

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 78 OF 2018

M/s. GMMCO Ltd. .Applicant

Vs.

Madhukar D. Patil, Proprietor of .Respondents
M/s. Madhukar D. Patil & ors.

Ms S. Madki, Advocate, for the Applicant
Mr. S. V. Gavand, APP, for the Respondent No. 3 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 22.04.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks transfer of Criminal Complaint No. 55 of 2014 from the Court of the learned Judicial Magistrate First Class, Pen, District – Raigad to the Court of the learned Metropolitan Magistrate, Egmore, Chennai. Orally, learned counsel for the Applicant submits that alternatively the order dated 12.05.2016 passed by the learned Judicial Magistrate First Class, Pen be directed to be complied with, by transferring the case to the Court of the learned Metropolitan Magistrate, Fort,

Mumbai.

3. At the outset, it may be noted that on 16.10.2018, notice was issued to the Respondents. Office noting shows that the Respondent Nos. 1 & 2 have been duly served. Hence, the aforesaid Application is taken up for hearing.

4. Perused the papers. It appears that the Applicant had initially filed a complaint as against the Respondent Nos. 1 & 2 in Alandur, Chennai alleging an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, the Complainant filed a complaint in the Court of the learned Judicial Magistrate First Class at Pen in view of the Judgment of the Apex Court in the case of *Dashrath Rupsingh Rathore Vs. The State of Maharashtra* passed on **01.08.0214** in *Cri. Appeal No. 2287 of 2009*. Thereafter, the Applicant filed an Application in the Court of the learned Judicial Magistrate First Class, Pen, being S.C.C. No. 555 of 2014 and sought transfer of the said case to the Court of the learned Metropolitan Magistrate, Egmore, Chennai. It appears that the Respondents filed their say to the said

Application and raised their objection to transfer of the said proceedings to Chennai. The learned Judicial Magistrate First Class, Pen after considering the submissions advanced by both sides observed that the disputed cheques were deposited by the Applicant (Original Complainant) in the HDFC Bank, Fort, Mumbai; and that it was the HDFC Bank, Fort, Mumbai, who had given intimation to the Applicant about the dishonour of cheques. Relying on the Apex Court's Judgment in the case of *Dashrath Rupsingh Rathore Vs. The State of Maharashtra* passed on *01.08.0214* in *Cri. Appeal No. 2287 of 2009*, the learned Judicial Magistrate First Class held that the learned Metropolitan Magistrate, Fort, Mumbai, had jurisdiction to try the case, as the Applicant had deposited the cheques in the HDFC Bank, Fort, Mumbai and as such, rejected the prayer of the Applicant to transfer the proceedings to the Court of the learned Metropolitan Magistrate, Egmore, Chennai. Accordingly, the learned Judicial Magistrate First Class, Pen passed the following order.

“

ORDER

1. The complaint is hereby transferred to Metropolitan Magistrate, Fort, Mumbai.

2. The complaint is returned to the complainant for filing it before the proper court within 30 days.”

The complaint filed by the Applicant was returned to the Applicant for filing it before the appropriate Court i. e. before the learned Metropolitan Magistrate, Fort, Mumbai. It is informed that the Applicant approached the Court of the learned Metropolitan Magistrate and handed over the said complaint, however, the Court of the Metropolitan Magistrate sent the said complaint back to the Court of the learned Judicial Magistrate First Class, Pen. It is informed that the Registry of the Metropolitan Magistrate's Court, Fort, Mumbai did not accept the complaint and instead transferred the papers to the Court of the learned Judicial Magistrate First Class, Pen. Registry of this Court informs that they have taken telephonic instructions from the Registry of the Court of the learned Judicial Magistrate First Class, Pen and state the said papers have indeed being transferred by the learned Metropolitan Magistrate, Fort, Mumbai to the Court of the learned Judicial Magistrate First Class, Pen.

5. Considering the order dated 12.05.2016 passed by the learned Judicial Magistrate First Class, Pen, the learned Judicial Magistrate First Class, Pen to transfer the papers to the Court of the learned Metropolitan Magistrate, Fort, Mumbai forthwith. After the said papers are transferred, the learned Metropolitan Magistrate shall issue notice to the Respondents for causing their appearance before the said Court, on a particular date.

6. At this stage, it is necessary to point out that there is nothing on record to show, that the order dated 12.05.2016 passed by the learned Judicial Magistrate First Class, Pen transferring the case to the Metropolitan Magistrate's Court, Fort, Mumbai, has been challenged by the Respondent Nos. 1 & 2.

7. The Application is, accordingly, allowed to the aforesaid extent and disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)