

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1908 of 2018

Order Reserved on : 04.08.2021

Order Delivered on : 01.10.2021

1. M/s Gouthami Hatcheries Pvt. Ltd. Registered Office at Flat No. 102, First Floor, 5-922/40, JVR Amrut Enclav, Adarsh Nagar Hyderabad (Telangana).
2. Dendi Shreenath Reddy, S/o Shri Dendi Jangi Reddy, Aged About 49 Years.
3. Mrs. Dendi Lokeshawari, W/o Shri Dendi Shreenath Reddy, Aged About 47 Years.
Borh are R/o 5-922/40, Adarsh Nagar, Near Birla Mandir, Saifabad Khairatabad, Hyderabad (Telangana).

---- Petitioners

Versus

1. State of Chhattisgarh, Through- District Magistrate, Rajnandgaon (C.G.)
2. M/s Indian Agro and Food Industries Ltd. Registered Officer at Village- Indamara, Post- Pendri, District- Rajnandgaon (C.G.)

---- Respondents

CRMP No. 1915 of 2018

1. M/s Gouthami Hatcheries Pvt. Ltd. Registered Office at Flat No. 102, First Floor, 5-922/40, JVR Amrut Enclav, Adarsh Nagar Hyderabad (Telangana).
2. Dendi Shreenath Reddy, S/o Shri Dendi Jangi Reddy, Aged About 49 Years.
3. Mrs. Dendi Lokeshawari, W/o Shri Dendi Shreenath Reddy, Aged About 47 Years.
Borh are R/o 5-922/40, Adarsh Nagar, Near Birla Mandir, Saifabad Khairatabad, Hyderabad (Telangana).

---- Petitioners

Versus

1. State of Chhattisgarh, Through- District Magistrate, Rajnandgaon (C.G.)
2. M/s Indian Agro and Food Industries Ltd. Registered Officer at Village- Indamara, Post- Pendri, District- Rajnandgaon (C.G.)

---- Respondents

AND

CRMP No. 1922 of 2018

1. M/s Gouthami Hatcheries Pvt. Ltd. Registered Office at Flat No. 102, First Floor, 5-922/40, JVR Amrut Enclav, Adarsh Nagar Hyderabad (Telangana).

2. Dendi Shreenath Reddy, S/o Shri Dendi Jangi Reddy, Aged About 49 Years.
 3. Mrs. Dendi Lokeshawari, W/o Shri Dendi Shreenath Reddy, Aged About 47 Years.
- Borh are R/o 5-922/40, Adarsh Nagar, Near Birla Mandir, Saifabad Khairatabad, Hyderabad (Telangana).

---- Petitioners

Versus

1. State of Chhattisgarh, Through- District Magistrate, Rajnandgaon (C.G.)
2. M/s Indian Agro and Food Industries Ltd. Registered Officer at Village- Indamara, Post- Pendri, District- Rajnandgaon (C.G.)

---- Respondents

For Petitioners	:	Mr. Maneesh Sharma, Advocate.
For State/Resp. 1	:	Mr. Sudeep Verma, Dy. Govt. Advocate.
For Resp. No. 2	:	Mr. T.K. Jha, Adv. & Mr. Pradeep Kumar Shrivastava, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. Since same set of facts are involved in all the petitions, therefore, they are heard analogously and are being disposed of by this common order. (For the sake of convenience, CRMP No. 1908 of 2018 is taken up as lead case).
2. The petitioners have filed these petitions under Section 482 of the Cr.P.C. challenging legality and propriety of the order dated 09.07.2018 (Annexure P/1) passed by Sessions Judge, Rajnandgaon (C.G.) in Criminal Revision No. 41/2018 (M/s Indian Agro and Food Industries Ltd. Vs. M/s Gouthami Hatcheries Pvt. Ltd. & others) by which the revision petition filed by respondent No. 2 has been allowed and quashed the order dated 29.01.2018 passed by Chief Judicial Magistrate, Rajnandgaon (C.G.) in Complaint Case No. 861/2017, by which right of the complainant to lead evidence was closed. The learned Sessions Judge has also transferred the cases from Court of Judicial Magistrate First Class to Chief Judicial Magistrate, Rajnandgaon (C.G.) to decide the case in

accordance with law. Being aggrieved by these orders, the petitioners have filed these petitions.

3. The brief facts as projected by the petitioners are that petitioner No. 1 is a company whereas petitioner No. 2 & 3 are Managing Directors of the company. There were business transactions between petitioners and respondent No. 2. In pursuance of the business transaction, petitioners have given Cheque No. 688759 dated 15.12.2016 to respondent No. 2 which was bounced due to insufficient funds, therefore, respondent No. 2 filed complaint against the petitioners under Section 138 of the Negotiable Instruments Act, 1881 before Judicial Magistrate First Class, Rajnandgaon, which is registered as Complaint Case No. 861/2017. The details of order passed by Revisional Court as well as Chief Judicial Magistrate and cheque numbers in all the cases, are given in table form, which are as under :-

CRMP No.	Revisional Court's Order & date	Chief Judicial Magistrate Order & date	Cheque No.
CRMP No. 1908/2018	CRR No. 41/2018 dated 09.07.2018	Complaint Case No. 861/2017 dated 29.01.2018	688759
CRMP No. 1915/2018	CRR No. 51/2018 dated 09.07.2018	Complaint Case No. 3800/2016 dated 29.01.2018	002195
CRMP No. 1922/2018	CRR No. 43/2018 dated 09.07.2018	Complaint Case No. 862/2017 dated 29.01.2018	688760

4. The learned Judicial Magistrate First Class after taking cognizance of the complaint, issued notice to the petitioners/accused persons directing them to appear before him. On 24.07.2017, petitioners appeared before Judicial Magistrate First Class and furnished bail bond as directed by Judicial Magistrate First Class and the case was fixed for framing of charges on 21.08.2017. On 21.08.2017, charges could not be framed, therefore, the case was adjourned to 23.09.2017 & thereafter adjourned to 10.10.2017 for framing of charges. On 10.10.2017, charges against the petitioners/accused have

been framed and learned Judicial Magistrate First Class fixed the case on 04.12.2017 for recording evidence of complainant witnesses. On 04.12.2017, complainant sought time for recording of evidence which was allowed, therefore, proceeding was adjourned to 12.01.2018. On 12.01.2018 witnesses of the complainant were present, but learned counsel for the petitioner/ accused sought time, which was allowed and thereafter, the case was fixed for 22.01.2018. On 22.01.2018, the petitioner sought time for cross-examination as his original counsel was not available, therefore, the learned Judicial Magistrate First Class adjourned the case to 29.01.2018. On 29.01.2018, petitioners moved an application under Rule 13 M.P. Rules & Orders (Criminal) (for short "the Rule 13") for providing the Hindi translation copy of the complaint and application under Section 45 of the Indian Evidence Act for sending the document to handwriting expert contending that the accused have given blank cheque as surety in which, the complainant has mentioned the excess amount, therefore, the cheque should be sent to handwriting expert or to any Government official document examiner to establish the fabrication committed by the complainant, for which the accused are ready to bear the expenses. The learned Judicial Magistrate First Class rejected the application for providing Hindi translation of the document relying upon the Share Place Agreement dated 15.11.2014 in which, the accused have put their signature in English, therefore, finding has been recorded that accused can very well understand the English language. The learned Judicial Magistrate First Class has also rejected the application under Section 45 of the Indian Evidence Act submitted by the accused. Thereafter, learned counsel for the accused moved an application stating that there is sudden demise in the family of original counsel Ravindra Reddy and he will be available only after 23.02.2018, therefore, the case may be adjourned to 23.02.2018. The learned Judicial Magistrate First Class

considering the guidelines issued by this Court on 15.12.2017 rejected the application on the ground that the accused are adopting delay tactics to linger on the proceeding of the case and fixed the case for cross-examination after post session.

5. Learned counsel for respondent No. 2 submitted before the trial Court on the same day i.e. on 29.01.2018 that the original documents are not available with him, therefore, he may be given time to submit the same. Learned trial Court after recording findings fixed the case on 04.09.2017, 23.09.2017, 10.10.2017, 04.12.2017, 12.01.2018, 22.01.2018, but complainant did not submit the original documents, therefore, directed the complainant to produce original document failing which, opportunity to lead evidence will be closed and also made certain observations against the for counsel for the complainant. At 4 O'clock, learned counsel for the complainant informed the Court that the original documents are available with him and he is ready for evidence. Learned counsel for the petitioner/ accused submitted that they are willing to file revision against order passed by this Court, therefore, cross-examination of the complainant may be deferred. Learned trial Court rejected their objection and thereafter fixed the case for cross-examination after some time. At about 4.30 p.m., learned counsel for the petitioner submitted that some documents are kept with Company Secretary- Girdhari Lal Soni, therefore, they may be given time to produce the same.
6. Learned Judicial Magistrate First Class relying upon judgment of Hon'ble the Supreme Court as well as the direction issued by this Court has rejected the application of the petitioner to lead evidence and also fixed the case on 27.02.2018 for cross-examination. On 27.02.2018, the case was ordered to be fixed on 26.03.2018 for cross-examination of complainant witnesses. On 26.03.2018, learned trial Court again directed the accused to cross-examine the witnesses of the complainant thereafter, fixed the case on 12.04.2018 for defence witnesses.

7. On 12.04.2018, the accused recorded their statements under Section 313 of the Cr.P.C. and closed their right to lead further evidence. The learned trial Court fixed the case on 25.04.2018 and also directed the complainant and accused to submit their written submission. The respondent No. 2 filed revision petition before learned Sessions Judge, who vide impugned order dated 09.07.2018 allowed the revision and quashed the order passed by learned Judicial Magistrate First, further directed to transfer the case to Chief Judicial Magistrate to decide the case, in accordance with law.
8. On above factual foundation, the learned counsel for the petitioner would submit that the impugned order passed by Revisional Court has committed material illegality and irregularity by quashing the order dated 30.01.2018 as sufficient opportunity has been given to respondent No. 2 still he has not availed the same, therefore, no further opportunity should have been granted as per the guidelines issued by this Court for early disposal of the case which has been rightly followed by learned Chief Judicial Magistrate.
9. He placed reliance upon the judgment passed by Hon'ble the Supreme Court in **Nitinbhai Saevatilal Shah & another Vs. Manubhai Manjibhai Panchal & another**¹, wherein it has been ordered directing transfer of the case while deciding the application for revision is only unwarranted and otherwise not permissible under the law, as such, the learned Sessions Judge should not have transferred the case as no application for transferring the case has been filed by the petitioner. He would refer para 19 of the judgment passed by Hon'ble the Supreme Court in **Nitinbhai Saevatilal Shah (Supra)**, which reads as under:-

“19. The cardinal principal of law in criminal trial is that it is a right of an accused that his case should be decided by a Judge who has heard the whole of it. It is so stated by this Court in the decision in *Payare Lal Vs. State of Punjab* [AIR 1962 SC 690 : (1962 (1) CriLJ 688)]. This principle was

1 (2011) 9 SCC 638

being rigorously applied prior to the introduction of Section 350 in the Code of Criminal Procedure, 1898. Section 326 of the new Code deals with what was intended to be dealt with by Section 350 of the old Code.”

10. Refuting the submission made by learned counsel for the petitioner, the learned counsel for respondent No. 2 would submit that the learned Revisional Court has not committed any illegality in transferring the case to the learned Chief Judicial Magistrate as huge amount of Rs. 6 Cr. was involved and looking to the manner in which the trial Court has conducted the trial, it is apparent that respondent No. 2 will not get justice from the Court and has lost faith on the trial Court and would pray for dismissal of the revision petition. Learned counsel would also submit that the present CRMP under Section 482 of the Cr.P.C. is not maintainable as the revision filed by the petitioner has been allowed by the Sessions Judge whereas as per Section 401 of the Cr.P.C., the petitioner has remedy of filing revision before this Court, as such, present CRMP is not maintainable.
11. On the other hand, learned counsel for the petitioner would submit that present CRMP is maintainable in the light of judgment passed by Hon'ble Supreme Court in **Prabhu Chawla & State of Rajasthan & another²**, wherein Hon'ble the Supreme Court has held as under:-

“5. Mr. Goswami also placed strong reliance upon judgment of Krishna Iyer, J. in a Division Bench in the case of *Raj Kapoor and Ors v. State and Ors.* [(1980) 1 SCC 43]. Relying upon judgment of a Bench of three Judges in the case of *Madhu Limaye v. The State of Maharashtra* [(1977) 4 SCC 551] and quoting therefrom, Krishna Iyer, J. in his inimitable style made the law crystal clear in paragraph 10 which runs as follows: (*Raj Kapoor case*, SCC pp. 47-48)

“10. The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing

2 (2016) 16 SCC 30

of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye v. The State of Maharashtra* this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution

'would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction". In short, there is no

total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)'."

12. From the afore-stated legal provision, it is quite vivid that even availability of alternate remedy of filing revision, this Court can hear the petition under Section 482 of the Cr.P.C. as there is no legal impediment. Even otherwise, in the present case, the Cr.M.P. has been filed on 15.09.2018 and after remain pending for three years, it will not be justifiable for this Court to relegate the petitioner for filing of revision petition under Section 401 of the Cr.P.C. before this Court, thus, the objection raised by respondent No. 2 is not sustainable in view of the peculiar facts and circumstances of the case. Therefore, this Court is deciding the present CRMP on its own merit.
13. The learned counsel for the petitioner would submit that since the order passed by the Revisional Court for transferring of the case is without jurisdiction, as such, the same is liable to be quashed by this Court. The judgment passed by Hon'ble the Supreme Court in **Nitinbhai Saevatilal Shah (Supra)** is not applicable to the facts of the case as in the present case the evidence has not been recorded and in fact the right of the

complainant has been closed in arbitrary manner in violation of principle of natural justice and fair play.

14. From the facts reflected in the order-sheet, it is quite clear that the Magistrate was not conducted trial in judicial manner, but infact he has closed the right of the complainant to lead evidence in a hurry manner denying proper opportunity to the complainant. The learned trial Court has made certain observations against counsel for the respondent, which shows that the Magistrate has not conducted trial in a fair manner. The trial Court, in which manner was conducting the trial, could certainly give impression in mind of the complainant that he will not get proper justice, therefore, the learned Sessions Judge has not committed illegality in transferring the case to the trial Court. It has been well settled legal preposition that fair trial is paramount consideration of dispensing justice system, therefore, there is no illegality in the order of learned Sessions Judge in transferring the case.
15. Learned Judicial Magistrate First Class in the garb of guidelines issued by this Court has adversely affected right of the complainant to contest his case properly which is not objected by the guidelines issued by this Court. It is evident that the proceeding were adjourned on pretext of respondent No. 2. The trial Court should have been seen that the charges have been framed on 10.10.2017 and the case was fixed for evidence on 04.12.2017. On 04.12.2017, the case was adjourned and fixed for 12.01.2018. On 12.01.2018 witnesses of the complainant were present, but learned counsel for the petitioner/ accused sought time, which was allowed and thereafter, the case was fixed for 22.01.2018. On 22.01.2018, the petitioner sought time for cross-examination as his original counsel was not available, therefore, the learned Judicial Magistrate First Class adjourned the case to 29.01.2018. On the said date, learned counsel for the petitioner has sought time which was allowed. The petitioner/ accused have sought time as original advocate was not available for cross-

examination, thereafter, matter was fixed on 29.01.2018. On 29.01.2018, two applications have been filed by the petitioner/accused firstly under the Rule 13 for providing translation copy of the documents and another one under Section 45 of the Indian Evidence Act for examination of the document by the expert which has been rejected and on the said date learned counsel for the petitioner/accused moved an application that they intend to challenge this order before the Revisional Court, therefore, the examination of witnesses may kindly be withheld

16. Hon'ble the Supreme Court in **Harita Sunil Parab & State (NCT of Delhi) & others**³, has held as under:-

“7. In *Gurcharan Das Chadha v. State of Rajasthan*, (1966) 2 SCR 678, dealing with the issue for transfer of a case, it was observed:

“13....The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard

³ (2018) 6 SCC 358

and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge sheet in FIR No.351 of 2016 reveals that of the 40 witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from NOIDA. The charge sheet of FIR No.1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also.”

17. The Revisional Court has rightly transferred the case to the Chief Judicial Magistrate, therefore, transfer of case to the Chief Judicial Magistrate cannot be said to be illegal which warrants any interference by this Court. The Revisional Court has rightly quashed the order wherein right of the complainant to lead evidence has been closed as no proper opportunity of hearing was given to them and on the same day, the accused recorded their statements under Section 313 of the Cr.P.C. which shows that Chief Judicial Magistrate was very much hurry to decide the case. Thus, there was sufficient material for Revisional Court to quash the order dated 29.01.2018 and transferred the case to Chief Judicial Magistrate, which does not warrant interference by this Court. Therefore, all the petitions filed by the petitioners bearing CRMP No. 1908 of 2018, CRMP No. 1922 of 2018 & CRMP No. 1915 of 2018 are liable to be dismissed.
18. This Court vide its order dated 19.09.2018 stayed the further proceeding pending before the Chief Judicial Magistrate, the same stands vacated. Learned Chief Judicial Magistrate is

directed to decide the case within a period of one year from the date of receipt of copy of this Court.

19. The parties are directed to appear before the trial Court on **15th November, 2021** and thereafter, the trial Court shall make endeavor to conclude the trial within one year from the date of first appearance i.e. on 15th November, 2021. No unnecessary adjournment will be granted to the parties until and unless there are emergent situations.
20. With the aforesaid observations and directions, these petitions are dismissed. No order as to cost.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun