

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

CRIMINAL APPLICATION NO. 458 OF 2023

Vivek s/o. Nivrutti Gosavi

...Applicant

Versus

The State Of Maharashtra & Anr.

...Respondents

Mr. Abhishek Kulkarni for the Applicant.

Mr. N.B. Patil, APP for the State-Respondent No.1.

Mr. S.G. Dodya for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JUNE, 2023.

PC. :

1. The Applicant has preferred this Application with two main prayers. In prayer clause (C), he has prayed that the complaint in SCC No.4802 of 2020 pending before the Judicial Magistrate First Class, Court No.9, Pune be quashed. His other main prayer i.e. prayer clause (D) is for setting aside the order dated 2nd March, 2013 passed by the Judicial Magistrate First Class, Pune under Exhibit No.35 in the same proceedings; and the order dated 11th April, 2023 passed by the Sessions Court, Pune in Criminal Revision Application No. 107 of 2023.

2. Heard Shri. Abhishek Kulkarni, learned counsel for the Applicant, Shri. N.B. Patil, learned APP for the State-Respondent No.1 and Shri. S.G. Dodya, learned counsel for the Respondent No.2.

3. The Applicant is the original accused, facing prosecution for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act').

4. The cheque in question was for Rs.25 Lakhs, drawn by the Applicant-accused on Axis Bank, Senapati Bapat Marg, Pune. The Respondent No.2, who was the original complainant, deposited this cheque for encashment through her bank, Pune Merchants Co-operative Bank Ltd. Pune, Laxmi Road Branch, Pune. The cheque was dishonored and after complying with all the necessary requirements, the complaint was filed.

5. As far as jurisdiction of the Court is concerned, in paragraph No. 11 of the complaint, it was mentioned that the bank of the Applicant-accused i.e. Axis Bank Ltd. was at Senapati Bapat Marg Branch, Pune, from where the said cheque got dishonored and therefore, the Court of the learned Magistrate was having jurisdiction over the complaint.

6. The Additional Chief Judicial Magistrate, Pune vide its order dated 25th February, 2020 issued process against the Applicant.

7. The Applicant made another application vide Exhibit No.35 in the same proceedings i.e. SCC No.4802 of 2020 on the ground that the learned Magistrate issuing process, had no jurisdiction. It was mentioned that the complainant's bank was Pune Merchants Co-operative Bank Ltd. Pune, Laxmi Road Branch, Pune and the complaint mentions that the complaint was being filed based on the bank of the Applicant-accused. That application was rejected by the Judicial Magistrate First Class, Pune vide its order dated 2nd March, 2023. The said order was challenged by the Applicant before the Court of Sessions at Pune vide Criminal Revision Application No.107 of 2023; which was also dismissed by the learned Additional Sessions Judge, Pune vide its order dated 11th April, 2023. All these orders are challenged by the Applicant in this Application.

8. The Revisional Court observed that the bank of the accused was situated in Pune within the jurisdiction of Judicial Magistrate First Class, Pune. The bank of complainant was also situated within the same jurisdiction. Thus the Court of Judicial Magistrate First Class, Pune was having jurisdiction. It was further observed that, it was an administrative arrangement to have convenience in judicial

functioning. This arrangement had nothing to do with the word, “local Jurisdiction” appearing in Section 142(2) of the N.I. Act.

9. Learned counsel for the Applicant emphasized the fact that in the complaint itself, the stand of the complainant was that the jurisdiction of the Judicial Magistrate was where the bank of the accused was situated. According to the learned counsel for the Applicant-accused, this averment is erroneous and is contrary to the Section 142 (2) of the N.I. Act. Section 142 (2) of the N.I. Act reads thus :

“142. Cognizance of offences.—

(1) xxxx

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the

branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

10. Therefore, according to learned counsel for the Applicant-accused, the relevant fact for the purpose of jurisdiction would be the bank where the complainant as the payee or holder in due course, as the case may be, maintains the account, is situated. In this case, as per the complaint, the complaint is filed within the jurisdiction of the bank of the accused which is contrary to the provisions of Section 142 (2).

11. Learned counsel for the Respondent No.2-complainant submitted that both the banks were situated in Pune city; and therefore, in any case, the Judicial Magistrate in Pune would get jurisdiction. He submitted that the Revisional Court has rightly observed that the demarcation of the local areas over which the Magistrate had jurisdiction, was made only for administrative convenience. The Magistrate did not cease to exercise their jurisdiction throughout the district of Pune.

12. Learned counsel for the Applicant-accused countered this argument by referring to Section 14 of Cr.P.C. and in particular Sub-section (1) and (2). He submitted that Sub-section (2) provides that, only subject to the definition of local areas given in Sub-section (1),

the Magistrate can exercise its jurisdiction. For convenience, Sections 14(1) and 14(2) of Cr.P.C. are reproduced as follows :

“14. Local jurisdiction of Judicial Magistrates.—

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code:

[Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.”

13. Learned counsel for the Respondent No.2-complainant then submitted that, if at all this submission is to be accepted, then still Section 462 of Cr.P.C. saves the order passed by the Magistrate. Section 462 of Cr.P.C. reads thus :

“462. Proceedings in wrong place.— No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

14. I have considered these submissions. Interestingly in this matter, the order of issuance of process was passed by the Additional Chief Judicial Magistrate and not any other Judicial Magistrate First Class, Pune. Therefore, in any case, he would have jurisdiction to pass that impugned order. Besides this, as rightly submitted by the learned counsel for the Respondent No.2-complainant, Section 462 of Cr.P.C. does save the situation and the order passed by the Additional Chief Judicial Magistrate, Pune taking cognizance, cannot be faulted with on the ground of lack of territorial jurisdiction. Though in the complaint, the complainant has referred to the accused bank as the basis for filing the complaint before the particular Magistrate's Court, the Court taking cognizance itself can apply its mind and find out whether that Court has jurisdiction to take cognizance.

15. In this case, the order of issuance of process was passed by the Additional Chief Judicial Magistrate, Pune who had proper jurisdiction to take cognizance and to pass order of issuance of process.

16. Even otherwise, Section 462 of Cr.P.C. does save this order. As submitted by the learned counsel for the Respondent No.2-complainant, the trial has progressed further and it is at the stage of cross-examination of the complainant. At this belated stage,

considering the above discussion, I do not see any reason to interfere with the orders passed by both the Courts, which are under challenge in this Application.

17. In this view of the matter, I am not inclined to interfere with the Application. Learned Chief Judicial Magistrate, Pune shall ensure that the trial goes on before the Magistrate, who has proper territorial jurisdiction in the facts of this case.

18. With these observations, the Application is disposed of.

(SARANG V. KOTWAL, J.)