

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

942 CRIMINAL APPLICATION NO.2375 OF 2022

**RAMDAS SONAAPPA TARASE AND OTHERS
VERSUS
HANUMAN SHIVAJI SHELKE AND OTHERS**

Mr.K.B. Jadhav, Advocate for the applicants.

Mrs.Kalpana Kulkarni (Sonpawale), Advocate for respondent Nos.1 to 3.

**CORAM : KISHORE C. SANT, J.
DATED : 06.12.2022**

PC :-

01. Heard learned Advocate for both the parties. The petitioner has challenged the order passed by the Sessions Judge under section 408 of the Cr.P.C. directing to transfer of RCC No.1 of 2018 pending before the Court of Judicial Magistrate, First Class, Partur to the Court of learned Sessions Judge-6, Jalna, as the said court is seized with the Sessions Case No.98 of 2019. Both the cases are arising out of the counter cases filed against each other. The learned Advocate for the applicants submits that while allowing the application, the learned Sessions Judge has not considered that the Trial at Partur was in advanced stage where four witnesses were also examined. He fairly accepts that the court was within its power while passing the order.

02. Learned Advocate for the respondents opposed the application and submitted that the Court has rightly passed the order. She relied upon judgment reported in AIR 2003 (SC) 4089 in the case of State of M.P. Vs. Mishrilal (Dead) and she particularly relied upon para No. 8 wherein the Hon'ble Apex Court has held that it is desirable to try cross-cases together by the same Court irrespective of the nature of offence involved. For ready reference, para No.8 is reproduced as below :-

“8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

03. Learned Advocate for the respondent further relied upon judgment reported in 2016 Cri.L.J.311 in the case of Chandrkantbhai Bhaichandbhai Sharma Vs. State of Gujarat and Anr. She relied upon paragraph Nos.17, 21 and 22 of the judgment, wherein power conferred on the Sessions Court under section 408 Cr.P.C. is considered. It is held that the

same powers are conferred upon High Court under Section 407 of Cr.P.C. Para 21 of the said judgment is reproduced here below :-

“21 In view of the above discussion, the position may be summarized thus :

(a) A Sessions Judge in exercise of judicial power under Section 408 of the Code may transfer any case pending before any Criminal Court in his Sessions Division to any other Criminal Court in his Sessions Division. That would mean that he can transfer even those cases where the trial has commenced from one Additional Sessions Judge in his Sessions Division to another Additional Sessions Judge in his Sessions Division. The transfer of a case under Section 408 of the Code being in exercise of a judicial power, it should be preceded by a hearing to the parties interested. Further, the reason or reasons why it is expedient for the ends of justice to transfer the case, has to be recorded.

(b) The judicial power under Section 408 (1) and the administrative power under Section 409 (1) and (2) are distinct and different and Section 408 is not controlled by Section 409 (2). A Sessions Judge in exercise of his administrative power under Section 409 may :

(i) withdraw any case or appeal from any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him;

(ii) recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate sub-ordinate to him;

(iii) recall any case or appeal which he has made over to any Additional Sessions Judge, before trial of such case or hearing of such appeal has commenced before such Judge. and try the case or hear the appeal himself or make it over to another Court for trial or hearing in accordance with the provisions of the Code. No hearing need be granted to any one before exercising such power. But the reason therefor shall have to be recorded having regard to Section 412.”

04. Thus, in view of this position, it is clear that the Sessions Court has sufficient power to transfer even a part-heard case. Therefore, the submission of the learned Advocate for the applicants that the case pending

before the Court was in the advanced stage and four witnesses were examined and therefore it was not proper on the part of the learned Sessions Judge to transfer such case is without any merit.

05. This Court does not find that any illegality is committed by the learned Sessions Court while passing the impugned order. Therefore, no interference is called for. The Criminal Application stands rejected.

[KISHORE C. SANT, J.]