

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 254 OF 2022

Prabhakar Baburao Thorat

Applicant

Versus

Suneel Dattatraya Mogre HUF and Anr.

Respondents

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Mr. Rizwan Merchant a/w Ms. Vinita Dandekar, Advocate for the Applicant.

Mr. Jatin P. Shah a/w Ms. Snehankita Munj a/w Ms. Sharadhha Kamble Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 23rd SEPTEMBER, 2022

PC :

1. Leave to amend to correct the name of Respondent No.1. Leave is granted.

2. The applicant is seeking transfer of C.C. No.1830/SS/2021 pending before the Court of learned Metropolitan Magistrate, 54th Court at Sewree, Mumbai to the Court of learned Metropolitan Magistrate 20th Court, Sewree, Mumbai and to hear the said case with C.C. No.1125/SS/2021, 1126/SS/2021 and 2149/SS/2021. The

applicant is facing prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Three complaints are pending before the Court of learned Metropolitan Magistrate, 20th Court at Sewree, Mumbai viz CC No. 1125/SS/2021, CC No. 1126/SS/2021 and CC No. 2149/SS/2021, and complaint bearing No. 1830/SS/2021 is pending before the Court of Metropolitan Magistrate, 54th Court at Sewree, Mumbai.

4. Learned advocate for the applicant submitted that in the interest of justice that all the complaints to be assigned for conducting the prosecution to one Court as the issues are overlapping of the complaints arose out of same transaction. The applicant preferred transfer application before the Court of Chief Metropolitan Magistrate bearing No. 42 of 2022. The said Court is vacant from last three to four years and the In-charge Chief Metropolitan Magistrate is over burden with his matters as well as other In-charge Court matters and as such said transfer application is not taken up for hearing by In-charge Chief Metropolitan Magistrate Court and the matter is only being adjourned from time to time. The trial in CC No. 1830/SS/2021 is

delayed. The complaints are arising out of same transactions and one complaint is before other Court. All complaints are filed under Section 138 of the Negotiable Instruments Act. This Court vide order dated 20.06.2022 had expedited the proceedings before the trial Court and in order to ensure the same as well as to secure ends of justice it is necessary that all complaints are before one Court.

5. Learned advocate for the respondent/complainant submitted that there is no need to transfer the proceedings as claimed by applicant. The proceedings in three cases has already commenced. The application under Section 407 of Cr.P.C. is not maintainable. The applicant had preferred application before In-charge Chief Metropolitan Magistrate and the same is pending. The In-charge Chief Metropolitan Magistrate has power to transfer the proceedings. This application is not maintainable in law.

6. In rejoinder, learned advocate for the applicant submitted that the applicant need not pursue application pending before the Court of In-charge Chief Metropolitan Magistrate. This Court can transfer the proceedings in

exercise of powers under Section 482 of Cr.P.C. Separate procedure is laid down under Negotiable Instruments Act, under Section 142-A of the Negotiable Instruments Act. It is not necessary to resort to section 410 of Cr.P.C.

7. Mr. Shah appearing for respondent submitted that all the four complaints are filed by different complainants. The case No. 1830/SS/2021 pending before the Learned Metropolitan Magistrate, 54th Court has not connection with three other cases. Trial in three cases have been ordered to be time bound by this Court. Section 142-A of Negotiable Instruments cannot be invoked to transfer case in question as contended by learned advocate for applicant.

8. The application for transfer of proceedings as aforesaid is pending before the In-charge Chief Metropolitan Magistrate. Section 410 of the Code empowers the Chief Judicial Magistrate for withdrawal of any case from or recall any case which he has made over, to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any such Magistrate competent to inquire into or try the same. Section 142-A cannot be imported to exercise such power in the fact of

the present case.

9. Section 142-A of the Negotiable Instruments Act reads as follows.:-

[142-A. Validation for transfer of pending cases.

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any Court, all cases transferred to the Court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that Court under sub-section (1) and such complaint is pending in that Court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same Court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that Court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different Courts,

upon the said fact having been brought to the notice of the Court, such Court shall transfer the case to the Court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), before which the first case was filed and is pending, as if that sub-section had been in force at all material times.]

10. Sub-section 2 of the said provision provides that notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where payee or holder in due course, as the case may be, has filed the complaint against the drawer of cheque in the Court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that Court under sub-section (1) and such complaint is pending in that Court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same Court. The said provision is not attracted in the present case. The complainant in all complaints are different. The applicant has preferred this application under Section 407 of Cr.P.C. The application under Section 407 of Cr.P.C. is pending before concerned Court. The applicant may pursue the said application for transfer. The prayer for transferring proceedings under Section 407 of Cr.P.C. or Section 142-A

of Negotiable Instruments is rejected.

ORDER

- (i)** Criminal Application No. 254 of 2022 is rejected and disposed off.
- (ii)** The prayer for transfer of case in CC No. 1830/SS/2021 to the Court of learned Metropolitan Magistrate 20th Court at Sewree, Mumbai is rejected.
- (iii)** The applicant is at liberty to pursue the application for transfer of the proceeding pending before the Court of learned In-charge Chief Metropolitan Magistrate.
- (iv)** In the event, the applicant pursue the said application, the concerned Court shall decide the said application for transfer expeditiously.

(PRAKASH D. NAIK, J.)