

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

CRIMINAL APPLICATION NO. 168 OF 2021

Hiten Jethalal Gala

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Yashpal Thakur a/w. Shikhani Shah i/b. Satyaram R. Gaud for Applicant.

Mr. Benny Joseph a/w. Ms. Pallavi Kaamath a/w. Ms. Pooja N.S. i/b. BJ Law Offices LLP for Respondent No.2.

Mr. Arfan Sait, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 27 JULY 2023

PC :

1. Heard Mr. Yashpal Thakur, learned counsel for the Applicant, Mr. Benny Joseph, learned counsel for the Respondent No.2 and Mr. Arfan Sait, learned APP for the State/Respondent No.1.

2. This application is preferred with the following main prayer:

“(b) Quash and set aside (i) the order dated 02.01.2020 passed by the Ld. Chief Metropolitan Magistrate, Esplanade, Mumbai in transfer application No.100/TA/2019 to 104/TA/2019 and ii) the order

dated 21/03/2020 passed by the Hon'ble Sessions Court in Criminal Revision Application No.80 of 2020, after examining the legality, validity and correctness thereof and the case No.8433/SS/2019, 8434/SS/2019, 8435/SS/2019, 8436/SS/2019, 8437/SS/2019 so also another Case No. 11395/SS/2019, pending on the file of Ld. Metropolitan Magistrate, 20th Court, Sewree, Mumbai be ordered to be transferred to the court of Ld. Metropolitan Magistrate, 59th Court, Kurla, Mumbai.

3. The main contention of the learned counsel for the Applicant is that, in view of the mandate of Section 142-A(2) of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act'), the subsequent complaints between the same parties in respect of the offence U/s.138 of the N.I. Act should be tried by the same Court where the first complaint was filed by the complainant.

4. The basic facts are reflected in the first complaint filed by the Respondent No.2 herein (hereinafter referred to as the complainant). In that complaint, it is mentioned that the Applicant had obtained a friendly loan of Rs.1 Crore from the complainant and in repayment of that loan, the applicant issued 10 cheques dated between September 2018 to June 2019 for Rs.10 lakhs each,

drawn on ICICI Bank Ltd. The complainant deposited these cheques on different dates. All these cheques were dishonoured giving rise to separate causes of action. The complainant, therefore, filed different cases in respect of the dishonour of these cheques. All these cases were pertaining to different cheques. There were seven such complaints in respect of these 10 cheques. The first of these complaints i.e. C.C.No.116/SS/2019 was filed before the Metropolitan Magistrate, 59th Court, Kurla, on 22/01/2019. (The said case is renumbered as C.C.No.1801/SS/2020 before the learned Metropolitan Magistrate, 20th Court, Sewree, Mumbai.) All the subsequent cases i.e. C.C.No.8433/SS/2019, C.C.No.8434/SS/2019, C.C.No.8435/SS/2019, C.C.No.8436/SS/2019 and C.C.No.8437/SS/2019 were filed on 12/06/2019 before the Metropolitan Magistrate, 20th Court, Sewree. The last case of the list i.e. C.C.No.11395/SS/2019 was filed on 25/07/2019 before the Metropolitan Magistrate, 20th Court, Sewree. The contention of the learned counsel for the applicant is that, all these subsequent cases filed in the Sewree Court should have been transferred to the Court of Metropolitan

Magistrate, 59th Court, Kurla where the first case i.e. C.C.No.116/SS/2019 was filed.

5. In this background, the Applicant approached the learned Chief Metropolitan Magistrate by preferring Applications bearing Case Nos.100/TA/2019 to 104/TA/2019 for the transfer of C.C.No.8433/SS/2019 to C.C.No.8437/SS/2019 pending on the file of Metropolitan Magistrate, 20th Court, Sewree to the Court of Metropolitan Magistrate, 59th Court, Kurla. Learned Chief Metropolitan Magistrate heard the parties including the complainant and observed that, most of the cases, i.e. five cases were pending on the file of the Metropolitan Magistrate, 20th Court, Mazgaon (Sewree) and, therefore, for the purpose of convenience, only two cases which were pending on the file of the Metropolitan Magistrate, 59th Court, Kurla need to be transferred to the Court at Mazgaon. Consequently, he transferred the two cases including the first case filed by the complainant pending before the court of Metropolitan Magistrate, 59th Court, Kurla to the court of Metropolitan Magistrate, 20th Court, Mazgaon.

6. Being aggrieved by that order, the Applicant preferred Criminal Revision Application No.80 of 2020 before the Sessions Judge. Learned Sessions Judge, Greater Mumbai vide his order dated 21/03/2020 dismissed the said Revision Application No.80 of 2020. He agreed with the reasoning given by the learned Chief Metropolitan Magistrate. Learned Sessions Judge also took into account the fact that the evidence was filed in all these cases and all of them had become part-heard before the court of Metropolitan Magistrate, 20th Court, Mazgaon and because of these circumstances he did not find any illegality in the order of the Chief Metropolitan Magistrate. For these reasons, he did not interfere with the order passed by the learned Chief Metropolitan Magistrate. With the result, all the cases referred to herein above are at present pending before the court of Metropolitan Magistrate, 20th Court, Mazgaon.

7. Learned counsel for the Applicant submitted that the orders passed by both these courts would be in violation of clear mandate of Section 142-A of the N.I.Act.

8. Learned counsel for the complainant very fairly consented and agreed with the submissions made by the learned counsel for the Applicant.

9. In view of the stand taken by both the parties, it is necessary to reproduce sections 142 and 142-A of the N.I.Act, which read thus:-

142. Cognizance of offences -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973--

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138 :

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(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.

142A. Validation for transfer of pending cases.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015,

more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

10. Sub Section 2 of Section 142 of the N.I.Act, as well as, Section 142-A of the N.I.Act were amended with effect from 15/06/2015. The effect of the amendment was that the territorial jurisdiction of the Court where the case U/s.138 of the N.I.Act could be filed was specified.

11. Sub Section 2 of Section 142 of the N.I.Act provides for the jurisdiction of the Court before which the complaint U/s.138 of the N.I.Act for dishonor of the cheque can be filed. Whereas, sub section 2 of Section 142-A of the N.I.Act takes care of the situation where the cheques were delivered for collection or presented for payment within the territorial jurisdiction of different courts. Sub section 2 of Section 142-A of the N.I. Act is important in this context. It starts with a non obstante clause mentioning that,

notwithstanding anything contained in sub section 2 or sub section 1 of Section 142 where the payee or the holder in due course has filed a complaint against the drawer of a cheque in the Court having jurisdiction under sub section 2 of Section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that Court; all the subsequent complaints arising out of Section 138 of the N.I.Act against the same drawer shall be filed before the same Court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that Court.

12. Thus, applying these provisions of the N.I.Act, it is quite clear that, in the present case, all the subsequent complaints filed by the complainant against the applicant who was the drawer of the cheques will have to be transferred to the Court where the first complaint was filed and was pending. In this case, as mentioned earlier, the first case i.e.C.C.No.116/SS/2019 was filed on 22.01.2019 before the Metropolitan Magistrate, 59th Court, Kurla, therefore, the said Court will get jurisdiction to try all the subsequent cases filed by the complainant against the applicant

which are referred to herein-above. Therefore, in strict compliance of Section 142 and 142-A of the N.I.Act, the Court in Mazgaon will not have jurisdiction to try the subsequent cases, but it will only be the Court of Metropolitan Magistrate, 59th Court, Kurla that will have the jurisdiction to try all these cases. Though, C.C.No.11395/SS/2019 was not the subject matter before the learned Chief Metropolitan Magistrate and the learned Sessions Judge, Mumbai, and since, this is the subsequently filed complaint between the same parties, it is covered under the provisions of Section 142-A of the N.I.Act. Even that case will have to be transferred to the Court of Metropolitan Magistrate, 59th Court, Kurla.

13. As observed by learned Sessions Judge in all these matters, the trials have progressed and the evidence by way of affidavit has been tendered by the complainant. Therefore, after transfer of these cases, the learned Metropolitan Magistrate, 59th Court, Kurla will have to conduct the trial from the stage onwards, at which stage the cases are pending at present. Learned counsel for the Applicant does not have any objection to this course of action. In fact, he agrees that the trials can proceed from the stage

at which they are pending at present.

14. Considering this discussion, following order is passed:

O R D E R

i) The Application is allowed.

ii) The order dated 02.01.2020 passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai in transfer application No.100/TA/2019 to 104/TA/2019 and the order dated 21/03/2020 passed by the learned Sessions Judge in Criminal Revision Application No.80 of 2020 are set aside.

iii) C.C.No.8433/SS/2019, C.C.No.8434/SS/2019, C.C.No.8435/SS/2019, C.C.No.8436/SS/2019, C.C.No.8437/SS/2019 and C.C.No.11395/SS/2019 pending on the file of Metropolitan Magistrate, 20th Court, Sewree shall be transferred to the Court of Metropolitan Magistrate, 59th Court, Kurla.

iv) Even, C.C.No.116/SS/2019 (old Number) which is renumbered as C.C.No.1801/SS/2020 pending before the Metropolitan Magistrate, 20th Court, Sewree shall be transferred to the Court of Metropolitan Magistrate, 59th Court, Kurla.

v) Trials are expedited. Both parties shall co-operate

with early disposal of the cases.

vi) Learned Metropolitan Magistrate, 59th Court, Kurla shall conduct the trials from the stage onwards, at which stage the cases are pending at present.

vii) The Application is disposed of.

(SARANG V. KOTWAL, J.)