

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.426 OF 2018

ANAND RUNWAL

)...APPLICANT

V/s.

M/S.MAHALAXMI TMT PVT. LTD. & ANR.)...RESPONDENTS

Mr.Mohit Bhansali, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent – State

Mr.S.J.Mishra a/w. Ms.Pushpa Tiwari i/b. SRS Legal, Advocate for Respondent.

CORAM : A. M. BADAR, J.

DATE : 8th JANUARY 2019

P.C. :

1 This is an application under Section 407 of the Code of Criminal Procedure by the original accused for transfer of Criminal Complaint bearing No.3852/SS/2016 between the parties for the offence punishable under Section 138 of the Negotiable Instruments Act pending before the learned Metropolitan Magistrate, 23rd Court, Esplanade Court, Mumbai, to

the court of the learned Judicial Magistrate First Class, Wardha. Respondent no.1 M/s.Mahalaxmi TMT Pvt. Ltd. is the original complainant. Respondent no.2 State is the formal party.

2 Heard the learned counsel appearing for the applicant/original accused. He drew my attention to four statutory notices issued by the respondent no.1/original complainant M/s.Mahalaxmi TMT Pvt. Ltd. to the accused intimating dishonour of four cheques and for payment of the amount under the cheques. By taking me through the averments made in the legal notices issued by the respondent no.1, the learned counsel appearing for the applicant/original accused argued that running account was maintained by the parties reflecting the money due in respect of supplying and receiving various type of steel and TMT bars. It is argued that as the transaction was a single transaction and as 24% interest was due on the unpaid amount, all complaints in respect of the said transaction need to be adjudicated by one court as common evidence will have to be adduced before the trial court.

Therefore, in submission of the learned counsel appearing for the applicant/original accused, as three complaints in respect of remaining three cheques are pending in the court of the learned Judicial Magistrate First Class at Wardha, the fourth complaint pending on file of the learned Metropolitan Magistrate 23rd Court, Esplanade Court, Mumbai, needs to be transferred to the court of the learned Judicial Magistrate First Class, Wardha.

3 The learned counsel appearing for the respondent no.1/original complainant argued that the cheque in respect of the complaint bearing no.3852/SS/2016 pending on the file of the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, is in respect of a separate transaction. All transactions were different. Fresh purchase order used to be received by the respondent no.1 from Karmic Trade Link Private Ltd. of which the applicant/original accused is the Director. Fresh invoices were used to be issued in respect of each transaction. As there were several separate transactions, the complaints came to be filed by the respondent no.1/original complainant before the court of

competent territorial jurisdiction, and one such complaint is rightly pending on the file of the learned Metropolitan Magistrate 23rd Court, Esplanade Court, Mumbai. My attention is drawn to paragraph 5 of the legal notice dated 2nd September 2016 issued by the respondent no.1/original complainant to demonstrate that the original complainant was selling and supplying the goods from time to time as per purchase orders issued by the Karmic Trade Link Private Limited. With this, it is urged that as the complaint is pending before the court of competent jurisdiction and as it relates to the different transaction, the same cannot be transferred to the court of the learned Judicial Magistrate First Class at Wardha.

4 I have carefully considered the rival submissions and also perused all four legal notices as well as the complaint pending before the learned Judicial Magistrate First Class at Wardha as well as before the learned Metropolitan Magistrate, 23rd Court, Esplanade Court, Mumbai.

5 At this juncture, it is necessary to understand the case sought to be made out by the respondent no.1/original complainant M/s.Mahalaxmi TMT Private Limited. Very first legal notice issued by the complainant on 18th April 2016 contains following allegations which would reveal the case of the complainant against the accused Karmic Trade Link Private Limited. Paragraphs 3 to 5 of the said legal notice need reproduction. Those read thus :

“3 KTPL approached to MTPL for supply of TMT bar through its director Mr. Anand Runwal (party no.2 to the notice) for supply of TMT bars in Oct. 2011. After discussions MTPL has agreed to provide TMT Bar (hereinafter referred as “goods” also) to KTPL on short term credit basis. The delivery of goods is at the factory sight of MTPL at Wardha. The term of payment is to pay the amount of bill, within 15 days after receipt of goods. It is also agreed that if the payment was not received on due date the interest from

the date of invoice @ 24% p.a. will be charged and debited to the account. The entire business transactions are subject to Wardha Jurisdiction.”

“4 Thereafter, MTPL has started supply of goods to KTPL. The KTPL is making payment through RTGS or cheque. The KTPL conducted the account regularly; even there is delay in making payments, till Dec. 2014. Thereafter, there is inordinate delay in making payments by KTPL. The dues against the KTPL therefore increased more than Rs.20/- crores. However, MTPL continue supplying of goods, taking into consideration the past business relations. The KTPL every time promised MTPL to clear the dues with interest shortly.”

“5 The original invoices of goods supplied are given to KTPL along with transport. The last

consignment of goods is sent to KTPL on 2-2-16. Therefore, to make the payment of dues in installments the KTPL has issued 4 cheques in favor of MTPL bearing No.775200, 775201, 775202 and 775203 drawn on State Bank of Hyderabad branch Jalna duly signed by its director Anand Runwal on 2-2-16 through director Mr.Suraj P. Soni (Noticee No.4). KTPL requested MTPL to deposit Cheque No.775200 dated 13-2-16 for Rs.700,00,000/- in last week of Feb. 2016 and Cheque No.775201 dated 4-4-16 for Rs.700,00,000/- on due date. The KTPL also given authority, power and permission to deposit the remaining two cheques in the first week of May 2016 for Rs.700,00,000/- and for remaining balance in the first week of June 2016.”

6 This legal notice is in respect of dishonour of cheque bearing No.775200 dated 4th April 2016 for Rs.7 Crore issued by the Karmic Trade Link Private Limited in favour of complainant/respondent no.1 M/s.Mahalaxmi TMT Private Limited.

7 Another legal notice of the same date i.e. 18th April 2016 was issued by the respondent no.1/original complainant M/s.Mahalaxmi TMT Private Limited to the Karmic Trade Link Private Limited. It is in respect of dishonour of the cheque bearing no.775201 dated 4th April 2016 in respect of amount of Rs.7 Crore. In the said legal notice also, similar averments are made as are made in the first legal notice of the very same date i.e. 18th April 2016.

8 Similar are the averments made in third legal notice dated 29th July 2016 issued by the respondent no.1/original complainant M/s.Mahalaxmi TMT Private Limited. This legal notice informs dishonour of cheque bearing no.775202 dated 6th May 2016 for Rs.7 Crore issued by Karmic Trade Link Private

Limited. The averments made in all these three legal notices makes it clear that running account was used to maintain in respect of the transaction of sell and purchase of TMT bars by the parties. The interest which was to be charged for the payment not received within due date is stated to be 24% per annum. At this juncture, it is apposite to note that in the third legal notice dated 29th July 2016, the respondent no.1/original complainant has categorically made it clear that the entire business transactions are subject to Wardha jurisdiction.

9 Be that as it may, prima facie it is seen that running accounts are maintained by the parties and averments are that four cheques issued in respect of legally recoverable debt are dishonoured which has resulted in filing of three complaints before the learned Judicial Magistrate First Class, Wardha, whereas the fourth complaint is pending in the court of learned Metropolitan Magistrate, Esplanade court, Mumbai. General convenience of the parties is one of the considerations for invoking the powers under Section 407 of the Code of Criminal

Procedure. In the case in hand, evidence which will be required to be adduced for making out the offence will be the same. The parties to the transaction are the same. Three complaints in respect of three cheques issued by Karmic Trade Link Private Limited in favour of the original complainant/ respondent no.1 M/s.Mahalaxmi TMT Private Limited are pending on the file of learned Judicial Magistrate First Class, Wardha. Hence, for convenience of the parties, the only case in respect of the similar transaction before the court of learned Metropolitan Magistrate, Esplanade Court, Mumbai, needs to be transferred to the court of learned Judicial Magistrate First Class, Wardha. The application is, therefore, allowed with the following order :

ORDER

- i) The Complaint Case bearing No.3852/SS/2016 between the parties pending on the file of the learned Metropolitan Magistrate, 23rd Esplanade court, Mumbai, be transferred to the court of the learned Judicial Magistrate First Class, Wardha, where three other similar complaint cases are pending.

- ii) The parties are directed to appear before the learned Judicial Magistrate First Class, Wardha, on **28th February 2019.**
- iii) The application is accordingly disposed off.

(A. M. BADAR, J.)