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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL TRANSFER APPLICATION NO. 1 OF 2021
WITH
STAMP NUMBER (MAIN) NO. 1800 OF 2020 (F)
WITH
CRIMINAL TRANSFER APPLICATION NO. 338 OF 2021
(F)**

CRIMINAL TRANSFER APPLICATION NO. 1 OF 2021

THE STATE OF GOA, THR. P.I. CRIME
BRANCH, RIBANDAR ...APPLICANT
Versus
SUBRATA BARRIK AND 5 ORS. ...RESPONDENTS

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Applicant.*

Mr. Vibhav Amonkar, Advocate *for Respondent No. 1.*

Mr. Chirag Angle, Advocate *for Respondent Nos. 4 and 5.*

**WITH
STAMP NUMBER (MAIN) NO. 1800 OF 2020 (F)**

STATE, THROUGH P.I., SIT
DONAPAULA ...APPLICANT
Versus
RAVIDNRA PRAKASH AND 16 ORS., ...RESPONDENTS

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Applicant.*

Mr. Jose F. Melo with Mr. Pankaj Chodanker, Advocates *for Respondent No. 14.*

Mr. Parag Rao, Advocate *for Respondent Nos. 15 and 16.*

**WITH
CRIMINAL TRANSFER APPLICATION NO. 338 OF 2021
(F)**

THE STATE OF GOA

...APPLICANT

Versus

GEETESH NAIK AND 3 ORS.

...RESPONDENTS

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Applicant.*

Mr. Jose F. Melo with Mr. Pankaj Chodanker, Advocates *for Respondent No. 3.*

CORAM: MANISH PITALE, J.

DATED: 28th January 2022.

P.C.:

1. These three Applications have been filed on behalf of the State of Goa, seeking the transfer of three Sessions cases, concerning offences under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the provisions of the Prevention of Corruption Act, 1988. The applicant has prayed for transfer of three specific cases, pending before the Special Court at Margao to the Court of Principal District and Sessions Judge at Panaji.

2. The brief backdrop in which these Applications have been filed is that the aforesaid cases were pending before the Principal District and Sessions Judge at Panaji for trial of the aforesaid offences under the MMDR Act. The chargesheets were

admittedly filed before the said Court in these matters. At this stage, on 25.01.2019, a notification was published in the official gazette, constituting a Special Court for the trial of offences under the provisions of the MMDR Act. Power was specifically exercised under Section 30-B of the MMDR Act in concurrence with the High Court for issuance of the said notification and for appointing a Special Court.

3. In this backdrop, admittedly, the State, which is the applicant in these Applications, moved Applications before the Principal District and Sessions Judge at Panaji for transfer of the aforesaid cases to the Special Court, constituted as per the aforesaid notification dated 25.01.2019. The said Applications were granted and the cases stood transferred to the Special Court, South Goa, Margao.

4. In one of such cases i.e. Special Case (Corruption) No. 03/2019, the State moved an Application, before the Special Court, contending that the earlier order of transfer, passed by the Principal District and Sessions Judge at Panaji, could not have been passed for the reason that the case stood transferred from one District to the other, which was beyond jurisdiction of the said Court. On this basis, it was contended that the aforesaid case be transferred back to the said Court. By the order dated

12.11.2020, the Special Court dismissed the said Application. It appears that in the other two cases i.e. Special Case (Corruption) Nos. 02/2019 and 04/2019, no such specific Application was moved for transferring the said cases back to the Court of the Principal District and Sessions Court, Panaji.

5. Instead, these three Applications have been filed, before this Court under Section 407(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking transfer from the said Special Court to the Principal District and Sessions Court at Panaji.

6. Mr. Faldessai, learned Additional Public Prosecutor for the applicant in the aforesaid Applications submits that the Application initially moved before the District and Sessions Court, Panaji was ill-advised and it was a mistake on the part of the State. In any case, it is submitted that the Principal District and Sessions Court, Panaji could not have transferred the said cases to the Special Court, which is located in South Goa District and the same is a separate District within the State of Goa. It is submitted that the exercise of power was relatable to Section 408 of Cr.P.C. which demonstrates that the State had mistakenly moved the application for transfer. It was further submitted that the notification in question, constituting the Special Court was issued on 25.01.2019 and since, the chargesheets were filed prior

to that, there was no reason for transferring the said cases under the said notification. On this basis, the prayer for transfer in the present Applications was supported.

7. On the other hand, Mr. Parag Rao, Mr. Jose Melo, Mr. Vibhav Amonkar and Mr. Chirag Angle, learned Counsel appearing on behalf of respective respondents, in these transfer Applications, submitted that the notification dated 25.01.2019 has been issued under Section 30-B(2) of the MMDR Act with the concurrence of the High Court, and therefore, in the State of Goa, as per the said notification, only the aforesaid Court, constituted at Margao has jurisdiction to try cases concerning the offences under the MMDR Act. On this basis, it is contended that after issuance of the said notification dated 25.01.2019, there is no question of any other Court trying the cases under the MMDR Act. On this basis, it is submitted that the aspect of transfer of cases from one Court to the other, would be of no relevance in the present cases, and hence, the State was not justified in invoking Section 407 of the Cr.P.C.

8. Heard learned Counsel for the rival parties and perused the material on record. In this case, there is no dispute about the fact that the notification dated 25.01.2019 was issued under Section 30-B of the MMDR Act. The said section reads as follows:

30-B. Constitution of Special Courts.—(1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge.

(4) Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.

9. The notification also specifically recorded that a specific designated Court has been identified at Margao in concurrence with the High Court as per Section 30-B(2) of the MMDR Act. Therefore, there cannot be a dispute about the fact that, upon issuance of notification dated 25.01.2019, the Special Court has been designated and identified for the whole of the State of Goa for trying of the offences under the MMDR Act, as the notification specifically records that the Special Court is being appointed for trying of the offences under the MMDR Act. Section 30-B also specifically states that the State Government has

the power to appoint such a Special Court in concurrence with the High Court for the purpose of specifically trying the offences under the MMDR Act.

10. In this backdrop, it becomes clear that the aforesaid three cases, with which this Court is concerned and in respect of which the aforesaid three transfer Applications are filed after issuance of the notification dated 25.01.2019, can be tried only before the Special Court, so constituted under the notification dated 25.01.2019, by exercising of power under Section 30-B of the MMDR Act.

11. Viewed from this angle, the contentions raised on behalf of the State that the earlier Applications moved before the Principal District and Sessions Court, Panaji for “transferring the cases” from the said Court to the Special Court were ill-advised, pales into insignificance. As of today, upon issuance of the notification dated 25.01.2019, and Special Court being constituted and appointed by the State Government in concurrence with the High Court, this Court is of the opinion that only the Special Court can proceed to try the cases concerning the offences under the MMDR Act.

12. In view of the above, there is no substance in the prayer made in the aforesaid Applications. Hence, the aforesaid Applications are dismissed.

MANISH PITALE, J.