
(2006) 10 BOM CK 0105

In the Bombay High Court

Case No : Criminal Appln No's. 836, 837, 1273 and 1274 of 2006

Baban Motiramji Mohod

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407(1)
Negotiable Instruments Act, 1881 (NI) — Section 138, 146

Citation : (2007) 3 BC 439

Hon'ble Judges : S.R. Dongaonkar, J

Bench : Single Bench

Advocate : P.A. Abhayankar, for the Appellant; Thakre, Assistant Public Prosecutor and Atul Chandurkar, for the Respondent

Final Decision : Allowed

Judgement

S.R. Dongaonkar, J.—Rule. Rule made returnable forthwith. Heard by consent of parties finally.

All these applications are arising out of the matters u/s 138 of the Negotiable Instruments Act between same parties. Hence heard together.

All relevant matters are between the same complainant and the accused and the prosecutions against the applicant are for the same offence i.e. u/s 138 of the Negotiable Instruments Act. These matters pending in the Courts of Chief Judicial Magistrate, Akola and 2nd Joint Civil Judge, Senior Division and Judicial Magistrate, First Class, Akola, details thereof are as under:

----- Sr. Criminal
Criminal Pending before the Court below No. Application Complaint No. in No.
High Court -----

1. 836/2006 2321/2005 Chief Judicial Magistrate, Akola 2. 837/2006 2689/2005
Chief Judicial Magistrate, Akola 3. 1273/2006 2691/2005 Judicial Magistrate,
First Class, Akola 4. 1274/2006 1745/2005 Judicial Magistrate, First Class, Akola

2. These applications arise out of the matters mentioned above which are pending in the Courts of Chief Judicial Magistrate, Akola and Judicial Magistrate, First Class, Court, Akola. Matters being u/s 138 of the Negotiable Instruments Act.

3. Learned Counsel for the applicant Mr. Abhyankar has contended that the cases have been filed by the non-applicant No. 2 i.e. complainant in the Courts at Akola by taking shelter of jurisdiction obtained by presenting the cheques in the Banks at Akola, where they were dishonoured and the trials at Akola are totally inconvenient to him as well as to the complainant. According to him, earlier transactions were not at Akola and the submissions to that effect in application have not been denied by the non-applicant. It would be sheer harassment to the accused if the trials are proceeded at Akola. Further it is contended that transactions for which cheques which are issued by the present applicant clearly show that the transactions would be subject to the jurisdiction of Court at Nagpur. However, in the present case, cheques were intentionally deposited by the complainant in the Banks at Akola, just to have the jurisdiction at Akola, and thereby to harass the accused-applicant. In the application the details of the earlier transactions have also been given. In short the learned Counsel for the applicant contends that it is convenient to both the parties if these matters are transferred to the Courts at Nagpur for trial. He has relied upon the judgment reported in Smt. Susheela B.S. v. Maroti Ferto Chemicals Ltd., Hospet II (2002) BC 702 : 2002(4) Crimes 250.

4. He has also submitted that there would be no prejudice caused to the complainant if these cases are transferred to the Court at Nagpur. In fact the complainant has not pleaded that any prejudice is going to cause to him, if these cases are transferred to Nagpur.

5. Learned Counsel for the respondent, complainant relied on the contents of the complaint to submit that the complainant has his branch office at Akola and, therefore, he had presented the said cheques at Bank at Akola. He had also taken me through the judgment of the Apex Court in K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr. III(2005)BC 158 (SC) : IV (1999)CCR 63 : 2000 (1) Mh.LJ. 193, to contend that as the cheques presented at Akola, territorial jurisdiction for the trial of these offences is the material aspect to be considered and, therefore, the Courts at Akola would have the jurisdiction over the matter. He has referred to judgment of the Apex Court reported in Baljit Singh and Another Vs. State of Jammu and Kashmir and Others, , to contend that the cases should be tried by the Courts in whose jurisdiction the offences have been committed. He further submitted that in the present case, the Bank witnesses are required to be examined and it would be inconvenient to them to attend the Court at Akola as they are Bank officials from Akola.

6. On perusal of the material available on record, it appears that applicant-

accused as well as the complainant have their offices at Nagpur. The transactions for which the cheques were issued also appear to have taken place at Nagpur. However, the cheques appear to have been presented in the Bank at Akola where they were dishonoured. In these circumstances, in the absence of material to show that the complainant is going to suffer any prejudice if the matters are transferred to Court at Nagpur, it is obvious that convenience of the parties would be in getting the cases decided in the Courts at Nagpur.

7. Although there cannot be any dispute that normally, cases should be tried in the Courts in whose territorial jurisdiction the offences have been committed, but the convenience of the parties also need to be seen more so in such cases.

8. Here is the case where the cheques are presented at Akola and the contention of the complainant is that he has branch office at Akola and, therefore, Akola Court has jurisdiction. No doubt the Courts at Akola would have jurisdiction to try these cases, but the fact remains that no prejudice is going to cause to the complainant if these cases are transferred to Nagpur. On the contrary it would be convenient to both the parties if these cases are tried at Nagpur. The fact that the Bank Officials are required to be called as witnesses, may not have concluding impact on the matter as in view of the provisions of Section 146 of the Negotiable Instruments Act, they may not be even required to be examined. Even otherwise that fact by itself would not be sufficient to reject this application, inasmuch as, in case of success, the complainant is likely to get the compensation to the suitable extent.

9. In these circumstances, therefore, the judgments relied upon by the complainant in support of this submission i.e. *K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.* (supra) and *Baljit Singh and Anr. v. State of J.K. and Ors.*, (supra), would not be attracted, as they deal with the aspect of jurisdiction of Courts which is undisputed in the present case.

10. Observations in *Smt. Susheel B.S. v. Maruthi Ferto Chemicals Ltd., Hospet*, (supra), do support the contentions of the applicant.

11. In my opinion in the present case, on facts and on considering the convenience of both the parties i. e. the applicant-accused, as well as the complainant, particularly when the complainant is unable to show that any prejudice is going to be caused to him in case of transfer of these matters to the Court at Nagpur, order for transfer of these cases to the Court of Nagpur u/s 407(1)(c)(2) is warranted.

12. Hence the Criminal Complaint Case Nos. 2321/2005 and 2689/2005 pending before Chief Judicial Magistrate, Akola and Criminal Complaint Case Nos. 2691/2005 and 1745/2005 pending before the Judicial Magistrate, First Class, Akola are hereby ordered to be transferred to the Court of Chief Judicial Magistrate, Nagpur, for disposal according to law. The trial Judges are directed to take appropriate action in these matters. The Chief Judicial Magistrate, Nagpur, on receipt of these cases shall be at liberty to assign these cases to any other

Courts for disposal according to law, if required.

Rule is made absolute in the aforesaid terms.