

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

CRIMINAL APPLICATION [APPLN] No. 33/2022.

Shobha Dilip Chavhan,
Aged 44 years, Occupation
Service, resident of Siddarth Apartment,
Kapilvastu Nagar, Duplex No.24,
Yamunakunj Duplex, Tahsil and
District Akola.

... **APPLICANT.**

VERSUS

Sandhya Madhukarrao Meshram,
@ Sandhya Prashant Gajbhiye,
Aged 44 years, Occupation – Service,
Resident of Vidyut Nagar, Paras,
Tahsil Balapur, and District
Akola.

... **NON-APPLICANT.**

Mr. U.J. Deshpande, Advocate for the Applicant.
Mr.M.N. Ali, for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JULY 12, 2022.

ORAL JUDGMENT :

Considering the controversy involved in the matter and by

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consent of the learned Counsel for the parties, Criminal Application is taken up for final disposal by issuing **Rule**, making the same returnable forthwith.

2. This application arises out of the proceedings pending under Section 138 of the Negotiable Instruments Act in the Court of Judicial Magistrate First Class, Yavatmal. The applicant who is accused in the case namely S.C.C.No.499/2020, is seeking transfer of the case to the Court of Magistrate at Akola in terms of Section 407 of the Code of Criminal Procedure. The applicant has claimed transfer on the ground of convenience of both the sides by pointing that all other litigations between the parties are pending at Akola.

3. The learned Counsel appearing for the non-applicant/complainant resisted the application by contending that the Court of Akola does not have the territorial jurisdiction to try the said case. Secondly he would submit that mere convenience of a party can be no ground for transfer. The concerned Criminal Case namely S.C.C. No. 499/2020 has been filed against the applicant/accused in the Court of Judicial Magistrate at Yavatmal. The applicant is resident

Rgd.

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of Akola. Admittedly, the same complainant / non-applicant has filed another criminal case under Section 138 of the N.I.Act bearing S.C.C.No.2462/2019 in the Court of Magistrate at Akola. Likewise, the same complainant has filed Regular Civil Suit No.136/2019 against the applicant in the Court of Civil Judge, Senior Division, Akola. Notably, the present applicant/accused has also filed Special Civil Suit No.68/2019 in the Court of Civil Judge, Senior Division, Akola against the complainant. In short three litigations which are filed by both the sides are presently pending in the Court at Akola. It is brought to the notice from the title clause of the litigation that the non-applicant/complainant is also resident of Akola, which is not controverted. In the light of these facts, the urge for transfer for the criminal case from Yavatmal to Akola is to be assessed.

4. The initial resistance is on the ground that the cheque was dishonoured at Yavatmal, therefore, the said Court only has territorial jurisdiction, meaning thereby Akola Court does not have jurisdiction.

5. On the point of territorial jurisdiction, the learned Counsel for the non -applicant has relied on the decision of Madras High Court in case of **Mrs.Nagalakshmi .vrs. Kadas Basha – 2011 All MR (Cri) Journal 151**. The said decision would not help the non-applicant as it never speaks about the powers of transfer of High Court, but, simply expresses about the territorial jurisdiction in relation to matters pertaining to Section 138 of the N.I.Act. Similarly reliance has been placed on the decision of the Supreme Court in case of **M/s. Himalaya Self Farming Group and another .vrs. M/s. Goyal Feed Suppliers – [Transfer Petition (Cri) No. 273/2020 decided on 16.09.2020**, wherein on facts the transfer was declined. The said case is distinguishable on facts, as in the case at hand both the parties are residing at Akola, as well as several cases between the parties are pending at Akola.

6. The learned Counsel for the non-applicant would submit that normally the cases shall not be transferred to a Court which does not have territorial jurisdiction. In this regard he has relied on the decision of Supreme Court in case of **Baljit Singh .vrs. State of**

Jammu and Kashmir – 1982 AIR [SC] 1558. In said case already transfer petition was rejected, but, the second petition on the same ground was allowed and thus, in that context those observations are made which would not apply to the case at hand. The non-applicant has also placed reliance on the decision of this Court in case of **Deepa Piyush Khatri .vrs. Piyush Bandulal Khatri – 2019 (5) All MR 634**, however, it does not bear any relevance.

7. Section 407[1][c][i] of the Code of Criminal Procedure would be the complete answer to the said submission. It provides that the High Court has power to transfer the case irrespective of the fact that the transferee Court may not have the territorial jurisdiction in terms of Sections 177 to 185 of the Code, provided it shall be a competent Court to try said offence. Therefore, there is no hurdle in transferring the case to the Court which does not have territorial jurisdiction.

8. Lastly, by placing reliance on the decisions of Supreme Court in case of **Bhairu Ram and others .vrs. Central Bureau of**

Investigation and others – 2010 All MR (Cri) 3356 (SC) and Rajesh Talwar .vrs. Central Bureau of Investigation and others – 2012 All MR (Cri) 1333 (SC), it is submitted that for the sake of mere convenience, cases cannot be transferred.

9. Reverting to the facts, undeniably the non-applicant / complainant is equally resident of Akola, which is reflected in the title clause of the proceeding. Pertinent to note that the non-applicant herself has filed a case under Section 138 of the N.I. Act, as well as Civil Suit in the Court at Akola. This fact itself loudly demonstrates that there would no inconvenience to the non-applicant for place of trial at Akola, which is her residential place. It is abundant clear that if all litigations between the parties are brought under one roof at Akola, it would be convenient for both. Moreover, it would be convenient for the non-applicant if her isolated case pending at Yavatmal is brought to Akola. In the circumstances, the applicant has made out sufficient ground for transfer of the case as sought for. Hence, the Criminal Application stands allowed. Criminal Case bearing Summary Criminal Case No.

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499/2020 pending on the file of Judicial Magistrate First Class, Yavatmal is withdrawn and the same is transferred to the Court of Magistrate of competent jurisdiction at Akola. The learned Principal District Judge shall assign the case to the competent Magistrate for disposal in accordance with law.

10. Criminal Application is allowed in the aforesaid terms with no order as to costs.

JUDGE