

Ghuge

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

WRIT PETITION NO.1572 OF 2021

Adil Hasan Shaikh and Ors	... Petitioners
V/s.	
The State of Maharashtra	... Respondent

Mr. S.M. Anees for the petitioners.

Mr. A.R. Patil APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 8, 2023

PC.:

1. The petitioner is challenging the order dated 8th February, 2021 passed in CC No.2400370/PW/2013 committing the complaint to the Sessions Court under Section 209 of the Code of Criminal Procedure, 1973. The First Information Report came to be registered against the petitioner for offences punishable under Sections 353, 332, 504 read with 34 of the Indian Penal Code, 1860. After completion of investigation the investigating agency filed charge-sheet.

2. By the impugned order dated 8th February, 2021 the learned Additional Chief Metropolitan Magistrate 24th Court Boriwali, Mumbai committed the case to the Sessions Court, this order is the subject matter of challenging in the present petition. Principal ground raised by the petitioner to challenge the order of committal to Sessions Court is that the amendment brought into force by

notification dated 7th June, 2018 has no retrospective effect as the offence in question was allegedly committed by the petitioner on 4th September, 2012. Therefore, according to petitioner on the date of offence the power to try petitioners was exclusively vested with the learned Magistrate. Therefore, according to him his rights including rights to be tried by a court shall be governed by law which was in existence on the date of offence.

3. *Per contra*, the Mr. Patil learned APP for the State relying on the judgment in the case of **Securities and Exchange Board of India Vs. Classic Credit Limited** reported in (2018) 13 SCC 1 submitted that change of forum to be tried for an offence being procedural right, only Sessions Judge has power to try the offence. He submitted that however the quantum of punishment shall remain same as was in force on the date of offence. The relevant clause of amendment in Indian Penal Code, 1860 brought into force by government Gazette dated 7th June, 2018 is as under :-

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE, 1860.

2. In Section 332 of the Indian Penal Code, 1860, in its application to 45 of the State of Maharashtra (hereinafter, in this Chapter, referred to as “ the said code”), for words “ three years” the words “ five years” shall be substituted.

3. In section 353 of the said Code, for words “ two years” the words “ five years ” shall be substituted.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973.

4. In section 309 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra

(hereinafter, in this Chapter, referred to as “ the Code of Criminal Procedure”), after the existing proviso, the following proviso shall be added, namely —

“ Provided further that, when the enquiry or trial relates to an offence under section 332 or 353 of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of Six months from the date of filing of the charge sheet.”

5. In the First Schedule to the Code of Criminal Procedure, under the heading “I-OFFENCES UNDER THE INDIAN PENAL CODE,” —

(i) for the entry relating to section 332, the following entry shall be substituted, namely :—

“332	Voluntary causing hurt to deter public servant from his duty	Imprisonment for five years, or fine, or both	Cognizable Non-Bailable	Court of Sessions”
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(ii) for the entry relating to section 353, the following entry shall be substituted, namely :—

“353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Imprisonment for five years, or fine, or both	Cognizable Non-Bailable	Court of Sessions”
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4. On perusal of the amendment, it appears that the Section 332 and 353 of Indian Penal Code, 1860 have been amended to

increase punishment from Three years to Five years and Two Years to Five years respectively. The said amendments being substantive in nature, would operate prospectively. In so far as the amendment in Code of Criminal Procedure, 1973 are as concerned, the said amendment being procedural in nature, will operate retrospectively. Law on this point is no longer res integra in view of Judgment of Apex Court in the case of **Hitendra Vishnu Thakur Vs. State of Maharashtra**, reported in (1994) 4 SCC 602.

5. Therefore, in my opinion, there is no substance in the submission that the petitioners have right to be tried by Magistrate only.

6. The next plank of submission is that the right of appeal vested in petitioner on the date of offence has been taken away. According to him, on the date of offence, the appeal would lie to Court of Sessions against the order of Magistrate. Result of amendment is that the forum to challenge the conviction, if any, is changed from Sessions Court to this Court.

7. Relying on judgment in the case of **Transmission Corporation of Andhrapradesh Vs. Ch Prabhakar and others**, reported in 2004 (5) SCC 551, it is submitted that the right of appeal being vested right, subsequent amendment in the statute cannot take away such right. There cannot be dispute about proposition of law laid down by the Apex Court. However, in the facts of the case right of appeal is not taken away. The effect of amendment in Code of Criminal Procedure, 1973 is to confer right of appeal to this Court instead of Court of Sessions. At the most it can be said that the right of

revision is taken away. However right of revision is not substantive right. Such right can be taken away by the provision of statutes either expressly or by implication. In the facts case such rights, if any, revision has been taken away.

8. Relying on the judgment of Allahabad High Court in the case of **Prem Das Vs. State of UP & Another**, in Criminal Revision No.2066 of 2010, decided on 21st September, 2012, it is submitted that the discretion under Section 323 whether to commit a case to Court of Sessions at any stage of inquiry or trial, even if does not exclusively triable by the Court of Sessions, has to be exercised judiciously. In the facts of the case in view of amendment in Code of Criminal Procedure, 1973, there can be no dispute that the offence are triable by Courts of Sessions. Once this is so, the judgment in the case of **Prem Das (supra)** has no application, as in the facts of the case the offence was not exclusively triable by the Court of Sessions and, therefore, the High Court set it aside holding that such discretion to commit trial to Sessions Court in absence of such power needs to be exercised judiciously. Therefore, submission on behalf of the petitioner cannot be accepted.

9. For the reasons stated above there is neither error of law nor miscarriage of justice. Therefore, Writ Petition stands dismissed. No costs.

(AMIT BORKAR, J.)