IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.88 OF 2004

STATE OF MAHARASHTRA
VERSUS
MANOJKUMAR ANIRUDDHA SHAHA

Mr.R.V.Dasalkar, APP for the appellant.
Mr.M.V.Dhongade h/f Mr.R.R.Patil, Advocate for the respondent.

**(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)**

DATE : MARCH 3, 2021

PER COURT :

1. By this appeal, the State of Maharashtra seeks to challenge the Judgment delivered by the learned Judicial Magistrate F.C.Sakri on 25/08/2003 in Reg.Cri.Case No.113/2002. The offence alleged to have been committed by the two accused, was punishable u/s 420, 467, 471 and 511 r/w Section 34 of the IPC. Both the respondents/ accused have been acquitted by the impugned judgment.

2. This appeal was preferred by the State of Maharashtra on 04/02/2004 u/s 378(1) of the Cr.P.C., as the provision then was.

By Act 25 of 2005, an amendment was introduced to Section 378 w.e.f. 23/06/2006, vide which an order of acquittal passed by the learned

Magistrate in respect of a cognizable and non bailable offence was made appealable to the Court of Sessions.

3. Prior to the amendment, Section 378(1) read as under :-

"378(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision."

Post amendment, Section 378(1) reads as under :-

"378. Appeal in case of acquittal - [1] Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5)-

(a) the District Magistrate may , in any case, direct the Public Prosecutor to present an appeal to the Court of sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]"

4. By virtue of the powers of the State Government, the amendment was introduced which altered the position in law. Earlier, the State Government was empowered to direct the Public Prosecutor to present an

appeal to the High Court from an original or Appellate order, of acquittal, passed by any Court, or an order of acquittal passed by the Court of Sessions in Revision proceedings.

5. The respondent/accused was charged with having committed offence punishable u/s 420, 467, 471 and 511 r/w 34 of the IPC. In so far as Section 467 is concerned, the maximum punishment is of imprisonment for life and the lesser punishment would be imprisonment for 10 years and fine. Considering Rule (II) Sub Clause (a) of Chapter I of the Bombay High Court Appellate Side Rules, 1960, an offence which is punishable with a sentence/term of imprisonment not exceeding 10 years, would render the learned Single Judge with the jurisdiction to deal with such a case. If the offence is punishable u/s 467 with a sentence of imprisonment for life, this Court would have the jurisdiction and the appeal would lie before the learned Division Bench. We, therefore, have no hesitation in concluding that the date on which the appeal was registered in this Court, not to be mistaken to be the date on which it has been entertained by this Court, the learned Prosecutor had rightly preferred the appeal.

6. The issue before us is as regards an amendment to procedural Law and whether a litigant would have any right to oppose a change of Forum in view of an amendment to the procedural Law thereby shifting the forum from a particular Court to another Court. We are not required to look any

further in view of the Law crystallized by the Hon'ble Apex court in Ramesh Kumar Soni Vs. State of Madhya Pradesh [(2013) 14 SCC 696], wherein it was held in paragraph Nos.7, 8, 14, 19 and 21, as under :-

"7. The First Schedule to the Criminal Procedure Code 1973 classifies offences under the IPC for purposes of determining whether or not a particular offence is cognizable or non-cognizable and bailable or non-bailable. Column 6 of the First Schedule indicates the Court by which the offence in question is triable.

7.1 The Madhya Pradesh Amendment extracted above has shifted the forum of trial from the Court of a Magistrate of First Class to the Court of Sessions. The question is whether the said amendment is prospective and will be applicable only to offences committed after the date the amendment was notified or would govern cases that were pending on the date of the amendment or may have been filed after the same had become operative?

7.2 The Full Bench has taken the view that since there is no specific provision contained in the Amendment Act making the amendment applicable to pending cases, the same would not apply to cases that were already filed before the Magistrate. This implies that if a case had not been filed upto the date the Amendment Act came into force, it would be governed by the Amended Code and hence be triable only by the Sessions Court.

7.3 The Code of Criminal Procedure does not, however, provide any definition of institution of a case. It is, however, trite that a case must be deemed to be instituted only when the Court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by a Magistrate on a complaint of facts filed before him which constitutes such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an

offence. The Magistrate may also take cognizance of an offence on the basis of his knowledge or suspicion upon receipt of the information from any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's Court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or a police report. The decision of this Court in Jamuna Singh and Ors. v. Bahdai Shah AIR 1964 SC 1541, clearly explains the legal position in this regard.

7.4 To the same effect is the decision of this Court in Devrapally Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors. (1976) 3 SCC 252 where this Court held that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein and that cognizance can be taken in the manner set out in clauses (a) to (c) of Section 190(1) of the Cr.P.C. We may also refer to the decision of this Court in Kamlapati Trivedi v. State of West Bengal (1980) 2 SCC 91 where this Court interpreted the provisions of Section 190 Cr.P.C. and reiterated the legal position set out in the earlier decisions.

8. Applying the test judicially recognized in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Sessions. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any Court

to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court were, in that view, perfectly justified in holding that the order of committal passed by the Magistrate was a legally valid order and the appellant could be tried only by the Court of Sessions to which the case stood committed.

14. The amendment to the Criminal Procedure Code in the instant case has the effect of shifting the forum of trial of the accused from the Court of Magistrate First Class to the Court of Sessions. Apart from the fact that as on the date the amendment came into force no case had been instituted against the appellant nor the Magistrate had taken cognizance against the appellant, any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. The appellant could not claim a vested right of forum for his trial for no such right is recognised. The High Court was, in that view of the matter, justified in interfering with the order passed by the Trial Court.

19. Even otherwise the Full Bench failed to notice the law declared by this Court in a series of pronouncements on the subject to which we may briefly refer at this stage. In Nani Gopal Mitra v. State of Bihar AIR 1970 SC 1636, this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure. In that case the trial of the appellant had been taken up by Special Judge, Santhal Paraganas when Section 5(3) of the Prevention of Corruption Act, 1947 was still operative. The appellant was convicted by the Special Judge before the Amendment Act repealing Section 5(3) was promulgated. This Court held that the conviction pronounced by the Special Judge could not be termed illegal just because there was an amendment to the procedural law on 18th December 1964. The following

passage is, in this regard, apposite:

> "…. It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force--(See In re a Debtor, and In re Vernazza. The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect:
>
> xx xx xx (Section 6 is quoted) xx xx xx …. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganus long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under Section 5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this

aspect of the case." (emphasis supplied)

21. The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be applicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from Sessions Court to the Court of Magistrate First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us."

7. This appeal was admitted by the learned Single Judge of this Court on 10/12/2007. It is obvious that the parties to this appeal were not aware of the substitution by Act 25 of 2005 with effect from 23/06/2006. This substitution to Section 378(1) was not brought to the notice of the learned Single Judge. When this appeal was listed for a final hearing on 26/02/2021, we have noticed the substitution. The learned Prosecutor has also perused the same and we, therefore, referred the matter to the learned Registrar (Judicial) to submit a report. We appreciate the inputs from the learned Registrar (Judicial), Shri Hemant Bhosale, who has rightly pointed out that an amendment to procedural law which shifts the forum, would be applicable to the case in hand.

8. We have no hesitation in concluding that an amendment to the

procedural Law leading to a change in Forum, would apply to pending cases and which, in other words, would be applicable retrospectively. This Court had not taken cognizance of this appeal until 29/09/2006, when notice was issued to the respondent/accused by the learned Single Judge of this Court. This appeal was admitted on 10/12/2007. As such, when notice was issued by this court, the appeal was not maintainable before this Court.

9. The Hon'ble Apex court, in Securities and Exchange Board of India Vs. Classic Credit Limited [(2018)13 SCC 1], has dealt with a change in Forum by way of an amendment. It was held that procedural amendments are presumed to be applicable retrospectively, unless expressly or impliedly provided otherwise. A change of Forum is a procedural change and therefore the amendment would be applicable retrospectively, obviously to the pending cases.

10. As has been held in Ramesh Kumar Soni (supra), in peculiar facts of a given case, the Court may rule otherwise if the case has almost concluded or is at an advanced stage where, a change in forum would cause prejudice to the parties and they would be compelled to suffer the rigours of tardy litigation. Nevertheless, in Securities and Exchange Board of India (supra), the Hon'ble Apex Court ruled that the amendment resulting in the change of Forum, would operate retrospectively irrespective of whether the

offence was allegedly committed by the accused prior to the amendment.

11. In view of the above, we deem it appropriate to transfer this criminal appeal to the learned Addl. Sessions Court, Dhule. We request the concerned Court to decide the said appeal within 4 (four) months from the date of appearance of the parties. All these parties shall appear before the concerned Court on 05/04/2021. The record and proceeding and muddemal property, if any, shall be transmitted to the said Appellate Court forthwith.

(B.U. DEBADWAR, J.) **(RAVINDRA V. GHUGE, J.)**