

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

CRIMINAL APPLICATION NO. 207 OF 2021

Hiten Hirji 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) This Hon’ble Court by exercising its power vested as per provision of section 407 of Cr.PC. be pleased to transfer the C.C.No.11869/SS/2019, 11870/SS/2019 & 02/SS/2020 presently pending in the file of 20th Court of Ld. Metropolitan Magistrate at Sewree (Mazgaon), Mumbai to Court of Ld. Metropolitan Magistrate, 59th Court, Kurla, Mumbai, where the earlier complaint was filed bearing its C.C.No.115/SS/2019 (now new C.C.No.1802/SS/2020) & another C.C.No.116/SS/2019 (now new C.C.No.1801/SS/2020), in view of strictly compliance of section 142A of Negotiable Instruments Act, 1881.

3. In this matter, the submission canvassed by the learned counsel for the Applicant is that, in view of the mandate of Section 142 and 142-A of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘N.I.Act’), the subsequent proceedings i.e. C.C.No.11869/SS/2019, C.C.No.11870/SS/2019 and C.C.No.2/SS/2020 pending before the learned Metropolitan Magistrate, 20th Court, Sewree be transferred to the Court of Metropolitan Magistrate, 59th Court, Kurla.

4. In addition to these complaints, the applicant is also seeking transfer of C.C.No.115/SS/2019 originally filed before the Metropolitan Magistrate, 59th Court, Kurla (renumbered as C.C.No.1802/SS/2020) now pending before the Metropolitan

Magistrate, 20th Court, Sewree; be transferred to the Metropolitan Magistrate, 59th Court, Kurla.

5. Learned counsel for the applicant submitted that the payee of the cheques i.e. the complainant had deposited different cheques which are the subject matters of all these complaints on different dates which gave rise to different causes of action. At the first instance, the cheque was deposited in the complainant's bank falling within the jurisdiction of the Metropolitan Magistrate, 59th Court, Kurla and therefore the first complaint C.C.No.115/SS/2019 (renumbered as C.C.No.1802/SS/2020) was filed before the learned Metropolitan Magistrate, 59th Court, Kurla, on 22.01.2019. The subsequent complaints were filed by the complainant against the present applicant on 18.10.2019 and on 02.01.2020. Thus, all the subsequent complaints should have been transferred to the Court at Kurla. The applicant had approached the learned Chief Metropolitan Magistrate for transfer of these cases to the Metropolitan Magistrate, 59th Court, Kurla by preferring application Nos.100/TA/2019 to 104/TA/2019. Learned Chief Metropolitan Magistrate, instead of transferring the

subsequent cases to the Court of Metropolitan Magistrate, 59th Court at Kurla, transferred C.C.No.115/SS/2019 pending before the Metropolitan Magistrate, 59th Court, Kurla to the Court of Metropolitan Magistrate, 20th Court, Sewree. The said order dated 02.01.2020 was challenged by the applicant before the Court of Sessions vide Revision Application No.80 of 2020. That Revision application was dismissed. The reasoning given by both the Courts is that, for the convenience of the parties it would be more convenient to try all these cases in Mazgaon court because majority of the cases were filed in Mazgaon court.

6. However, considering the mandate of Section 142 and 142-A of the N.I. Act, which is more elaborately discussed in the companion matter by a separate order passed today in Criminal Application No.168 of 2021, the court of Metropolitan Magistrate, 59th Court, Kurla would have jurisdiction to try all these cases. Learned counsel for the Respondent No.2 very fairly agrees to this proposition of law.

7. In view of this, 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 Hon'ble Sessions Court in Criminal Revision Application No.80 of 2020 are set aside.
- iii) C.C.No.1802/SS/2020, C.C.No.11869/SS/2019, C.C.No.11870/SS/2019 and C.C.No.2/SS/2020 pending before the Metropolitan Magistrate, 20th Court, Sewree be transferred to the Court of Metropolitan Magistrate, 59th Court, Kurla.
- iv) Trials are expedited. Both parties shall co-operate with early disposal of the cases.
- v) Learned Metropolitan Magistrate, 59th Court, Kurla shall conduct the trials from the stage onwards at which stage the cases are pending at present.
- vi) The Application is disposed of.

(SARANG V. KOTWAL, J.)