

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2876 OF 2019

Megha Mandar Samant,
Age : 29 Years, Occ. Household,
R/o. Flat No.5, Chandralok Apartment,
Near Old Indira Nagar Police Station,
Patil Garden Nashik. Applicant

Versus

M/s Shewet Sarita Farm Products
Through its Partner
Kamlakar Anant Samant,
Age : 58 Years, Occ. Business,
R/o. Anantashram;, 1st Floor,
Vijayawadi, Hirapur Road,
Chalisgaon, Dist. Jalgaon. .. Respondent

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Advocate for the Applicant : Mr. V.V. Deshmukh
Advocate for Respondent- Mrs. Minakshi L. Sangeet
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CORAM : SURENDRA P. TAVADE, J.

DATE : 23.08.2021

PER COURT :-

The applicant has filed this application praying for Summary Criminal Case No. 5896 of 2018, pending before the learned 4th Judicial Magistrate, First Class, Jalgaon, District Jalgaon, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (here-in-after, referred to as the "N.I.Act") be transferred to the Court of the learned Judicial

Magistrate, First Class, Nashik, wherein, the complaint is filed by the applicant, for the offence punishable under Sections 498-A and 420 of Indian Penal Code and other provisions, is likely to be tried after filing of the charge sheet and proceeding of Miscellaneous Application No. 76 of 2019 (for condonation of delay, in filing the revision) along with the revision application filed by the applicant herein, against the order of issuance of process in Summary Criminal Case No. 5896 of 2018, passed by the learned Judicial Magistrate, First Class, Jalgaon, for the offence punishable under Section 138 of the N.I.Act be transferred to the competent courts at Nahsik.

2. It is contended that the respondent firm has filed complaint under Section 138 of the N.I.Act against the applicant. It is contended that the applicant is a daughter-in-law of the partner of the respondent firm, namely, Kamlakar Samant. It is contended that the marriage of the applicant and the son of Kamlakar, namely, Mandar performed on 3rd January 2016 at Mumbai. Both of them resided together till June-2018. It is contended that the husband of the applicant forged the cheque of the applicant and issued in favour of the respondent-firm. The said cheque was dishonoured on the ground that it was manipulated. On the basis of dishonour of the said cheque, the respondent-firm has filed a private complaint bearing

Summary Criminal Case No. 5896 of 2018, against the applicant in the Court at Jalgaon. The trial Court issued process against the applicant. The applicant has filed a revision application before the learned Sessions Court at Jalgaon but, there was delay in filing the revision application. The revision application was filed along with application for condonation of delay and the said application is pending before the Sessions Court, Jalgaon.

3. It is contended that the husband of the applicant has also filed a Petition bearing No. A-541 of 2018, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights, before the learned Family Court at Nashik, against the applicant. He has also filed Hindu Marriage Petition No. 77 of 2019, before the learned Civil Judge, Senior Division, Chalisgaon, under Section 12(1)(c) and (d) of the Hindu Marriage Act, 1955, for divorce on the ground of declaration of nullity of marriage. It is contended that the husband of the applicant has filed litigation against the applicant at Chalisgaon, Jalgaon, Nashik, in order to harass her. The applicant has also filed a complaint against her husband and others under Section 498-A of the Cr.P.C, which is pending at Nashik. Therefore, it is prayed that the Summary Criminal Case No. 5896 of 2018, which is pending before learned J.M.F.C at Jalgaon and the application for condonation of delay along

with revision application, which is filed by the applicant against the order of issuance of process, before the Session Court at Jalgaon, bearing M.A. No. 76 of 2019 be transferred to Nashik Court, where the criminal case against the husband of the applicant is pending.

4. The respondent appeared and objected the present application on the ground that the applicant is facing charge under Section 138 of the N.I.Act. As per the provisions of Section 138 of N.I.Act, a complaint is required to be filed within whose local jurisdiction if the cheque is delivered for clearance through an account of the branch of the bank where the payee or holder in due course, as the case may, maintains the account, is situated or if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

5. Learned counsel for the respondent submits that the cheque was delivered at Jalgaon. The drawee has deposited the said cheque in his account at Jalgaon, therefore, except Jalgaon Court, no other Court has jurisdiction to try and entertain the complaint. Therefore, the present application is not maintainable.

6. It is also submitted that the witnesses of the said case are from Jalgaon District, so, it is not convenient for witnesses to visit at Nashik for giving evidence. If the criminal case is transferred to Nashik, the hardship would be caused to the witnesses. Therefore, it is prayed that the application may be dismissed.

7. Admittedly, the applicant prays for transfer of Summary Criminal Case No. 5896 of 2018, wherein, she is accused. The learned counsel for the respondent relied on the ratio laid down in the case of ***Mrs. Maneka Sanjay Gandhi and another Versus Miss Rani Jethmalani*** reported in ***AIR 1979 Supreme Court Cases 468***, wherein the Apex Court has held as under -

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary

from case to case. The grounds for the transfer have to be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complainant and will mitigate the serious difficulties of the accused. In the instant case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi; but the meat of the matter, in a case of defamation, is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances."

8. In view of the above ratio, I have perused the fact of the present case. It appears that, the applicant is facing charge under Section 138 of the N.I.Act in Summary Criminal Case No. 5896 of 2011. No doubt, it is the case of the applicant that her husband had fraudulently issued cheque in favour of the respondent. It is also the case of the applicant that the cheque is dishonoured on the ground of manipulation of cheque in

question. But, the said allegations cannot be considered in this application against the applicant as the applicant has filed revision application against the issuance of process. But, the fact remains on record that the Summary Criminal Case No. 5896 of 2018, is governed by the provisions of N.I.Act. In the year 2015, there is an amendment in Section 142(2) of the N.I.Act, which runs as under :-

“The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation- For the purpose of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

9. In view of the above amended provisions of the law, it can be said that the case under Section 138 of the N.I.Act, can be

tried only by the Court in whose local jurisdiction the cheque was delivered or presented for payment. In the present case, in both the contingencies, the Court should be at Jalgaon. In the present case, the cheque was delivered and it was presented for encashment at Jalgaon; therefore, except Jalgaon Court, no other Court has jurisdiction to try and entertain the case. The offence under Section 138 of N.I.Act is technical in nature. The Bank witnesses in the present case are from Jalgaon, therefore, it would not be convenient for them to depose in the Nashik Court. The ratio laid down in the case of **Menka Gandhi** (*supra*), is applicable to the facts of present case. The transfer of criminal case is not beneficial for the Bank witnesses, as the offence is of a technical in nature, therefore, in view of the provisions of Section 142(2) of N.I.Act, the case cannot be transferred to Nashik. In view of aforesaid discussion, the application has no merit, therefore, it is liable to be dismissed. Hence, the order :-

ORDER

The application stands dismissed.

**(SURENDRA P. TAVADE)
JUDGE**

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