



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

17 CRIMINAL APPLICATION NO. 4653 OF 2024

CHETAN S/O SURESH KAWADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R. P. Dhase, Advocate for the Applicant

Mr. K. K. Naik, APP for the Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.01.2025

PER COURT :-

1. Heard the learned counsel for the Applicant and the learned APP for the State, at length.

2. By the present Application, the Applicant prays for transfer of proceeding bearing SCC No.60 of 2020 from the file of the learned Judicial Magistrate First Class, Shirur Kasar, District Beed to the Chief Judicial Magistrate, Pune.

3. The learned counsel for the Applicant submits that the present Applicant / accused and the non-applicant No.2 / original complainant both are residing at Pune. Both the parties are

running their businesses at Pune. However, the non-applicant No.2 initiated the complaint SCC No.60 of 2020 for the offence punishable under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate, First Class, Shirur Kasar, District Beed. Therefore, for convenience of the parties, the Applicant / accused prayed for transfer of SCC No.60 of 2020 to the file of the learned Chief Judicial Magistrate, Pune, from file of the learned Judicial Magistrate, First Class, Shirur Kasar, District Beed.

4. On face of record, it prima-facie appears that the non-applicant No.2 has instituted the complaint SCC No.60 of 2022 for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act before the learned J.M.F.C. Shirur Kasar, on ground that, on 14.10.2019, the present Applicant / accused had issued a cheque of Rs.17,33,000/- for discharging of the legal liabilities. However, said cheque has been dishonored due to insufficient funds on 21.10.2019. The averments of the complaint itself shows that, the non-applicant No.2 had deposited said cheque with his banker, namely, "Pooranwadi Nagarik Sahakari Bank, M/P Shirur Kasar, Beed, but said cheque was not honoured. After service of mandatory notice, the non-applicant No. 2 filed the proceeding

SCC No.60 of 2020 before the learned Judicial Magistrate First Class, Shirur Kasar, District Beed.

5. Section 142 of the Negotiable Instruments Act provides for calling cognizance of offence. Sub-section (2) of Section 142 of the Negotiable Instruments Act, provides as under:-

“(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.”

6. In order to ascertain the local jurisdiction, if the holder of the cheque in due course deposit the cheque with his banker by a particular place and the said cheque dishonored, therefore, the same is not en-cashed on any ground and the banker of the holder of cheque communicated about dishonor of the cheque, in that event, the jurisdiction lies to the Court within whose jurisdiction the cheque was dishonored.

7. In the case of *Dashrath Rupsingh Rathod Vs. State of Maharashtra and another*, (2014) 9 SCC 129, the Hon'ble Supreme Court held that the complaint under Section 138 of the Negotiable Instruments Act, shall be inquired into and tried only by a Court within whose local jurisdiction (i) 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, maintain the account, is situated or (ii) 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 maintained the account, is situated.

8. In the case in hand, the non-applicant No.2 filed a complaint before the competent jurisdiction within whose jurisdiction the cheque in question dishonored. Therefore, I do not find that the Applicant has made out substantial grounds to transfer SCC No.60 of 2020 to the learned Chief Judicial Magistrate, Pune. Hence, the Criminal Application is rejected.

[Y. G. KHOBRAGADE, J.]

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