which necessitates interference by this Court under Section 482 of the Code of Criminal Procedure.

The criminal application is **dismissed**. No costs.

JUDGE

Ansari