

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

Criminal Application (APPLN) No.14 of 2022

Akshay s/o Pramodrao Haral,

Versus

State of Maharashtra, through the District Government Pleader Yavatmal/P.S.O.
Yavatmal Gramin, Tal. & Dist. Yavatmal and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.D. Awchat, Advocate for appellant.

Shri S.A. Ashirgade, A.P.P. for respondent no.1/State

CORAM : ANIL S. KILOR, J.

DATED : 04 MARCH 2022

This is an application filed under Section 407 of the Criminal Procedure Code raising a question to the correctness and legality of the order passed by the Sessions Judge, Yavatmal in Other Misc. Criminal Application (OMCA) No.37/2021 rejecting the application preferred by the applicant for transfer on Regular Criminal Case No.642/2016 (State Vs. Dipak Thakare and others) pending before the 6th Joint Civil Judge, Junior Division and Judicial Magistrate, Yavatmal to District Judge-2 and Additional Sessions Judge and the same be tried along with Sessions Case No.93/2016 (State Vs. Akshay).

2. The reasons given by the learned Sessions Judge for rejection of the application, which reads thus:

“3. According to the applicant both the cases are counter cases. Therefore, R.C.C. No.642/2016 needs to be transferred from the Court of J.M.F.C. (Court No.6), Yavatmal into the Court of Additional Sessions Judge-2, Yavatmal to dispose of the same with S.C. No.93/2016. According to me, there is difference between committal of cases and transfer of cases. The committal Court can commit a case to the Sessions Court, if the case is exclusively triable by the Sessions Court. Further more, if both the cases are counter cases and case exclusively triable by the Sessions Court, is committed to the Sessions Court for trial and the counter case is not exclusively triable by the Sessions Court and such is noticed then the said Court, where that case is pending commit the said case to the Sessions Court to try and dispose of with the counter case which is committed for trial and pending in the Sessions Court. Sessions Judge can transfer cases from one Court to another Court and cannot commit cases from one Court to another Court.”

3. This Court in the case of Giridhar s/o Vishwanath Pise Vs. State of Maharashtra and others reported in **2005(3) Mh.L.J. 880**, has held thus:

“4. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that two counter cases are pending in the Court. Sessions Trial No. 3 of 2004 (Crime No. 138/03) is pending in the Sessions Court, whereas Summary Criminal Case No. 151/03 (Crime No. 139/03) is pending before J.M.F.C., Warora. The learned Sessions Judge rejected the prayer of the applicant/accused for transfer of the aforesaid summary criminal

case from the Court of J.M.F.C., Warora to the Court of Sessions on the ground that in both the cases the accused are different and the offences are distinct in both the cases. Such order cannot be sustained in view of the observations of the Supreme Court in *Sudhir v. State of M.P.*, 2001 SCC (Cri) 387, wherein it has been held in para 10 of the judgment that "We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross-cases shall be tried by the same Court, can be summarised thus : (i) it staves off the danger of an accused being convicted before his whole case is before the Court, (ii) it deters conflicting judgments being delivered upon similar facts, and (iii) in reality the case and the counter-case are, to all intents and purposes, different or conflicting versions of one incident."

4. In the teeth of above referred well settled principle of law, I revert back to the facts of the present case. In the present case, both the cases are arising out of the same incident and they are counter cases. One is triable by the Magistrate and another is triable by the Sessions Court. Thus, in view of the judgment in the case of *Giridhar (supra)*, I am of the opinion that the findings recorded by the learned Sessions Judge while rejecting the application under Section 408 of Criminal Procedure Code is erroneous and contrary to law. Accordingly, I passed following order:

- i) The Criminal Application is **allowed**.

- ii) The order dated 10/01/2022 in Other Miscellaneous Criminal Application (OMCA) No.37/2021 passed by the Sessions Judge, Yavatmal is quashed and set aside.
- iii) The Regular Criminal Case No.642 of 2016 (State Vs. Dipak Thakare and others) pending before the 6th Joint Civil Judge Junior Divisions and Judicial Magistrate Yavatmal is transferred to District Judge-2 and Additional Sessions Judge Yavatmal and the same be tried along with Sessions Case No.93/2016 (State Vs. Akshay).

The Criminal Application is **disposed of** accordingly.

[ANIL S. KILOR, J.]

R.S.Sahare