

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPLN) NO.111 OF 2022

Sawari Candles

.VS.

State of Maharashtra and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A. C. Khare, Advocate for the Applicant

Mr S. A. Ashirgade, APP for the State/non-applicant No.1

Mr A.K. Bhangde, Advocate for the non-applicant No.2

CORAM : G.A. SANAP, J.

DATE : JANUARY 18, 2023.

The applicant Firm through its Proprietor has made this application for transfer of Summary Criminal Case No. 17008 of 2019 filed under Section 138 of the Negotiable Instruments Act, 1881 (For short 'N. I. Act'), by the non-applicant No.2 against the applicant in the Court of Judicial Magistrate First Class, Nagpur to the Designated Court constituted under Section 6 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (For short 'MPID Act'), where the MPID case No. 1999/2/2019 filed on the basis of the report lodged by the non-applicant No.2 is pending. It is the case of the applicant that the issue involved in both the cases is with regard to the recovery of money. The facts in both the cases, by and large, are identical. The applicant initially made an application before the 14th Jt. Civil Judge Senior Division and Additional Chief

Judicial Magistrate, Nagpur and prayed to club the Summary Criminal Case No. 17008 of 2019 with the pending MPID Case bearing No. 1999/2/2019 pending before the learned District Judge, Nagpur. Learned Magistrate vide order dated 29/06/2022 was pleased to reject this application on the ground that there is no enabling provision either under the MPID Act or under any other law for clubbing the cases. The applicant, thereafter, made an application under Section 408 of the Code of Criminal Procedure (For short 'Cr.P.C.) read with Section 6 of the MPID Act before the Principal District and Sessions Judge, Nagpur for transfer of Summary Criminal Case No. 17008 of 2019 to the MPID Court at Nagpur. Learned Principal District and Sessions Judge by his order dated 19/09/2022 rejected this application holding that the powers for transfer of cases in this manner are not vested in the Sessions Judge.

2. The applicant, therefore, approached this Court by making this application under Section 407 read with Section 482 of the Cr.P.C. read with Section 6 of the MPID Act. It is stated that in the interest of justice as well as for the purpose of convenience of the parties it is necessary to transfer the Summary Criminal Case No. 17008 of 2019 from the Court of Magistrate to MPID Court where the MPID Case No.1999/2/2019 is pending. It is submitted that since both the matters pertain to recovery of the amount, it would be advantageous for the MPID Court to dispose of the matters together.

3. The non-applicant No.1/State has filed reply through the investigating officer and has opposed the application. It is contended that the application is not at all maintainable. No case has been made out for transfer of the Summary Criminal Case No. 17008 of 2019 to MPID Court, Nagpur or for clubbing both the cases together. It is stated that the provision of Section 6 of the MPID Act are not applicable to address the grievance made by the applicant.

4. The non-applicant No.2 has also filed reply and opposed the application. It is contended that both the matters are not identical. The offences committed in both the cases are separate and distinct. The procedure prescribed for case under Section 138 of the N. I. Act is a summary procedure. The evidence of the non-applicant No.2 (Complainant) has already been submitted. The summary case is now posted for recording cross examination of the non-applicant No.2. Learned Judicial Magistrate First Class, Aarni after taking cognizance has committed the MPID Case to the MPID Court, Nagpur. Apart from the offences under the MPID Act the proprietor of the applicant is prosecuted for commission of offences under Sections 406, 420, 506, 504 read with Section 34 of the Indian Penal Code.

5. I have heard the learned Advocate for the applicant, learned APP for the State and learned Advocate for the non-applicant No.2. Perused the record and proceedings.

6. The main question is whether the prayer for transfer of a summary criminal case to MPID Court is made out by invoking the provisions of Section 407 (1) (a), (b) and (c) of the Cr.P.C. and also by invoking the provisions of Section 6 of the MPID Act. Learned Advocate for the applicant in all fairness submitted that in view of the nature of the proceeding, the doctrine of *double jeopardy* may not be applicable. Learned Advocate submitted that the transfer of a Summary Criminal Case No. 17008 of 2019 to MPID Court and hearing of the same with the MPID case No. 1999/2/2019 will tend to the general convenience for the parties and witnesses. Such a transfer in the fact situation is expedient for the ends of justice. It is submitted that if both the cases are clubbed together that would ensure fair and impartial trial to both the parties. Learned Advocate further submitted that Section 6(3) of the MPID Act also provides for transfer of such cases to the Designated Court.

7. Learned APP and the learned Advocate for the non-applicant No. 2 reiterated the facts stated in their respective reply while advancing their arguments. In sum and substance, they submitted that a case is not made out for transfer either under Section 407 (1) of the Cr.P.C. or under Section 6(3) of the MPID Act.

8. Learned Advocate for the applicant relied upon the order dated 26/06/2014 passed in Criminal Application No. 2007 of

2004 (*Golden Glades Ltd. & Ors. v/s. The State of Maharashtra and Ors.*) by Co-ordinate Bench of this Court at Principal Seat at Bombay, to point out that in the similar circumstances the cheque bounce case was transferred to the MPID Court. I have perused this order. It is to be noted that in the peculiar facts of the said case, which are stated in the order, transfer and clubbing was allowed. In this case, it would be necessary to first consider the provisions of Section 6(3) of the MPID Act. Section 6(3) of the MPID Act reads thus:

“6. Designated Court

(1)

(2)

(3) Any pending case in any other Court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.”

9. It is to be noted that even on bare perusal of the facts stated in the application, the applicant cannot rely upon and invoke this provision. This provision would get attracted to the cases which are filed under the provisions of MPID Act for the purpose of transfer to the Designated Court established under the MPID Act. It is, therefore, crystal clear that this provision is applicable only to the MPID cases. The same, therefore, cannot be made applicable for transfer of the case registered under Section 138 of the N. I. Act. The MPID Act is a special

enactment. Similarly, the N. I. Act is also a special enactment. Under the N. I. Act the jurisdiction is conferred on the Judicial Magistrate First Class or the Metropolitan Magistrate as the case may be to try the cases instituted under Section 138 of the N. I. Act by adopting the summary procedure. It is therefore seen that the case instituted under the N. I. Act would not fall within the ambit of Section 6(3) of the MPID Act to make it applicable for transfer.

10. It is further pertinent to note that the scope of the inquiry in the case of commission of offence under Section 138 of the N. I. Act and the special MPID case instituted after full-fledged investigation is totally different. Apart from the offences alleged to have been committed under the MPID Act, the offences under Sections 406, 420, 506, 504 read with Section 34 of the Indian Penal Code have also been added in the said case. Learned APP submitted that in the said MPID case, the charge is yet to be framed. Learned Advocate for the non-applicant No.2 submitted that in the case instituted under Section 138 of the N. I. Act the evidence of non-applicant No. 2 on affidavit has been filed. It is, therefore, seen that by very nature of the two proceedings it is very difficult to accept the submission that the question involved in both the cases is identical and therefore, for resolution of the same the Summary Criminal Complaint No. 17008 of 2019 pending on the file of Judicial Magistrate First Class, Nagpur needs to be transferred to the Designated Court under the MPID

Act. It is further pertinent to note that there is no bar under law to scuttle the prosecution under Section 138 of the N. I. Act, when there is a separate case registered under the MPID Act or under other criminal law for the commission of those offences on the identical facts. The nature of inquiry in the MPID case and the volume of the evidence in the said case would be totally different. In the case instituted under Section 138 of the N. I. Act the scope of inquiry and volume of evidence would be comparatively far lesser than the one in the MPID case. In my view, therefore, the ground of convenience to the parties and witnesses is not at all sustainable. Therefore, in my view no case is made out under Section 407 of the Cr.P.C. for transfer and clubbing of the two matters. Similarly Section 6 of the MPID Act is not applicable at all in the present factual situation. In the facts and circumstances, I conclude that no case has been made out for granting the application.

11. The application stands **rejected**.

(G. A. SANAP, J.)

Namrata