



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

CRIMINAL APPLICATION NO.91 OF 2023

(Mohan Narayan Ningurkar Vs. Rajlaxmi Multi State Credit Co-operative Society Ltd.,
Yavatmal)

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

Court's or Judge's orders.

Mr. Rohan R. Deo, Advocate for Applicant.
Mr. Onkar Deshpande, Advocate for Non-Applicant.

CORAM: M. W. CHANDWANI, J.

DATE: 29th JANUARY, 2024.

By the present application, the applicant has challenged the order of rejection of transfer of either of cases i.e. S.C.C. No.2401/2020 and S.C.C No.512/2020 in one court.

2. The non-applicant is Bank and it is alleged that for repayment of loan, the applicant issued two different cheques i.e. Cheque No.002343 dated 09.12.2019 and Cheque No.002344 dated 30.09.2022 which were tendered with the Bank of the non-applicant, they were dishonoured due to insufficient fund. After issuance of separate memo by the Bank of non-applicant, statutory notices were issued under Section 138 of the Negotiable Instruments Act, 1881 (for short N.I. Act) and two separate complaints came to be filed against the applicant.

3. The applicant moved application before the Sessions Judge requesting that both the matters are arising

out of the same transaction with the non-applicant/Bank, therefore, these matters be transferred to any of the Court. The learned Additional Sessions Judge by the impugned order rejected the application on the ground that in both the cases the cheques are different and cause of action are different.

4. The learned counsel for the applicant submits that though two separate cheques were allegedly given by the applicant but those were towards one and same loan transaction i.e. for repayment of loan taken by the applicant from non-applicant/Bank. While considering the defence of the accused, there may be conflict finding of both the courts, therefore, for maintaining the consistency, it should be tried by one of the either Courts. According to him, in case of conflicting findings, the judicial propriety cannot be maintained.

5. Per contra, the learned counsel appearing on behalf of the non-applicant vehemently objected the application and supported the reason given by the learned Additional Sessions Judge. According to him, there are two separate cause of action. Therefore, hardly it will make no difference in either of the case, if those are being tried by two different courts.

6. No doubt, routinely the cases should not be transferred and there is no dispute that the cause of action in both the complaints are different. The applicant and non-applicant was having only one loan transaction and the

cheques in question were issued pursuant to the same loan account. I find substance in the argument of the counsel for the applicant that the defence of the applicant may be appreciated by one court and may be discarded by other court and in that case there is possibility of recording conflict findings. Therefore, in this peculiar circumstances it is desirable that both cases should be tried by one court.

7. In view thereof, Summary Criminal Case No.512/2020 pending on the file of 5th Judicial Magistrate First Class, Yavatmal is directed to be transferred to the file of 2nd Judicial Magistrate First Class, Yavatmal.

8. Accordingly, the application is disposed of.

JUDGE

NSN