

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 56 OF 2021

Deepak Agrawal s/o Ramswaroop Agrawal

..vs..

YES Bank Limited, thr. Regional Collection Leader and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.S. Gulia, Advocate for applicant.

Shri R.S. Suryawanshi, Advocate for non-applicants.

CORAM : VINAY JOSHI, J.

DATED : 24/09/2021

This is an application under Section 407 of the Code of Criminal Procedure seeking transfer of Criminal Case No.582/SS/2021 pending on the file of Metropolitan Magistrate's 7th Court at Dadar, Mumbai (hereinafter referred to as 'Mumbai Court') to the competent Court having jurisdiction at Nagpur.

2. The transfer is primely sought on the ground that Mumbai Court has no jurisdiction to try and entertain the criminal complaint filed under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act'). Secondly, on the ground of personal inconvenience of the applicant (accused), transfer has been sought.

3. Heard both sides and gone through the judgments cited by the applicant.

4. Admittedly, the applicant who is proprietor of

M/s. Shyam Steel has availed financial facility of Rs.1.25 crores from Yes Bank Limited. It is the case of Yes Bank that in order to discharge liability, a cheque tuning Rs.1.25 crores dated 16.02.2021 drawn on the Yes Bank Limited, Nagpur Branch was issued by the Applicant - Deepak Agrawal. Said cheque was deposited by Yes Bank in his account at Mumbai, which was dishonored. After making statutory compliances, Yes Bank Limited has filed a private complaint to the Magistrate's Court of Mumbai for the offence punishable under Section 138 of the N.I. Act against the applicant – Deepak Agrawal, which is sought to be transferred.

5. It is the applicant's contention that Mumbai Court does not have jurisdiction to take cognizance of the aforesaid complaint, since the entire transaction took place within the jurisdiction of Nagpur Court. According to him, the dishonored cheque was drawn on the Bank situated at Nagpur and was also issued in favour of the Nagpur Branch of Yes Bank Limited. In short, he would submit that since the entire transaction took place within the territorial jurisdiction of Nagpur Court, in terms of Section 142 of the N.I. Act, the jurisdiction lies with Nagpur Court only. Besides that, it is submitted that, the applicant (accused) is the permanent resident of Nagpur and doing business at Nagpur only. He is sole care taker of family and unable to leave his minor children and old aged parents to attend the Court at Mumbai.

Therefore, on account of inconvenience also, he sought for transfer.

6. Per contra, respondents resisted this application by filing reply-affidavit. It is specifically denied that entire transaction took place within the jurisdiction of Nagpur Court. Learned Counsel for respondents took me through paragraph 12 of the complaint, pertaining to jurisdiction clause. The complainant – Yes Bank Limited has stated that it has registered and Corporate Office in Mumbai. The loan transaction, its' sanction and disbursement has been processed at Mumbai. Moreover, the complainant-Bank has deposited cheque in its bank account at Mumbai. Learned Counsel for the complainant has submitted that statutory demand notice was issued from Mumbai and hence, Mumbai Court has jurisdiction to try and entertain the case.

7. Learned Counsel for the applicant to substantiate his claim for transfer has relied on various decisions. In short, the applicant in this transfer application has called upon this Court to decide whether Mumbai Court has jurisdiction to try and entertain the case. I am not inclined to enter into the said factual aspect, since the applicant(accused) if aggrieved, by the filing of complaint at Mumbai sans jurisdiction, then can very well approach to concerned Magistrate's Court at Mumbai for its redressal. Section 142 of the N.I. Act suffered an amendment,

crystallizing the jurisdiction of Court in terms of Section 142(2) of the N.I. Act. The said position is later on clarified by the Supreme Court in its decision in the case of ***Bridgestone India Private Limited vs. Inderpal Singh (2016) 2 SCC 75***. If on merits, the Mumbai Court does not have jurisdiction, then on application if made, the said Court would pass appropriate order. However, the said factual aspect cannot be entertained in this application under Section 407 of the Code of Criminal Procedure.

8. Learned Counsel for the applicant by placing reliance on the decisions of the Supreme Court in cases of ***Mohd. Hussain @ Julfikar Ali vs. The State (Govt. of NCT) Delhi 2012(1) SCALE 145***, ***2. Zahira Habibullah Sheikh and anr. vs. State of Gujarat and ors. (2006) 3 SCC 374*** and ***3. State of Maharashtra vs. Narayan Shamrao Puranik and ors. (1982) 3 SCC 519*** submitted that the applicant (accused) has a right to have fair trial by a competent Court, which is a part of right to life and personal liberty. Observations made in those judgments have no application to the facts of the case in hand, in view of limited scope of this application.

9. As regards to the second ground of transfer, it pertains to personal inconvenience of applicant (accused). The applicant is engaged in the business of Steel and Iron trading at Nagpur. He has availed over draft facility from Yes Bank Limited, out of which the

dispute arose.. The jurisdiction is carved out by the statute to modulate criminal proceedings. Unless, there exists exceptional grounds, for the sake of convenience of the party, the proceeding cannot be transferred. Personal inconveniences of the applicant businessman can hardly be a ground for transfer.

10. Having regard to these facts, there is no justification in transferring the criminal case pending on the file of Mumbai Court to Nagpur. It is hereby made clear that this Court has not made any observations on the point whether the Mumbai Court has jurisdiction or not. It is open for the applicant to agitate said ground before the Court where the criminal case is pending. In view of that the application being devoid of merits, stands rejected.

JUDGE

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