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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3358 OF 2022

Panjabrao Vithalrao Kadam APPLICANT
VERSUS
Sustainable Agro Commerical Finance Ltd., & Anr. RESPONDENTS

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Mrs. Surekha G. Chincholkar, Advocate for the applicant
Mrs. Ashwini Lomte, Adv. for respondents No.1 & 2 (appointed)

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th JANUARY, 2023

ORDER :

1. By this application, filed under section 407 read with 482 of the Criminal Procedure Code, the applicant seeks transfer of SCC No. 1927 of 2017 filed in the Court of learned Chief Judicial Magistrate, Parbhani and SCC No. 2266 of 2018 filed in the Court of Chief Judicial Magistrate, Aurangabad by respondents No.1 and 2, to the Court of Chief Judicial Magistrate, Nanded.

2. Respondent, Sustainable Agro Commercial Finance Ltd., is a non banking company which provides micro finance and is registered with the Reserve Bank of India. The company sanctioned term loan of Rs.1,03,200/- to the applicant for purchase and installation of micro irrigation system, on 7th May, 2016. The said loan facility was availed by the applicant. The

applicant issued cheque of Rs.46,787/- bearing No. 121982 drawn on Tamsa Branch of State Bank of Hyderabad towards repayment of loan, which on presentation with Axis Bank Ltd., Parbhani Branch, was bounced due to insufficient funds. Since the applicant failed to pay the cheque amount, the respondent after issuing statutory notice, filed SCC No. 1927 of 2017 in the Court of CJM, Parbhani under section 138 of the Negotiable Instruments Act and on receipt of summons, the applicant appeared in said case.

3. The company also filed SCC No. 2266 of 2018 in the court of CJM, Aurangabad under section 138 of the NI Act against the applicant, in respect of the same term loan facility alleging that after default towards repayment of loan, the applicant issued cheque of Rs.1,22,971/- bearing No. 121985 dated 29th September, 2017 drawn on State Bank of Hyderabad Hadgaon Branch, which on presentation with Axis Bank Limited, Branch Aurangbaad, was bounced due to insufficient funds.

4. Heard learned advocate for the applicant and the learned advocate appointed for the respondents.

5. Learned advocate for the applicant states that both the cheques are allegedly issued for the same transaction of term

loan given to the applicant and, therefore, since the applicant had given cheques of his bank accounts of Nanded District, both the complaints, one pending at Parbhani and one at Aurangabad, are liable to be transferred at Nanded as the respondent Company has branch office at Nanded also.

6. Learned advocate for the respondents, on the other hand, opposed the prayer, on the ground that two different cheques were issued by the applicant, which were presented by the respondent company at two different branches and on return of cheques, after issuance of statutory notices, the complaints are filed at Parbhani and Aurangabad, where the cheques were presented for encashment. She, therefore, submits that since two different branch managers are complainants in both the complaints, the trials are not liable to be transferred.

7. Admittedly, both the cheques are issued by the applicant for repayment of term loan of Rs.1,03,200/-. The applicant has issued cheques of his bank accounts in Nanded District. It appears that the respondent Company has presented both the cheques at two different branches and has filed separate complaints at Parbhani and Aurangabad. *Prima facie*, there does not appear any plausible reason for the respondent Company to present two cheques of two different branches. It appears that

only with a view to harass the applicant, two complaints are filed at two different places.

8. From the documents placed on record, it appears that respondent Company has branches at Parbhani, Aurangabad and Nanded. Taking into consideration these aspects, this Court is of the opinion that the complaint filed at Aurangabad is liable to be transferred to Parbhani, which would be advantageous for both the parties.

9. The application is, therefore, partly allowed, by directing transfer of SCC No. 2266 of 2018 pending on the file of Chief Judicial Magistrate, Aurangabad to the file of Chief Judicial Magistrate, Parbhani for trial in accordance with law.

10. It is made clear that evidence in both the trials be recorded separately and trials be decided simultaneously.

11. Fees payable to learned advocate appointed for the respondents is quantified at Rs.5000/- to be paid by High Court Legal Aid Services, Sub Committee, Aurangabad, within a period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE