

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

CRIMINAL WRIT PETITION NO. _____/2024

PETITIONER: - Sanjay Hariram Agrawal

(Org. Applicant)

VERSUS

RESPONDENT: - State of Maharashtra

(Org. Non Applicants)

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NAGPUR


COUNSEL FOR PETITIONER

DATED: 02.12.2024

(ADV. SAGAR KISHOR LAMBAT)

I

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

CRIMINAL WRIT PETITION NO. _____/2024

ACT CODE:-

PETITIONER: - Sanjay Hariram Agrawal
(Org. Applicant) Aged about 58 years,
Occ. Business.
R/o. 7, Hari Seva Street,
Kidderpore, Kolkata.

VERSUS

RESPONDENT: - **State of Maharashtra**
(Org. Non Applicants) Through P.S.O., Ganeshpeth
Police Station, Nagpur.

SYNOPSIS

Date	Chronology of events
	The petitioner is accused along with 10 other accused vide chargesheet no. 150 of 2002 facing trial under section 406,409,

II

468, 471, 34, 120 B of the Indian Penal Code before Trial Court in RCC no. 147 of 2002. The petitioner is also implicated in other similar type of offences around the state of Maharashtra for the offences of criminal breach of Trust and Cheating pertaining to security transactions carried out by his company- M/s. Home trade ltd, registered member of Pune Stock Exchange and national Stock Exchange. The petitioner file transfer petition wide cr. Application no. 628 of 2014 before the Hon'ble Bombay High Court for clubbing all the cases to be tried by one Court. During the pendency of that petition, all the criminal cases pending against the petitioner were stayed by order dated 10/12/2014.

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The trial of the present case was directed to

	be separated against rest of the accused from the petitioner/ accused No.3.
23.12.2014	One PIL 25/2014 was filed before Bombay High court Nagpur Bench. The Hon'ble High Court vide order dated 23/12/2014 directed that the court of CJM Nagpur, expedite the trial and conclude the same as expeditiously as possible.
06.04.2018	In same PIL no. 25/2014 by order dated 06/04/2018 was pleased to grant interim order in favor of petitioner in transfer case shall not come in the way of learned trial judge to conduct the trial expect against the person (Sanjay Hariram Agarwal) in whose case the order is passed by the learned single judge of Hon'ble Bombay High Court.
04.10.2019	The Hon'ble Bombay High Court, Nagpur Bench in the same PIL vide order dated

	<p>04/10/2019 has directed the record and the proceedings of criminal case no. 147/2002 (Crime no. 101/2002 registered with the Police Station Ganeshpeth, Nagpur) be called immediately and placed before the court of CJM Nagpur.</p>
14.11.2019	<p>On 14/11/2019 the learned trial Judge passed the order after hearing the objection of the accused and on framing of the charge and directed to proceed with the matter as against accused persons excluding accused no. 3 Sanjay Hariram Agarwal and accused No. 10 Kanan Vasant Mewawala who appears to be absconding since long."</p>
22.12.2023	<p>In view of the aforesaid order the petitioner was kept out of the trial similarly as an absconding accused in case RCC No. 147/2002 and no charges were framed</p>

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	<p>against the petitioner and the whole trial proceeded against the other accused and culminated into a judgment dated 22.12.2023 by the learned CJM, Nagpur</p>
16.04.2024	<p>Shockingly the trial against the petitioner is sought to be continued in the same RCC No. 147/2002 and the entire record of the said Trial case is being relied upon by the trial court without providing the copy of split-up chargesheet which is illegal and improper. The petitioner approached the Ld. Trial Court vide Application to direct the prosecution to file split charge sheet against the petitioner. The Ld. Trial Court vide order dated 16.04.2024 rejected the application on the ground that there is no substance and is not warranted.</p>

18.11.2024	<p>The petitioner being aggrieved by the order dated 16.04.2023 preferred a criminal revision no. 118 of 2024 before the Ld. Sessions Judge, Nagpur. The Ld. Session Judge vide order dated 18.11.2024 dismissed the said revision and imposed a cost of Rs. 20,000/- on the petitioner.</p>
	<p>The petitioner vide the present writ petition is challenging the order passed by the learned Addl. Session judge dated 18/11/2024. In Cri. Revision no. 118 of 2024 arising out of order passed by learned 2nd additional CJM Nagpur. On dated 16/04/2024 in RCC no. 147/2002.</p> <p>Hence this Petition</p>
<p><u>ACT AND RULES</u></p> <ol style="list-style-type: none">1. Constitution of India2. Indian Penal Code3. Code of criminal procedure	

CITATIONS IF ANY:

Shall be submitted at the time of hearing.

POINTS FOR CONSIDERATION

Whether, in the event of a split trial as directed by the Hon'ble High Court, the trial court can continue proceedings under the original case number and record, thereby utilizing evidence and statements presented in the trial of other co-accused, or whether a fresh charge sheet and case number must be assigned to the petitioner to ensure a fair and separate trial?"

Nagpur,

Dated :- 02/12/2021



COUNSEL FOR PETITIONER)

(ADV. SAGAR KISHOR LAMBAT)

1

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

CRIMINAL WRIT PETITION NO. _____/2024

ACT CODE:-

(Arising out of order dated 18.11.2024 in Criminal Revision No. 118 of 2024 passed by the Additional Session Judge-12, Nagpur)

PETITIONER: - Sanjay Hariram Agrawal
(Org. Applicant) Aged about 58 years,
Occ. Business.
R/o. 7, Hari Seva Street,
Kidderpore, Kolkata.

Received Copy

21/12/24
Clerk to G P

VERSUS

RESPONDENT: - State of Maharashtra
(Org. Non Applicants) Through P.S.O., Ganeshpeth
Police Station, Nagpur.

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA



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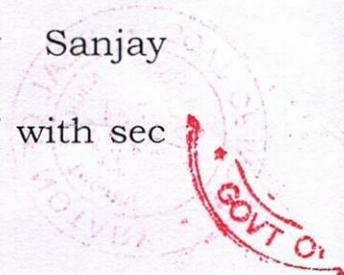
**The petitioner above-named MOST RESPECTFULLY
SHOWETH as under: -**

By the present Writ Petition, the petitioner is challenging the order passed by the learned Addl. Session judge dated 18/11/2024. In Cri. Revision no. 118 of 2024 arising out of order passed by learned 2nd additional CJM Nagpur. On dated 16/04/2024 in RCC no. 147/2002. On Application for directing the prosecution filed by the petitioner for directly the prosecution to furnish the copy of split up chargesheet pertains to the petitioner.

FACTS:

The above-named petitioners most humbly and respectfully beg to submit as under: -

1. It is submitted that on 21/11/2002, the Ganesh Peth Police Station filed charge sheet no. 150/2002, in which the petitioner, along with ten other accused, was implicated. The petitioner was also involved in similar offenses across Maharashtra. Consequently petitioner namely Sanjay Agarwal filed 9 criminal application under sec 407 with sec



482 of CRPC before Hon'ble High Court Bombay for transfer of 9 criminal cases pending before various court of Maharashtra to one court in city of Mumbai. The Hon'ble Chief Justice by order dated 17/12/2014 was please to accept the request that criminal application no. 627/2014 Wardha 628/2014 Nagpur he 630/2014 Amravati be heard and decided principal seat at Mumbai. The cr app no. 628/2014 for transfer of RCC no. 147 of 2002 from nagpur to Bombay came up for hearing on 19/12/2014 and the Hon'ble High Court issued notice and granted add interem relief as prayed in prayer clause B which was for the stay of the trial RCC no. 147 of 2002. and hence during the pendency of the transfer petition all the proceedings against the petitioner were stayed, the copy of the order dated 19/12/2014 and final order passed on 9th July 2021 at annexed herewith as **ANNEXURE A** and **ANNEXURE B**

2. It is further humbly submitted that PIL No. 25/2014 was filed before the Nagpur Bench of the Bombay High Court. By an order dated 23/12/2014, the Hon'ble Court observed that "the learned government pleader, on

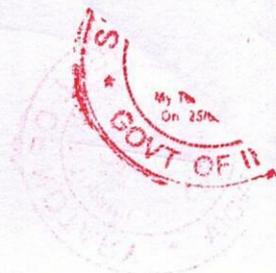


instructions from the public prosecutor appearing before the trial court, makes a statement that the trial of the absconding accused and the trial would proceed expeditiously insofar as the the other accused are concerned” the Hon’ble High Court directed the Court of the Chief Judicial Magistrate, Nagpur, to expedite the trial within a period of one year. The copy of the same dated 23/12/2014 is annexed here with as **ANNEXURE- ‘C’**.

3. It is further submitted that in the same PIL No. 25/2014, by an order dated 06/04/2018, the Hon’ble Court granted an interim order in favor of the petitioner in a transfer case. The Court clarified that this order would not hinder the learned trial judge from proceeding with the trial, except in the case of Sanjay Hariram Agarwal, where a separate order was passed by the learned Single Judge of the Hon’ble Bombay High Court. The relevant para is quoted here in below: -

“CORAM: B.R Gavai and M.G Giratkar, J J

Date- 06/04/2018



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3....

4. *We therefore clarify that the said order would not come in the way of learned trial judge to conduct the trial, except against the person in whose case the order is passed by the learned single judge of this court at Bombay."*

4. From the aforesaid order, it is evident that the petitioner's trial was separated from that of the other accused, whose trial was directed to proceed. At this stage, the learned trial court should have assigned a fresh case number to the split-up matter and entered it in the relevant register. In instances where a split-up case remains pending for an extended period, and efforts to secure the presence of the accused have failed while the trial of the other accused has concluded, the matter should be transferred to the register of long-pending cases. However, as per the records,



no such action has been taken despite the directions of the Hon'ble Bombay High Court.

5. That the Hon'ble Bombay High Court, Nagpur Bench in the same PIL vide order dated 04/10/2019 has directed as under which is quoted herein below;

“the record and the proceedings of criminal case no. 147/2002 (Crime no. 101/2002 registered with the police station Ganeshpeth, Nagpur) be called immediately and placed before the court of CJM Nagpur, so that the trial of the case except against the accused (Sanjay H Agarwal) whose trial has been stayed by the learned single judge at Mumbai proceeds further in compliance with the directions given many times by this court earlier. If any record of the criminal case pending against said Sanjay Hariram Agarwal would be required by Mumbai court, the learned CJM shall separate that part of the record which pertains to the said accused and send it to Mumbai court. Special Bailiff be deputed for bringing the record and proceeding. “



The copy of the order dated 04/10/2019 is annexed herewith **ANNEXURE- D**

6. It is further humbly submitted that on 14/11/2019 the Learned Trial Judge passed the order after hearing the objection of the accused and on framing of the charge as below order.

"1. All the objections raised on behalf of the accused persons on the point of framing of charge along with prayer to discharge the accused is hereby rejected.

2. The matter shall be proceeded ahead as against accused persons excluding accused no. 3 Sanjay Hariram Agarwal and accused No. 10 Kanan Vasant Mewawala who appears to be absconding since long."

The copy of the order dated 14.11.2019 is annexed herewith as **ANNEXURE - E.**

7. In view of the aforesaid order, the petitioner was treated as an absconding accused in RCC No. 147/2002, and no charges were framed against him. The trial proceeded



exclusively against the other accused and culminated in a judgment dated 22.12.2023 by the learned CJM, Nagpur. After the conclusion of the trial and disposal of RCC No. 147/2002, the petitioner's trial should have been assigned a separate case number, based solely on the chargesheet and documents relevant to him. However, in a shocking and improper manner, the trial court is attempting to continue proceedings against the petitioner under the same RCC No. 147/2002, relying on the entire record from that case without providing a copy of the split-up chargesheet, which is both illegal and unjust. The petitioner approached the Ld. Trial Court vide Application to direct the prosecution to file split charge sheet against the petitioner. The Ld. Trial Court vide order dated 16.04.2024 rejected the application on the ground that there is no substance and is not warranted. The copy of the order dated 16.04.2024 is annexed herewith as **ANNEXURE -F.**

8. Aggrieved by the order dated 16.04.2023, the petitioner filed Criminal Revision No. 118 of 2024 before the learned Sessions Judge, Nagpur. The copy of the revision

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application no. 118 of 2024 is annexed herewith as
ANNEXURE -G.

9. However, by an order dated 18.11.2024, the learned Sessions Judge dismissed the revision and imposed a cost of ₹20,000 on the petitioner. the copy of the order dated 18.11.2024 is annexed herewith as **ANNEXURE -H.**

10. That, the petitioner being aggrieved by the order dated 18.11.2024 passed by the learned Sessions Court and having no other alternative remedy, the petitioner has approached this Hon'ble Court under Articles 226 and 227 on the following grounds:

GROUNDS

- a) It is submitted that the petitioner has been denied the opportunity to defend himself adequately. The trial against the other accused was conducted with proper framing of charges and opportunities for cross-examination. The petitioner, however, has not been afforded the same rights, thereby violating the principles of natural justice. The petitioner must be



provided a fresh trial, distinct from the previous proceedings, ensuring a fair hearing as mandated by law. That, the charges are framed against the other accused by giving the proper opportunity. The examination chief of the prosecution was conducted in front of the other accused. The other accused has observed the examination-in-chief, of the deponent during the examination-in- chief and consult with the council for the preparation for the cross examination. This opportunity needs to be given to the petitioner also.

- b) It is submitted that the allegations against the petitioner differ significantly from those against the co-accused. While the charges against the co-accused have already been adjudicated, the petitioner's involvement, as per the prosecution's case, pertains to separate acts that require independent assessment. Proceeding with the trial based on the same record undermines the petitioner's right to be tried solely on the evidence relevant to him. The petitioner has



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cooperated with the investigating authorities throughout the proceedings. Unlike some of the co-accused, who were absconding or uncooperative, the petitioner's actions have always supported the investigation. Treating the petitioner similarly to the co-accused and denying him a separate trial is unjust and overlooks his distinct role. The continuation of proceedings based on the same charges and evidence against the co-accused creates a significant risk of prejudice. The petitioner faces the possibility of being unfairly judged based on evidence that pertains to the other accused, rather than his own alleged actions. A fair trial requires that the petitioner's case be considered independently, with separate evidence and witnesses.

c) It is further humbly submitted the Hon'ble Bombay High Court had directed the separation of the petitioner's trial. Despite these directions, no fresh trial number was assigned, and the trial court has continued



proceedings in the same case file, contrary to the guidelines laid down by the Hon'ble Madras High Court in *H. Arun Basha v. State*, Criminal O.P. No. 28952 of 2018 as following:

The following guidelines can be kept in mind while dealing with cases of absconding accused.

- i.** *Where the Court has issued process for the appearance of an accused and the same could not be served and if the Court is satisfied that the accused is in abscondence, the Court may, after having waited for a reasonable time, proceed under Section 82 of the Cr.P.C.*
- ii.** *If the case involves a single accused against whom proceedings have been initiated under Section 82 of the Code, the Court shall shift the case from relevant register to the register of long pending cases.*
- iii.** *When there are several accused persons in a case and only some of them have appeared or have*



been produced before the Court and if the Court is satisfied that the presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused in attendance to have the case against them enquired into or tried without delay, the Court may split up the case if it is satisfied that such splitting up will cause no prejudice either to the prosecution or to the accused in attendance and proceed with the enquiry or trial as regards the accused who are in attendance.

- iv.** While splitting up the case as referred to in (iii), the Court shall assign a fresh number to the split up case relating to the absconding accused and enter the same in the relevant register of the <http://www.judis.nic.in> current year.
- v.** In a case exclusively triable by a Court of session, when there are several accused persons and only some of them have appeared or have been produced before the Court, the Magistrate



Court shall follow the same procedure *mutatis mutandis* till the stage of splitting up of case, as provided in clauses (i) to (iv).

vi. The Magistrate Court shall thereafter comply with the provisions of Section 207 or Section 208, as the case may be, insofar as the accused in attendance and commit the case to the Court of Session.

vii. The Sessions Court shall be reported about the split up of the case and the Sessions Court shall assign a number to the split up case, enter the same in the sessions Register and communicate the number to the Magistrate Court forthwith. The Magistrate Court shall also indicate this number in brackets along with the fresh number assigned to the split up case relating to the absconding accused.

viii. As and when the absconding accused appears and is produced before the Magistrate Court, the



Magistrate Court shall comply with clause (vi) and while committing the case to the Court of Session shall indicate the number assigned by the Sessions Court for the split up case.

ix. Clauses (i) to (vii) above shall apply, as far as may be to cases where an accused person has appeared, but has subsequently absconded.

x. If the accused has absconded after committal of the case, the Sessions Judge shall follow the same procedure under clauses (ii) to (iv)."

d) It is submitted that proceeding with the trial against the petitioner under the same RCC No. 147/2002 and relying on the entire record from the trial of the co-accused creates a significant risk of prejudice. Given that the petitioner's charges are distinct from those of the other accused, using the same evidence and witness statements risks conflating the two cases, which could unfairly influence the outcome of the petitioner's trial. The petitioner has not had the opportunity to cross-examine the witnesses in the context



of his own case, as the co-accused were able to observe and consult on the examination of witnesses.

- e) It is further respectfully submitted that it is well-established law, as affirmed in *State of Kerala v. Joseph* (2014) 16 SCC 385, that the evidence from one case should not be considered for another case. Similarly, in *Naga Muttu v. Raju Bhai* (2018) 7 SCC 743, the Court observed that evidence recorded in a criminal trial against one accused is strictly confined to the culpability of that accused and cannot be used in the trial of a co-accused, even if they are charged with the same offence. This principle ensures that each accused is tried based on the evidence relevant to their individual case and not influenced by the proceedings or evidence relating to others.
- f) It is respectfully submitted that the imposition of a cost of ₹20,000 on the petitioner by the learned Sessions Judge, Nagpur, in its order dated 18.11.2024, is manifestly unjust and improper. The petitioner approached the Sessions Court through a criminal revision petition to seek a remedy against the rejection of his application by the trial court,



which sought to address crucial procedural lapses regarding the splitting of the trial and the handling of the charge sheet. The petitioner, in good faith, invoked the legal process to assert his rights and to ensure that the trial against him is conducted in accordance with the law and with due regard to principles of fairness and justice. The imposition of costs, especially in a case where the petitioner has only sought to ensure that his trial is handled separately, as mandated by the Hon'ble High Court's order, penalizes him for attempting to assert his legal rights. The petitioner did not act in bad faith or with the intent to delay or hinder the proceedings but rather sought to correct procedural errors that would otherwise result in prejudice against him. Moreover, the petitioner is not responsible for the delay in the proceedings or the failure to follow due process by the trial court. The learned Sessions Judge failed to consider the fact that the petitioner was merely seeking an opportunity to defend himself in a separate trial, which is a right guaranteed under the law. The imposition of costs in such



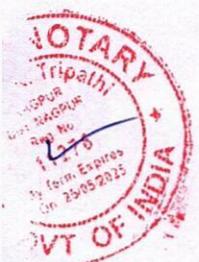
circumstances appears punitive, without a justifiable basis, and should be reconsidered. The petitioner's action in filing the revision petition was an exercise of his legal right, and penalizing him in this manner undermines the principle of access to justice. Therefore, the imposition of costs should be set aside, as it is inconsistent with the fair administration of justice.

- g) It is further respectfully submitted that in compliance with the directions issued by the Hon'ble High Court, the sessions trial was separated, and the Hon'ble Court specifically directed that the documents pertaining to the petitioner be separated and sent to the Mumbai Court for the conduct of his individual trial. Similarly, in the trial of other accused, the trial court examined witnesses in the presence of those accused, thereby granting them the opportunity to observe the proceedings and evidence being recorded against them. This right to witness and respond to the evidence presented is an essential component of a fair trial, as it ensures that the accused have the



opportunity to challenge and cross-examine witnesses in real-time.

h) In the present case, the petitioner is entitled to the same opportunity to effectively participate in the trial. To ensure a fair and just process, it is crucial that the petitioner is provided with the relevant documents, statements, and evidence specific to his case. The prosecution must furnish a separate list of witnesses it intends to examine, along with the documents it wishes to exhibit, so that the petitioner may have the opportunity to prepare his defense adequately. The learned trial court and the sessions court have failed to interpret the concept of a split chargesheet correctly. The term "split" should be understood as the initiation of a new, separate trial against the petitioner, as directed by the Hon'ble High Court, rather than continuing the proceedings under the same trial number. This new trial must be conducted independently, ensuring that the petitioner is afforded the proper legal opportunities to contest the case, as outlined by the apex court's guidelines for a fair trial.



11. The petitioners submit that he has not filed any other petition regarding the same subject matter in this court, before the Supreme Court of India, or before any other court.

12. The petitioners submit that there is no other alternative remedy available to the petitioners except to approach this Hon'ble Court by filing the present writ petition.

13. That the petitioners undertake to supply the translated copy of the documents in Marathi and typed copies of other documents as and when directed by this Hon'ble court.

14. The Petitioners have filed documents as per the list and crave leave to file more during the hearing.

HENCE THIS PETITION

PRAYER:-

It is, therefore, most humbly and respectfully prayed before this Hon'ble Court that, it may be pleased to: -

- i. quash and set aside the order dated 18/11/2024 passed by the learned Additional Sessions Judge-12, Nagpur, in criminal revision no. 118/2024, and order



dated 16.04.2024 passed by the 2nd A.C.J.M, Nagpur in R.C.C no. 147/2002.

- ii. By considering the order dated 04/10/2019 by Hon'ble Division Bench High Court at judicature at Bombay, Nagpur Bench, Nagpur in Civil application no. 1701 of 2019 in PIL no 25/2014 at page no. 10 of that order, direct the respondent to supply the relevant document and statements pertaining to petitioner and list of witnesses to the petitioner for the proper adjudication and for fair trial of the petitioner.
- iii. Stay to the proceeding vide R.C.C. No. 147 of 2002 pending before the 2nd Addl. Chief Judicial Magistrate, Nagpur till disposal of this Writ Petition.
- iv. To call for the records and proceedings in case no. RCC no. 147/2002 from the Hon'ble Add.CJM, Nagpur and to pass any other relief as this Hon'ble court may deem fit and proper.

NAGPUR

DATE 02.12.2024

COUNSEL FOR PETITIONER

(ADV. SAGAR LAMBAT)



SOLEMN AFFIRMATION

I, Sanjay Hariram Agrawal, aged about 58 Years, Occ. Business, R/o 7, Hari Seva Street, Kidderpore, Kolkata, (West Bengal) the petitioner herein, do hereby take oath and state on solemn affirmation as under that the present matter has been drafted by my counsel as per my instructions. That, I say that the statements made in paragraphs No. 1 to 14 are read over to me and explained in vernacular. I say that so far as they relate to the facts of the case, are true to my personal knowledge. Hence, verified and signed on this 02nd day of December 2024, at Nagpur.

S. M. Armon

DEPONENT

02/12/24

(Sanjay H. Agrawal)

I know & identify the deponent

ADVOCATE

(Sagar K. Lambat)





sworn before me on this 2
day of July 2024 at Nagpur to
Shri/Smt./Ku Sonyel Huriram Deprwad
R/o Nagpur who has been identified
by Shri/Smt S. K. Lambert
Advocate Nagpur

NANDITA R. TRIPATHI
NOTARY
Maharashtra State
Nagpur Dist. Nagpur.

NOTARIAL REG.
ENTRY: 6295
DATE: 21 Jul 24



24

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

CRIMINAL WRIT PETITION NO. _____/2024

PETITIONER: - Sanjay Hariram Agrawal

(Org. Applicant)

VERSUS

RESPONDENT: - State of Maharashtra

(Org. Non Applicants)

LIST OF ANNEXURE

Sr. No.	Anne.	Particulars	Date	Page No.
1	A	True copy of order passed by the Hon'ble High Court of Bombay, in Criminal Application No. 628 of 2014.	19.12.2014	27
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3	C	True copy of order	23.12.2014	94-96

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		2024.		
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NAGPUR


COUNSEL FOR PETITIONER

DATED: 02.12.2024

(ADV. SAGAR KISHOR LAMBAT)



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1/1

905.APPLN.628.14

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 628 OF 2014

Sanjay Hariram Agarwal .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.Niteen Pradhan i/b Ms.S.D.Khot, Advocate for the Applicant.
Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 19th December, 2014.

P.C. :

1 Issue notice to the respondent, returnable on 14/01/2015.

2 Ad-interim order in terms of prayer clause (b) till then.

3 Mrs.M.R.Tidke, the learned APP waives service on behalf of the respondent-State.

(ABHAY M.THIPSAY, J)



Annexure-B

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

CRIMINAL APPLICATION NO. 628 OF 2014

WITH

INTERIM APPLICATION NO.63 OF 2020 IN CRI.APPLN NO.628/2014

State of Maharashtra ... Applicant

In the matter between

Sanjay Hariram Agrawal ... Applicant

Vs.

Omprakash Baburao Kamdi & Ors. ... Respondents

WITH

CRIMINAL APPLN.889 OF 2019 IN CRI.APPLN. NO.332/2015

WITH

CRI.APPLN.NO.332 OF 2015 IN CRI.APPLN.NO.624/2014

WITH

CRI.APPLN. NO.333 OF 2015 IN CRI.APPLN.NO.624/2014

WITH

CRIMINAL APPLICATION NO. 624 OF 2014

Wardha District Central
Co-operative Bank Ltd. ... Applicant

In the matter between

Sanjay Hariram Agrawal ... Applicant

Vs.

The State of Maharashtra ... Respondent

WITH

CRIMINAL APPLICATION NO. 625 OF 2014

WITH

CRIMINAL APPLICATION NO. 626 OF 2014

WITH

CRIMINAL APPLICATION NO. 627 OF 2014

WITH

INTERIM APPLN.NO.322 OF 2015 IN CRI.APPLN.NO.629 OF 2014

WITH

CRIMINAL APPLICATION NO. 629 OF 2014



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Suresh Shivajirao Kale

... Intervenor

In the matter between

Sanjay Hariram Agrawal

... Applicant

Vs.

The State of Maharashtra & Ors.

... Respondents

**WITH
CRIMINAL APPLICATION NO. 630 OF 2014
WITH
CRIMINAL APPLICATION NO. 631 OF 2014
WITH
CRIMINAL APPLICATION NO. 1022 OF 2014**

Sanjay Hariram Agrawal

... Applicant

Vs.

The State of Maharashtra

... Respondent

**WITH
CIVIL PUBLIC INTEREST LITIGATION NO. 15 OF 2020
WITH
INTERIM APPLICATION NO.2250 OF 2020 IN CIVIL PIL NO.15/2020**

Sanjay Hariram Agrawal

... Applicant

In the matter between

Omprakash Bhaurao Kamdi & Ors.

... Petitioners

Vs.

The State of Maharashtra Ors.

... Respondents

Mr.Niteen Pradhan with Ms.Shubhada Khot, Ms.Ameeta Kuttikrishnan, Mr.Aditya Lasaria, Ms.Tanvi Tapkire, Mr.Amey Mahadik, Mr.Anthony Nadar for the Applicants in IA No.63/2020 in APPLN/628/2019 and connected matters.

Mr.A.A.Kumbhakoni, Advocate General with Mr.P.P.Kakade, GP with Ms.A.A.Purav, AGP with Mr.Akshay Shinde "B" Panel Counsel with Mr.A.R. Patil, Addl. P.P. for the Respondent-State in I.A. No. 60/2020 alongwith all connected Criminal Applications.



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Mr.B.B.Tiwari for Respondent No.4 in APPLN/624/2014.

Ms.G.M.Dubash for Respondent No.5 – Breach Candy Hospital Trust in APPLN/626/2014.

Mr.D.H. Sharma with Mr.Prateek D. Sharma for Respondent Nos. 5 to 7, 9, 11 to 13 in Criminal Application No. 627 of 2014.

Mr.Girish Purohit for Respondent Nos.4, 5 & 7 in APPLN/628/2014.

Mr.Abhijeet Desai with Surbhi Agarwal with Ms.Apurvi Joshi with Ms.Chandni Sachade for Applicant-Respondent No.2 – Wardha Bank in APPLN/889/2019 and APPLN/333/2015.

Mr.Pramod Patil with Komal Mestry i/b PNP & Associates for Respondent No.8 – Osmanabad DCC Bank in APPLN/1022/2014.

Mr.D.D.Patil i/b Mr.D.S.Patil for Respondent No.11 – Suvarnayog Sahakari Bank Ltd. in APPLN/629/2014.

Ms.Neha Bhide for Respondent Nos.2, 4, 7, 12, 14 and 16 in APPLN/630/2014.

Mr.Sanjiv Sawant with Rutu Pawar for Respondent Nos.4, 6, 7, 9 & 10 in APPLN/631/2014.

Mr.Joe Carlos for Respondent in C.A.No.628 of 2014.

Mr.Pralhad Paranjape with Mr.Manish Kelkar with Druti Datar for Respondent No.2 in C.A.No.628 of 2014.

Mr.Surel Shah with Mr.Rahul Kasbekar for Respondent No.5 in C.A.No.629 of 2014.

Mr.S.P.Bhandarkar, Senior Advocate in Civil PIL No.15 of 2020 with IA.No.2250 of 2020.

**CORAM : A. A. SAYED &
MADHAV J. JAMDAR, JJ.**

DATE OF RESERVE : 24TH JUNE, 2021



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DATE OF PRONOUNCEMENT : 9TH JULY, 2021**JUDGMENT (PER MADHAV J. JAMDAR, J.)**

1. The Applicant, who is the original accused in various criminal cases pending in various Courts, namely, Mumbai, Wardha, Nagpur, Pune and Osmanabad has filed above referred nine Criminal Applications under sections 482 and 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C., 1973") inter alia seeking transfer of these cases to the Competent Court in Mumbai for its trial in accordance with law. The details of all these cases are as under :

Criminal Application No.	C.R.No. Police station	Case No. and Court	Offence punishable under sections	Status of Applicant
624/2014	83/2005 and 13/2005 Santacruz police station	C.C.No.412/PW/2007 Add.Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 420, 34 IPC	Accused No.2
625/2014	C.R.No.81/2002 L.T.Marg police station, Mumbai	C.C.No.324/P/2002 Add.Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 420, r/w..120(B) of IPC	Accused No.3
626/2014	C.R.No.50/2004 E.O.W. Mumbai C.R.No.298/2004 Santacruz police station	C.C.No.197/PW/2007 Add.Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 465, 120(B) of IPC	Accused No.1
627/2014	C.R.110 of	C.C.No.573/2002	406, 409, 420 r/	Accused



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	2002 and No.124/2002 Wardha Police Station	Chief Judicial Magistrate, Wardha	w. 34 IPC	No.1
628/2014	C.R. No.101/2002 (Original C.R. No. 97/2002 of Ganeshpeth Police Station, Nagpur.	C.C.No.147/2002 Additional Chief Judicial Magistrate, Nagpur	406, 409, 468, 471 r/w. 120-B r/w. Section 34 of IPC	Accused No.3
629/2014	C.R. No. 65 of 2002 Vishrambag Police Station, Pune	C.C.No.357/2002 J. M. F.C., Shivaji Nagar, Pune.	406, 409, 420, r/w. 34 of IPC	Accused No.1
630/2014	C.R. No. 75 of 2002 City Kotwali Police Station, Amravati	C.C.No.847/2003 Chief Judicial Magistrate, Amravati	406, 409, 420, 468, 34, 120B of IPC	Accused No.21
631/2014	C.R.No. 102/2002 Pimpri Police Station, Pune	C.C.No.498/2002 Judicial Magistrate First Class, Pimpri, Pune	465, 467, 468, 471, 406, 408, 420, 34 of IPC	Accused No.20
1022/2014	C.R.No.45/2002 of EOW (Original C.R. No. 158/2002.	C.C.No.398/2002 Chief Judicial Magistrate, Osmanabad	406, 409, 420, 468, 471 r/w. Section 34 IPC	Accused No.7



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2. We have heard Mr.Niteen Pradhan, learned Counsel appearing for the Applicant, Mr.AA.Kumbhakoni, learned Advocate General for the Respondent – State of Maharashtra, Mr. B.B.Tiwari, learned Advocate appearing for Respondent No.4 in Criminal Application No.624 of 2014 and Mr.D.H.Sharma, learned Advocate appearing for Respondent Nos.4 to 7, 9, 11 to 13 in Criminal Application No.627 of 2014.

3. At the outset we note that both Mr. Niteen Pradhan, learned Counsel and Mr. A. A. Kumbhakoni, the learned Advocate General advanced submissions by referring to the facts of the Criminal Application No. 628 of 2014.

4. Mr.Niteen Pradhan, learned Counsel contended that transactions which are the subject matter of all these Criminal cases had taken place at Mumbai and, therefore, the Courts at Nagpur, Wardha, Pune, Amravati and Osmanabad have no jurisdiction to conduct the trial of these cases. He mainly relied on section 181(4) of the Cr.P.C., 1973. He relied on several judgments of this Court as well as of Hon'ble Supreme Court. He submitted that alleged offence is of criminal misappropriation or of criminal breach of trust and entire transaction had taken place in Mumbai and, therefore, as per section 181(4) of Cr.P.C., 1973 the Court within whose local jurisdiction the offence was committed has jurisdiction to conduct trial and, therefore, Court at Mumbai exclusively has got jurisdiction to deal with these cases. He has very heavily relied on the Full Bench judgment of this Court reported in *AIR 1930 Bom 490 = 32 BLR 1195 in re Jivandas Savchand*.

5. Mr.Niteen Pradhan, learned Counsel submitted that the Applicant was Chairman and Chief Executive Officer of M/s.Home Trade Ltd., a company registered under the Companies Act, 1956 (hereinafter referred to as the



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“said company”). The said company was engaged in business of Stock and Securities, Brokering and Trading. The said company was member of National Stock Exchange of India (hereinafter referred to as “NSE”) and of Bombay Stock Exchange of India (hereinafter referred to as “BSE”) and also of Pune Stock Exchange (hereinafter referred to as “PSE”). He submitted that the transactions which are subject matters of the above nine criminal cases have taken place in city of Mumbai wherein the Government of India Securities were offered, sold and purchased. The contract notes were executed and issued by the said company as a member of NSE in city of Mumbai. The money transactions have also taken place in Mumbai. He submitted that the respective charge-sheets in said nine cases were filed with respect to offences under sections 406, 409, 468, 471, 120B read with 34 of the Indian Penal Code (hereinafter referred to as “IPC”).

6. Mr.Niteen Pradhan, the learned Counsel submitted that the said company had entered into few transactions relating to Government of India Securities with Nagpur District Central Co-operative Bank Ltd. (hereinafter referred to as “NDCCB”). He submitted that there was delayed delivery of Rs.125.60 crores to NDCCB and, therefore, the FIR was lodged. He submitted that the then Chairman of NDCCB - Sunil Babashed Kedar lodged FIR bearing C.R.No.97 of 2002 at Ganeshpeth police station, Nagpur for the offence punishable under section 406, 420 read with 34 of IPC against five companies including said company on 25/04/2002. He submitted that in the meanwhile the Special Auditor was appointed to investigate the affairs of NDCCB and Special Auditor concluded that the management of NDCCB was also responsible and lodged FIR on 29/04/2002 bearing C.R.No.101/2002 at Ganesh Peth police station, Nagpur against the then Chairman – Sunil Kedar and the then General Manager - Ashok Nange and others. He submitted that investigation in both crimes



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i.e. C.R.No.97/2002 and C.R.No.101 of 2002 was conducted by CID, Nagpur Unit and thereafter charge-sheet was filed in the Court of learned Judicial Magistrate, First Class No.I, Nagpur clubbing both FIRs and the Applicant was arrayed as Accused No.3. The said case is numbered as C.C.No.147 of 2002 for the offences under sections 406, 409, 468, 471, 120-B and 34 of IPC. He submitted that initially case relating to Nagpur District Co-operative Bank Ltd. and Osmanabad District Central Co-operative Bank Ltd. were investigated by EOW, Mumbai and after almost entire investigation was completed, the investigation was transferred to Nagpur police and Osmanabad police respectively and thereafter charge-sheets were filed in respective courts. He also pointed out factual position regarding above remaining eight cases. He submitted that all those cases are pertaining to delayed delivery of Government of India Securities. He submitted that all transactions were entered into at Mumbai. The contract notes pertaining to transactions were executed at Mumbai. The consideration amount of District Co-operative Banks from Wardha, Nagpur, Amravait, Osmanabad, Mumbai and Pune were paid and received in Mumbai. He submitted that all securities transactions were routed through existing bank accounts of these District Co-operative Banks at Maharashtra State Central Co-operative Bank, Fort Branch at Mumbai.

7. Mr.Niteen Pradhan, the learned Counsel further submitted that the financial transactions have taken place from the bank accounts held by the Complainant and the Accused which are in Mumbai and many witnesses are common in all cases and are from Mumbai and, therefore, he prayed that all the cases be transferred to the Competent Court in Mumbai and be tried in accordance with law. He submitted that monies were transferred from the said Mumbai accounts and securities were also transferred by the Applicant through his brokering companies/entities in Mumbai. He



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submitted that the said transactions are covered by the Regulations framed by the NSE, Mumbai. He submitted that in view of provisions of section 181(4) of Cr.P.C. the jurisdiction for registration of offence, investigation and consequent trial is in Mumbai. He pointed out several orders passed by this Court in above Criminal Applications. He pointed out several orders passed in PIL No.25/2014 which was filed before Nagpur Bench of this Court.

8. Mr.Niteen Pradhan, the learned Counsel relied on the judgment reported in **(1988) 2 SCC 602 in A.R.Antulay vs. R.S.Nayak and Anr.** He submitted that the said judgment deals with effect of trial held without jurisdiction. He submitted that the trial conducted by various Courts outside Mumbai are being conducted illegally and without jurisdiction. He relied on the judgment reported in **(1992) 1 SCC 534 in case of Smt. Shrisht Dhawan vs. M/s.Shaw Brothers** and more particularly on paragraphs 19 of the said judgment wherein it has been held that mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or Tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. He relied on several other judgments, the reference to relevant judgments will be made as and when necessary.

9. Mr.Kumbhakoni, learned Advocate General, on the other hand submitted that real issue involved in the present matter is not whether Criminal Courts situate at Mumbai has jurisdiction to entertain, try and decide all above referred criminal cases but real issue is whether respective Criminal Courts where the trials are presently being conducted have



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jurisdiction to continue with those trials. The learned Advocate General submitted that all these cases are dealing with District Central Co-operative Banks and such banks have limited jurisdiction only to extent of said District. Such banks cannot give loan to persons outside the District. He submitted that Nagpur District Central Co-operative Bank Ltd. cannot give loan to person who is residing outside area of operation of said bank. He submitted that every District Central Co-operative Bank has account in Maharashtra State Co-operative Bank at Mumbai and, therefore, it cannot be termed that entire transaction had taken place in Mumbai. He submitted that money paid to the Applicant through Bank which is in Mumbai has no relevance as the money has come from Nagpur and therefore, the contention that the Court in Mumbai has exclusive jurisdiction is without any basis. He submitted that accused delivered certain documents terming them as securities at Nagpur and the said securities were found to be forged and merely photocopies of said securities were submitted with the NDCCB. He submitted that original securities were never delivered. He submitted that the Chairman of NDCCB is main accused and he committed offence at Nagpur. He submitted that said Chairman in collusion with other accused committed the said offence.

10. The learned Advocate General submitted that most of these criminal cases are nearing completion. He submitted that section 181(4) of Cr.P.C., 1973 applies to all these cases. He submitted that Full Bench judgment of this Court in re Jivandas Savchand (supra) has no application since it was delivered when section 181(2) of the Code of Criminal Procedure, 1878 (hereinafter referred to as Cr. P.C., 1878), was in operation and the said section and Section 181(4) of Cr.P.C., 1973 are not *pari materia* and there are material changes in both the provisions. He relied on the judgment reported in (2001) 1 Mh.L.J. 407 in *Pratiraksha Mazdoor Sangh*,



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Jalgaon vs. State of Maharashtra and Others more particularly on paragraphs 9 and 17 of the said judgment to contend that Full Bench judgment in the matter between re Jivandas Savchand (supra) is no more good law as substratum i.e. very basis of said judgment does not exist. Relying on the said judgment, he submitted that provisions of statute after its amendment are to be read and construed with reference to new provisions and not with reference to the provisions which originally existed.

11. Mr. Kumbhakoni, learned Advocate General has relied on the relevant portion of Forty-First Report of Law Commission of India by which amendment to section 181(2) of Cr.P.C. 1878 was proposed. The Forty-First Report was published in September 1969. He also relied on judgment reported in **(2007) 5 SCC 786 in case of Asit Bhattacharjee vs. Hanuman Prasad Ojha and Others**. He submitted that section 178 Cr.P.C., 1973 clearly provides that even if a part of cause of action arises within jurisdiction of the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under section 190 (1) Cr.P.C., 1973 then such Court will have jurisdiction to make investigation. He relied on the judgment reported in **(2001) 9 SCC 432 in the matter between CBI vs. Braj Bhushan Prasad and Others** and particularly on paragraphs 38 and 39 of the said judgment. He submitted that as per section 181(4) inter alia the Court within whose local jurisdiction any part of the property which is the subject of the offence was required to be returned or accounted for, by the accused will have jurisdiction and, therefore, submitted that respective Courts dealing with these criminal cases will have jurisdiction. He further relied on the judgment of the Hon'ble Supreme Court reported in **2012 (3) SCC 132 in Lee Kun Hww, President, Samsung Corporation, South Korea and Others**. He submitted that with respect to offence of criminal misappropriation or of criminal



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breach of trust inter alia the Court within whose local jurisdiction, the whole or a part of the consideration were required to be returned or accounted for would have jurisdiction in the matter and, therefore, he submitted that respective Courts have jurisdiction to deal with the respective cases. He relied on the judgment of this Court reported in **2016 SCC Bom online 1574 in the matter between Evangelical Alliance Ministries Trust and Others vs State of Maharashtra and Anr.** wherein the Full Bench judgment in re Jivandas Savchand dated 18th July, 1930 was considered and it is specifically observed that the said Full Bench judgment was on the basis of the then applicable provision and the provision of law has been amended. He, then, submitted that the respective Courts dealing with all the aforesaid nine criminal cases are having jurisdiction. He further submitted that some of these criminal cases are nearing completion and, therefore, at this stage the transfer of cases as sought by the Applicant be not granted.

12. Shri B B Tiwari, learned Advocate appearing for Respondent No.4 in Application No.624 of 2014 relied on the judgment of the Hon'ble Supreme Court reported in **(2020) 10 Supreme Court Cases 92 in the matter between Kaushik Chatterjee vs. State of Haryana and Others** more particularly on paragraphs 38 and 40. He submitted that territorial jurisdiction can depend on facts established through evidence. Relying on the said judgment, he submitted that all these questions are required to be raised before the Court trying the offence and such Court is bound to consider the same. He relied on the depositions recorded in Regular Criminal Case No.147 of 2002 pending in the Court of Additional Chief Judicial Magistrate, Nagpur and submitted that as per the said oral evidence it is very clear that the transaction has taken place in Mumbai and, therefore,



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it is necessary to transfer the trial of the said cases to the city of Mumbai.

13. Mr.D.H.Sharma, learned Advocate appearing for Respondent Nos.5 to 7, 9, 11 to 13 in Criminal Application No.627 of 2014 submitted that the said Criminal Application is concerning transfer of Regular Criminal Case No.573 of 2002 from the Court of the learned Chief Judicial Magistrate, Wardha to the Competent Court at Mumbai. He submitted that he is opposing the prayer for transfer of the case. He submitted that the trial of the said Regular Criminal Case No.573 of 2002 has progressed substantially and, therefore, the trial be not transferred. He further submitted that the Directors of said bank, namely Accused No.2 and Accused No.4 i.e. present Respondent Nos.2 and 4 had moved similar Application before the learned Chief Judicial Magistrate, Wardha to transfer the case and said Application was rejected on 9th January, 2013 and Criminal Application No.2 of 2013 moved before the Nagpur Bench of this Court challenging said order was withdrawn by them on 1st February, 2013 without seeking liberty to file any fresh Application and thereafter present Application is filed by another Director of said Bank i.e. present Applicant on the same grounds. He, therefore, opposed the prayer of the Applicant.

14. Before considering the legal submissions concerning relief regarding transfer of above referred criminal cases pending in respective Courts to a Competent Court in Mumbai, we deem it appropriate to set out factual position involved in Criminal Application No.628 of 2014. The prayer in said application is to transfer C.C. No. 147 of 2002 pending on the file of learned Chief Judicial Magistrate, Court No.1, Nagpur arising out of C.R. No.101 of 2002 and C.R. No.97 of 2002 registered at Ganeshpeth Police Station, Nagpur to a Competent Court in Mumbai for its trial in accordance with law.



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15. The Respondent No.2-Sunil Kedar lodged FIR No. 97 of 2002 on 25th April, 2002 at Ganeshpeth Police Station, Nagpur. The relevant portion of said FIR is as follows:-

"I am a Chairman of the Nagpur District Central Co-Operative Bank Ltd. Nagpur since 1993 to March, 1995 and now again from the date 19.01.1999. The working capital of our bank in Rs.827 crores and demand and time liability is Rs.630 crores approximately.

In February, 2001, our bank had entered into an agreement with M/s. Home Trade Ltd. Tower 4, Vashi Railway Station Complex, New Mumbai's Executive Director Shri Trivedi for making assignment in the Govt. Securities and Investments. Since that date, we were transacting about purchase and sale of approved Govt. Securities. M/s. Home Trade Ltd. is a firm registered with the Reserve Bank of India and it is recognized by SEBI. All the certificates of our financial transactions done with this firm so far were given to us. But, since last three months, we did not get the Investment certificates of our investments. During this period, NABARD had carried out the inspection of our bank in the year 2002 and at that time it had demanded the original investment certificates and not the Xerox copies. This broker was sending the Xerox copies of the certificates and after the completion of the transaction, he was sending the amount of difference. But, as per the directions of the NABARD and demanding the original certificate of Investment, they have communicated that it has been sent to you regularly. But, in fact, on the lines of M/s. Home Trade Ltd. We made correspondence with the following companies:

(1) M/s.Home Trade Ltd. Tower Four, Vashi Railway Station Building, Navi Mumbai's executive Director Shri Trivedi; (2) M/s. Indramani Mercants Pvt. Ltd. Raj Kuti, 2-B, Pretoria Street, Calcutta, (3) M/s. Sendru dealers Pvt. Ltd. 11, Babu Road, Calcutta, (4) M/s. Syndicate Management services Pvt. Ltd. 405, Aalish Annexe, Gulibar Tekdi, Ahemadabad (Gujrat), (5) M/s. Gilrage Management services ltd. 108, Liberty Apartment, 80-A, Ragni Road, Vile Parle (West) Mumbai- 50 (M.S.)

(Approved Govt. Securities) had made the purchase sale transactions of the Govt. Bonds (1) to (5) above.

We did not receive any certificates of the financial transactions



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since 25.01.2002 from all the Brokers. In this way, the amount of Rs.125.60 crores paid by us for investment in the Govt. Bonds, but we were not given the actual certificates and thereby cheated us.

The above said amount of Rs.125.60 crores vide cheques drawn on the Nagpur District Central Co-Operative Bank Ltd., near Shukrawari Talao, Head office, as per the other transactions, was deposited in our account in the Maharashtra State Co-operative Bank, Mumbai Branch. The above said transactions were done through the cheques/transfer mode. All the relevant documents are available in the bank records and we can submit the same to the investigating officer as and when asked to do so.” (Emphasis Supplied)

Thus, the contents of said FIR clearly show that inter alia huge amounts were sent by Nagpur District Central Co-Operative Bank Limited, Nagpur to its account in Maharashtra State Co-Operative Bank, Fort Branch, Mumbai Branch and the same were inter alia paid to the said company for purchasing Government of India securities. It is specifically mentioned that original investment certificates were not provided to the Nagpur District Central Co-Operative Bank Limited, Nagpur but photo copies were provided.

16. It appears that five days before the Respondent No.2 –Sunil Kedar lodged FIR No. 97 of 2002, the Commissioner and Registrar of Co-operative Societies, Maharashtra State, Pune by letter dated 20th April, 2002 informed the Divisional Joint Registrar of Co-operative Societies, Nagpur about the financial irregularities and scam in the Nagpur District Central Co-Operative Bank Limited, Nagpur and it was directed to conduct proper inquiry and to take police action, if necessary. Thereafter, the Divisional Joint Registrar Co-operative Societies, Nagpur issued order dated 24th April, 2002 directing the Special Registrar, Class I (Bank), Co-operative Societies, Nagpur to conduct the audit of the bank transactions and send the report thereof. Thereafter, Bhaurao Vishwanath Aswar, Special Auditor Class-I (Bank) Cooperative



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Department, Nagpur conducted inquiry regarding financial irregularities and scam of Nagpur District Central Co-Operative Bank Limited, Nagpur. The following persons were non-applicants in the said inquiry.

- (i) Sunil Chhatrapal Kedar, Chairman/President, Nagpur District Central Sahakari Bank Ltd. Nagpur.
- (ii) Shri A. C. Choudhary, General Manager, Nagpur District Central Sahakari Bank Ltd. Nagpur.
- (iii) M/s. Home Trade Ltd. Tower Four, Vashi Railway Station Building, Navi Mumbai's executive Director Shri Trivedi.
- (iv) M/s. Indramani Mercants Pvt. Ltd. Mumbai.
- (v) M/s. Syndicate Management Services Pvt. Ltd. Ahemadabad
- (vi) Century Delers Pvt. Ltd. Kolkata
- (vii) M/s. Giltage Management Services Ltd. & Ors.

17. In the said inquiry it was found that the said transaction was to the tune of Rs. 124,05,75000/- upto March-2001. The original documents of said transaction such as original securities, bonds, investment certificate, money receipt etc. were not found available in the bank and all these transactions were found to have been done through brokers/agents. The Board of Directors also made aware of these transaction in its meeting held on 25th August, 2001. In the said Inquiry Report it is specifically observed that it is doubtful whether the actual transactions were done or not by the non-applicant Nos.3 to 7. It was also found that bank has got only photo copies of the contract note in respect of non-applicant No.3. But the contract notes in respect of their agents/non-applicant Nos. 4 to 7 were not available in the bank. Non-applicant Nos. 4 to 7 have only given details of securities but none of the documents of securities are available with the bank. It is specifically mentioned in the said inquiry report that entire transaction made



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by the Nagpur District Central Co-Operative Bank is doubtful, illegal and against the trust of the shareholders and the depositors. In the said inquiry report following conclusion is recorded:-

“It has been concluded by the applicant in his inspection that the above bank is a Trustee of the Depositors and share holders and it has done the investment of the Public Money unauthorisedly and illegally through the unauthorized brokers/agents. Their this Act is a criminal breach of Trust of the interest of the Depositors and share holders. The Chairman of the bank i.e. the non-applicant no. 1 and the non-applicant no. 2 is a general manager are the public servants and the share holders and depositors have deposited their hard earned money with the bank with the great trust and belief.”

(Emphasis Supplied)

18. In view of the said inquiry report, Mr. Bhaurao Vishwanath Aswar, Special Auditor Class-I (Bank) Cooperative Department, Nagpur lodged FIR No. 101 of 2002 on 29th April, 2002 with Ganeshpeth Police Station Nagpur for the offence punishable under Sections 406, 468, 409 read with 34 of Indian Penal Code. Thereafter investigation in both the aforesaid crimes i.e. C.R. No. 97 of 2002 and 101 of 2002 was conducted by State CID, Nagpur Unit. The Deputy Superintendence of Police, CID, Maharashtra State Nagpur filed chargesheet and said case was numbered as C.C. No. 147 of 2002 for the offence punishable under Sections 406, 409, 468, 471, 120B and 34 of Indian Penal Code. Some of the relevant aspects as set out in the summary of investigation in final report submitted under Section 173 of Code of Criminal Procedure are as follows:-

“1. The Chairman Sunil Kedar, Vice Chairman Smt. Asha Mahajan, Joint manager Shri A. L. Chaudhari, Chief Accountant Shri A. G. Gokhale and Chief Administrative Officer Shri S. S. Gode were authorised to deal with the transactions regarding sale and purchase of Government Securities by the resolution no 8 in the meeting of the



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board of directors of the Nagpur District Central Cooperative Bank dated 19.1.99.

2. In the meeting of the board of directors of the Nagpur district Central Cooperative Bank held on 16.5.99, a resolution No. 14.6 came to be passed that the transaction of the Government Securities from Reserve Bank of India would be by S. G. L. mode and through the account of Maharashtra State Cooperative Bank.

3. On 14.9.2000, Chairman Sunil Kedar took the signatures of the other 6 directors by passing circulating Resolution. As per the said resolution, a decision was taken to sanction the loan of 40 crores by the NDCC bank to the Euro Discover India Limited on 20% interest. Accordingly, the Nagpur District Central Cooperative Bank sanctioned the loan of rupees 40 crores to the directors of Euro Discover India Limited 1. Sanjay Agrawal Mumbai 2. Ketan Kantilal Sheth, Mumbai 3. Nandakishor Shankarlal Trivedi, Mumbai. The Chairman Sunil Kedar himself accepted 4 cheques of 10 crores pertaining to the said loan and gave them to the Director Euro Discover India Limited, Sanjay Agrawal.

It was observed that the said loan of 40 crores was given without following the banking Rules. The area of operation of the Nagpur District Central Cooperative Bank is limited to the district Nagpur. The directors of Euro Discover India Limited Co. are not the members of the bank and are outside the area of the operation of the bank. The decision regarding the loan of 40 crores was taken by circulating resolution. Though it was the responsibility of the Chairman to place the said circulating resolution before the next meeting of the board of directors. "Rule 24/14 of the Banking Regulation", the said circulating resolution was never placed before the next meeting of the board of directors. The 6 director who signed thereon, gave a statement that many of the directors who signed the circulating resolution are inadequately qualified and have very little knowledge of English. The signatures were obtained and have very little knowledge of English. The signatures were obtained by General Manager Shri Ashok Chaudhari who told them that the said resolution was to be sent to the NABARD and the signatures were necessary.

4. On 2.2.2021, Shri Peshkar, the Chief Accountant Officer prepared an office note to resolve that the Securities were to be purchased in the physical form. Shri A. L. Chaudhari, Chief Manager,



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proposed the said resolution and the Chairman Shri Sunil Kedar seconded the same.

The decision regarding the sale and purchase of the Government Securities in the physical form was taken by the Chairman himself and the same was never placed before the meeting of the board of directors. Similarly, there was no discussion on the said issue ever in the meeting of the board of directors.

5. From the period 5.2.2001 to 12.6.2001, the amounts 25.80 crores, 26.2 crores, 26.51 crores, 15.14 crores, 40.44 crores, 21.73 crores, 20.02 crores and 10.03 crores, totaling to about 185.70 crores were transferred to the account of Home Trade Limited from the account no. 101/575 of the Maharashtra State Cooperative Bank Mumbai by transfer voucher. It was done after obtaining sanction from the Chief Manager A L Chaudhari and Chairman Sunil Kedar, on the office notes dated 5.2.2002, 7.2.01, 5.3.01, 16.6.01, 20.3.01, 4.6.01, 12.6.01 respectively.

During the above period, the original Government Securities were never sent to the bank by the Home Trade Limited Co. It was not revealed that any efforts were made by the Nagpur District Central Cooperative Bank to obtain the original Gol Securities.

Between the period 21.3 2001 to 31.10. 2001, viz. 21.3 2001, 28.3.2001, 11.8.2001, 11.8.2001, 23.8.2001, 24.8.2001, 30.8.2001, 30.8.2001, 31.8.2001 and 8.9.2001 and 31.10.2001, on these dates, amount of 26.47 crores, 4.44 crores, 1.18 crores, 1.37 crores, 78.52 lacs, 17.93 lacs, 2.9 crores, 1.14 crores, 12.37 lacs, 33.19 lacs, 4.9 lacs totaling to about 38.15 crores rupees were returned respectively by the Home Trade Co. Ltd to the Nagpur District Central Cooperative Bank. The said amount has been credited to the account of the State Cooperative Bank of the Nagpur District Central Bank account number 101/5751. The balance amount of 147.54 crores remained unpaid by the Home Trade Co. Ltd., to the Nagpur District Central Cooperative Bank in the transaction pertaining to the purchase of Government Securities in the year 2001.

The Home Trade Company never sent the originals of government securities to the Nagpur District Central Co-operative Bank. No efforts were made by the Nagpur District Central Co-operative Bank to obtain the originals of government securities in the



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year 2001.”

(Emphasis supplied)

19. The learned Advocate General has relied on certain documents which are part of the charge sheet. The details of said documents are as follows :

(i) The circulating resolution dated 14/09/2020 passed by NDCCB at Nagpur reads as under :

“CIRCULATING RESOLUTION, DATED 14.9.2000

M/s.EURO DISCOVER INDIA LTD. International Infotech Parks, Tower 3, 5th Floor, New Mumbai has offered a deal of Rs.40.00 crores for investment in their Securities against the pledge of 5,00,000 Equity Share of Home Trade Limited, equivalent to Rs.40.00 crores as per current market price with collateral security of Rs.40.00 crores of 13,50,000 shares of Ways India Limited. The deal is at a very handsome return of 20% p.a. and is based on buy-back arrangement at Rs.960.00 per share after one year. The investment would be for one year from the date of investment and the interest is payable on half yearly basis. The company has agreed to give post dated cheques of Rs.40.00 crores and two post dated cheque for Rs.4.00 crores each towards repayment of principal and half yearly interest. The investment is guaranteed by 3 Directors M/s.Euro Discover India Ltd., and counter guarantee of 3 Directors in individual capacity is also offered. The Board of The Nagpur District Central Co-operative Bank Ltd. Nagpur therefore by this Circulating Resolution dated 14.9.2000 resolves to effect the deal in the interest of the Bank.”

(Emphasis supplied)

The said resolution bears signatures of the accused - Sunil Kedar in his capacity as the Chairman and also of other Directors of NDCCB.

(ii) A note dated 14/09/2000 signed by the Chairman of NDCCB was circulated to other Directors of NDCCB while passing said Circulating Resolution dated 14/09/2000. The said note mentions the details of the proposal for investment of Rs.40 crores received from M/s.Euro Discovery India Ltd. and inter alia records that if the said proposal is approved then the

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following documents are to be obtained :-

- 1) Letter of guarantee from Shri Ketan Sheth, Sanjay Agrawal and N.S.Trivedi on stamp paper of Rs.50/- each for Rs.16.00 crores each in the form approved and vetted by Shri P.S.Takre, Chartered Accountant, on the stamps purchased from Nagpur as the city Nagpur would be jurisdiction.
- 2) Promissory Note duly signed on date.
- 3) Buy-back agreement on stamp paper of Rs.20/- purchased from Nagpur for Nagpur jurisdiction.

(emphasis supplied)

(iii) The said note further records the fund position as on 14/09/2020 of the NDCCB. :

“Fund Position :

As on 14.9.2000, the surplus position of funds is of Rs.
112.00 crores i.e.

(A) <u>Call Deposit at Nagpur</u>	<u>19.00 crores</u>
(B) <u>Call Deposit at Bombay</u>	<u>39.00 crores</u>
(C) Fixed Deposits	54.45 crores
(D) Govt. approved securities	90.08 crores
(E) Other securities not counted for SLR	15.00 crores

	217.53 crores
Less 28% Liquidity against TDL of Rs.37,555.80 crores	105.28 crores

Surplus	<u>112.25 crores</u>
	=====

(iv) Accordingly, the Letter of Guarantee was executed on 14/09/2020 inter alia by said Ketan Sheth in favour of the Chairman of NDCCB Ltd., Head Office Ruikar Road, Gandhisagar, Nagpur and the same was executed at Nagpur.



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(iv) On the proposal for purchase of physical securities of Government of India Securities dated 2nd February, 2001 following remark was found which was approved by the Chairman of the NDCCB:

“The proposal for sale of purchase of GOI Securities in physical form can be done through Home Trade Ltd. Home Trade shall operate the transactions of all deals/trades through our current account maintained with M.S.Co-op. Bank Ltd. Mumbai. Put up for approval.”

(vi) Thereafter sanction from time to time was given for purchase of Government of India Securities and for that purpose huge amounts were paid from the account maintained in the Maharashtra State Co-Operative Bank, Fort Branch, Mumbai of NDCCB Ltd., Nagpur. One such sanction dated 03.02.2001 is reproduced hereinbelow for ready reference:-

“दि नागपूर जिल्हा मध्यवर्ती सहकारी अधिकोष मर्या., नागपूर

दि.३/२/२००१

विषय— ‘होम ट्रेड लिमिटेड’ कडून फिजीकल सेक्युरिटी (GOI) खरेदी करण्यास मंजूरी बाबत...

महोदय,

होम ट्रेड लिमिटेड कडून प्राप्त झालेल्या फॅक्सनुसार गव्ह. सेक्युरिटीला (फिजीकल) ११.३% (२०१२) प्रीमियम दर रू १०२.६८ ची उपलब्ध असल्यामुळे दिनांक ५/२/२००१ रोजी महाराष्ट्र सह. बँक मुंबई येथील चालू ठेव खाते क्रमांक १०१/५७५१ मधून ‘होम ट्रेड लिमिटेड’ चे नांवानी रू. २५.०० कोटीच्या सदर सेक्युरिटीज खरेदीकरीता रू. २५८०.०२,१५२.७८ चा चेक देण्यास मंजूरीकरीता सादर.

मा. मुख्य हिशोबनीस,

सरव्यवस्थापक

हिशोबनीस

वरीलप्रमाणे ११.०३% (२०१२) व्याज दराच्या रू २५.०० कोटीच्या सेक्युरिटीज रू. १०२.६८ दराने खरेदी करण्यास मान्यता असावी.

मा. अध्यक्ष

३/२/”

20. Thus, perusal of FIR, the chargesheet and documents which are part of the chargesheet shows that following are the important aspects involved in C.R. No. 101/2002 which is subject matter of Criminal Application No. 628 of 2014 :

- (i) The area of operation of the Nagpur District Central Co-op Bank Ltd. is limited to the district of Nagpur. Head office of NDCCB Ltd. is at Ruikar Road, Gandhinagar, Nagpur.
- (ii) The monies of NDCCB are public monies and they are the monies of its share holders and the depositors.
- (iii) The NDCCB Ltd. has current account in Maharashtra State Co-op Bank. Fort, Mumbai.
- (iv) Huge amounts were transferred by Nagpur District Central Co-operative Bank Ltd., Nagpur from Nagpur to its account in Maharashtra State Co-Operative Bank, Fort Branch, Mumbai.
- (v) The said amounts were inter alia to be utilized for purchase of Government of India securities and for that purpose payment was made to the accused.
- (vi) The accused failed to provide original Investment Certificates to the 'NDCCB', Nagpur, but provided photo copies and the accused committed criminal misappropriation and/or criminal breach of trust.
- (vii) The depositors and shareholders of the 'NDCCB', Nagpur who are victims and suffered as their money was unauthorizedly and illegally utilized.
- (viii) The huge amounts of the depositors/share holders of NDCCB are transferred from Nagpur to the account of



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NDCCB maintained at Maharashtra State Co-operative Bank Ltd., Mumbai and from that account huge amounts were paid to Home Trade Ltd. or other accused ostensibly for purchase of Government of India Securities. Thus original certificates of said Government of India Securities or the misappropriated monies are required to be returned to or accounted for by the accused persons at NDCCB, Nagpur.

21. In view of above factual position and for appreciating the various submission of the respective Counsel, it is necessary to consider the relevant provisions of law, both of Cr.P.C., 1878 and Cr.P.C. 1973.

(i) The important provisions of Cr. P.C., 1898 are as follows :-

Section 177 to 189 of the Cr. P.C., 1898 is regarding place of inquiry for trial.

“177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.”

“179. When a person is accused of the commission of any offence by reason of anything which has done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.”

“181.(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.”

(ii) The relevant provisions of Cr.P.C., 1973 are as follows:-

(a) “4. Trial of offences under the Indian Penal Code and other



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laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.”

(b) Sections 177 to 189 of Cr. P.C., 1973 are regarding jurisdiction of the Criminal Courts in inquiries and trials. The important provisions are set out hereinbelow :

“177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”

“178. Place of inquiry or trial- (a) when it is uncertain in which of several local areas an offence was committed or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

“179. Offence triable where act is done or consequence ensues- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

“181(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.”

22. Section 181 (2) of Cr. P.C., 1898 and Section 182 (4) of Cr.P.C. 1973 refers to offences of criminal misappropriation or of criminal breach of trust. Therefore, Section 403 and Section 405 of IPC are also relevant and therefore relevant portion of the same is set out hereinbelow:-



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“Sec. 403. Dishonest misappropriation of property.

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Sec. 405. Criminal breach of trust.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

23. A perusal of section 181(2) of Cr.P.C., 1898 shows that following Courts will have jurisdiction to inquire into or try offence of criminal



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misappropriation or of criminal breach of Trust :

(i) A Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person.

(ii) A Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was retained by the accused person.

(iii) A Court within the local limits of whose jurisdiction the offence was committed.

24. If the Section 181(2) of Cr. P.C., 1898 and Section 181(4) of Cr. P.C., 1973, are compared with each other the same clearly shows that there are many changes in both the provisions particularly there are significant additions in section 181(4) of Cr.P.C. 1973.

25. A perusal of section 181 (4) of Cr.P.C., 1973 shows that following Courts will have jurisdiction to inquire into or try offence of criminal misappropriation or of criminal breach of Trust :

(i) A Court within whose local jurisdiction the offence was committed.

(ii) A Court within whose local jurisdiction any part of the property which is the subject of the offence was received by the accused person.

(iii) A Court within whose local jurisdiction any part of the property which is the subject of the offence was retained by the accused person.

(iv) A Court within whose local jurisdiction any part of the property which is the subject of the offence was required to be returned by the accused person.

(v) A Court within whose local jurisdiction any part of the property which is the subject of the offence was required to be accounted for by the accused person.



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26. Thus various Courts contemplated under section 181(4) of Cr.P.C. 1973 will have jurisdiction to inquire into or try offence of criminal misappropriation or criminal breach of trust. Courts within whose local jurisdiction (i) offence was committed or (ii) any part of the property which is the subject of the offence was received by the accused or (iii) any part of the property which is the subject of the offence was retained by the accused or (iv) any part of the property which is subject of the offence was required to be returned by the accused or (v) any part of the property which is subject of the offence was required to be accounted for by the accused; all these Courts will have jurisdiction to try said offences. It is very clear that conferring jurisdiction on Court of local jurisdiction where any part of the property which is subject of the offence was required to be returned or accounted for by the accused person as provided in section 181(4) of Cr.P.C., 1973 is not provided in section 181(2) of Cr.P.C., 1898 and the said change is significant addition as far as aspect of jurisdiction is concerned. It is very significant to note that the said change is made from the point of view of victims of the offences.

27. The factual position on record clearly shows that huge amounts which were transferred from 'NDCCB', Nagpur to its account in the Maharashtra State Co-operative Bank Limited, Fort Branch, Mumbai was belonging to the shareholders and depositors of 'NDCCB', Nagpur. The area of operation of NDCCB is only Nagpur District and therefore it is obvious that shareholders and depositors of NDCCB are from Nagpur District. The said amount was to be utilised for purchasing Government of India Securities. The original certificate of Government of India securities were to be delivered at 'NDCCB', Nagpur. The huge funds from 'NDCCB', Nagpur



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were transferred from Nagpur to NDCCB's account in Maharashtra State Co-operative Bank Limited, Fort at Mumbai and the same were misappropriated or subjected to criminal breach of Trust and therefore, either the original Government of India securities or the said huge funds were required to be returned to NDCCB, Nagpur or accounted to 'NDCCB', Nagpur. Even if NDCCB, Nagpur has got account at Maharashtra State Co-operative Bank Limited, Fort Branch at Mumbai and even if entire transaction was done through said account at Mumbai and some amounts are returned in said Mumbai account of NDCCB, Nagpur by accused, the fact remains that the said amounts ultimately belong to the shareholders and the depositors of NDCCB, whose area of operation is restricted to Nagpur District and therefore, the said amounts are ultimately required to be returned to or accounted for by the accused person to the shareholders and depositors of NDCCB at Nagpur. Thus, it is clear that Nagpur Court i.e. Court of Learned Chief Judicial Magistrate, Nagpur has also jurisdiction to deal with said case. Thus, the factual aspects as involved in said C.C. No. 147 of 2002 pending on the file of learned Chief Judicial Magistrate Court No. 1, Nagpur, if examined on the basis of relevant provisions namely Section 181 (4) of Cr. P.C., 1973 then it is clear that the said Court at Nagpur has jurisdiction to deal with the said case.

28. Mr. Niteen Pradhan, the learned Counsel appearing for the Petitioner very heavily relied on the judgment in re Jivandas Savchand (supra). In the said case decided by the Full Bench of Bombay High Court, the Court completely dissented from the view taken by the Calcutta High Court in the case reported in *AIR 1925 Cal. 613* between *Gunananda Dhone vs. Santi Prakash Nandy*. The Calcutta High Court took the following view :



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“If there is a contract that the accused is to render accounts at a particular place and fails to do so as a result of his criminal act in respect of the money, he can, without unduly straining the language of the section, be said to dishonestly use the money at that place as well, in violation of the express contract which he has made touching the discharge of the trust by which he came by the money, and so commits the offence of criminal breach of trust at that place also.”

The Hon'ble Calcutta High Court recorded its conclusion as follows :

“9. My conclusion therefore is that where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court within the local limits of whose jurisdiction that place is situate, may enquire into and try the offence under the provisions of Section 181 Sub-section (2), Criminal Procedure Code.”

The Hon'ble Chief Justice Beaumont C.J. of the Bombay High Court recorded the dissent of Full Bench to the said view of Calcutta High Court in the following manner :-

“With very great respect to the learned Judges who decided that case, I am quite unable to follow the line of reasoning. It seems to me to involve a confusion between the place where the offence was committed and the place where the complainant first acquired evidence that the offence had been committed. I can see nothing in section 405 of the Indian Penal Code to justify the contention that when a man in Rangoon delivers false accounts in Bombay, he is thereby making a dishonest use in Bombay of money or property which has never left Rangoon.”

The factual aspects involved in the said judgment of Full Bench in re Jivandas Savchand (supra) as recorded in the said judgment are as follows:

“The complaint alleges that the complainant in October 1928 entered into partnership with the accused in the business of merchants and commission agents in rice carried on at Rangoon. Accused No. 1 was to manage and conduct the business at Rangoon according to the instructions that might be issued to him, and was allowed to draw monthly expenses at a certain sum. There were partnership articles between the parties, under which the head office was to be at Bombay, and under Clause (12), accused No. 1 was to send weekly statements on account of the partnership as well as business transacted on behalf of the partnership to the head office in Bombay, and by Clause (16) the accounts of the partnership were to be made up once a year, the profit and loss account to be forwarded by accused No. 1 to the head office in Bombay immediately after the accounts were made up, and the distribution of profits and losses were to be entered up thereafter in accordance with the instructions received from the head office. Now, in short, the charge made against the accused is that they misappropriated the firm's moneys in Rangoon and falsified the accounts in Rangoon, and the question is whether they can be tried for those offences in Bombay”.

29. At this stage it is required to be noted that the said Full Bench judgment in re Jivandas Savchand on which Mr. Niteen Pradhan, the learned Counsel has very heavily relied is concerning interpretation of section 181(2) of Cr.P.C., 1898. The equivalent provision of said section of Cr.P.C., 1973 is section 181(4), however, as noticed above there are certain changes particularly very significant additions made in section 181(4) of Cr.P.C., 1973 as compared to section 181(2) of Cr.P.C. 1898. We have already highlighted the said changes hereinabove.

30. In this context it is important to note that Forty-First Report of Law Commission of India published in September 1969 elaborately considered the provision of section 181(2) of Cr.P.C., 1898 and observed in paragraph 15.14 to 15.17 as follows :

“15.14. Sub-section (2) of section 181 indicates the possible venues



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for the offences of criminal misappropriation of property and criminal breach of trust. Besides the local area where the offence was committed the venue may be laid in any area within which the property which was the subject of the offence was either received or retained by the accused person.

15.15. As defined in section 405 of the Indian Penal Code, the offence of criminal breach of trust may be one of two types. The first occurs when the trusted person dishonestly misappropriates or converts to his own use the property in question; and the second, when he dishonestly uses or disposes of that property in violation of :--

- (a) any direction of law prescribing the mode of discharge of the trust, or
- (b) any legal contract, express or implied, which he has made touching the discharge of the trust.

The place of commission of the offence in the first type is the place where the accused dishonestly misappropriate the property or converted it to his use, and in the second type, it is the place where he dishonestly used or disposed of the property in violation of law or contract.

15.16. Doubt exists in many cases as to the exact manner, point of time and place where the dishonest misappropriation, conversion, use or disposal was effected. Since these matters are within the special knowledge of the accused, the complainant is unable to adopt the jurisdiction with which the offence has been committed. Though no such doubts ordinarily arise in regard to the place or places where the property in question was received or retained by the accused, these places are not always suitable for launching the prosecution.

15.17. The question has accordingly arisen in a number of reported cases whether these offences can be inquired into or tried by a Court within whose jurisdiction the accused was bound by law or contract, to render accounts or to return the entrusted property but failed to discharge that obligation. The decisions of High Courts on this point are conflicting.”

(Emphasis Supplied)

31. Thereafter in subsequent paragraphs of the said report of the Law Commission of India, large number of conflicting decisions of various High Courts including the said case decided by Calcutta High Court in the matter of Gunananda Dhone (supra) and aforesaid Full Bench judgment of the Bombay High Court in re Jivandas Savchand (supra) were noted.

32. Paragraph 15.21 is about applicability of section 179 of Cr.P.C., 1898 to the offence contemplated under section 181(2) of Cr.P.C., 1898. Paragraph 15.21 read as under :

“15.21. In some early decisions the Courts considered the rule in section 179 applicable and held that the place where the complainant suffered loss “in consequence of” the accused person’s act could be the venue for his trial on a charge of criminal breach of trust. The following extract from a judgment of the Allahabad High Court typifies this line of reasoning:-

“The consequence which ensued here is that money was taken out of the pocket of a British India subject. That man suffered in Allahabad from the consequence of the applicant’s supposed guilt. Section 181(2) of the Code does not in any way modify the provision of section 179”.

Most High Courts, however, have taken the view that loss to any person caused by the misappropriation is not an ingredient of the offence, that the offence is complete as soon as there is appropriation, conversion or use with a dishonest intention and that section 179 has no application whatever in regard to this offence.”

(Emphasis Supplied)

33. In view of conflicting decisions of various High Courts the Law Commission of India recommended following amendment to sub-section (2) of section 181 of Cr.P.C.



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“(2) Any offence of criminal misappropriation or of criminal breach of trust may be enquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.”

Thereafter Cr.P.C. 1973 was enacted with many significant changes in Cr.P.C. 1898 and the Cr.P.C. 1898 was repealed. The aforesaid proposed section 181(2) of Cr.P.C. 1898 as suggested by the Law Commission of India was incorporated as section 181(4) of the Cr.P.C. 1973.

34. Thus, it is clear that although Mr. Niteen Pradhan, the learned Counsel appearing for the Applicant has very strongly relied on the Full Bench judgment of this Court in re Jivandas Savchand (supra), it is very clear that the provision on the basis of which Full Bench judgment was delivered is substantially amended and now the section which is in operation is section 181(4) of Cr.P.C., 1973 which is substantially different from earlier equivalent provision namely section 181(2) of Cr.P.C., 1898. Therefore, the said Full Bench judgment cannot be applied to the amended provision as reflected in section 181(4) of Cr.P.C., 1973.

35. The learned Advocate General has rightly pointed out the judgment in case of **Pratiraksha Mazdoor Sangh, Jalgaon** (supra) and has relied on paragraph 17 of the said judgment which reads as follows :

“17. The substratum of the very basis of the judgment of the Division Bench delivered in the case of B.S. Raut v. State of Maharashtra (supra) does not exist as on date, as such, the said judgment is no longer a good law and it cannot be allowed to hold the field in the light of the existing provisions of the Act. A statute after its amendment is to be read and construed with reference to the new provisions and not with reference to the provisions which originally existed. It is needless to mention that when legislature intended by

any particular amendment to make substantial changes in the existing statute, it is impossible to arrive at a conclusion without noticing the change suggested or intended and after taking into account the changes made by the legislature, it is not possible for us to hold that the said judgment still holds the field. In view of the amendment to section 27-A of the Act, the said judgment cannot be applied to the facts of the present case. It is no longer a good law.”

The aforesaid observations are squarely applicable to the present case in view of amended section 181(4) of Cr.P.C., 1973 which is substantially different from section 181(2) of Cr. P.C., 1898, in view of significant additions as discussed hereinabove. It cannot be said that the Full Bench judgment of this Court will still apply to the said amended provision. Therefore, it is very clear that the said Full Bench judgment in re Jivandas Savchand is not at all applicable to the amended provision as contained in section 181(4) of Cr.P.C., 1973. Therefore, reliance on said judgment in re Jivandas Savchand will not substantiate the submissions sought to be canvassed by the Learned Counsel appearing for the Applicant.

36. Mr.Niteen Pradhan, learned Counsel relied on various judgments of various High Courts. The said judgments are as follows :

- (i) AIR 1924 Lahor 663 Mahtab Din vs. Emperor;
- (ii) AIR 1931 Rangoon 164 Ali Mohamed Kassim Vs. Emperor;
- (iii) AIR 1934 Allahabad 499 Kashi Ram Mehta vs. Emperor;
- (iv) AIR 1937 Sind 68 Mukhi Tirathdas vs. Jethanand Matvalomal & Anr.;
- (v) AIR 1954 Allahabad 648 Ram Charan & Anr. vs. Devendra Kumar;
- (vi) 1978 Cri.L.J. 577 Mysore Manufacturers & Traders, Bangalore vs. Ray Choudhary, Madras.

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However, the above judgments, except the last judgment in the case of Mysore Manufacturers and Traders Bangalore (supra), have no application to the present case as the same are concerning section 181(2) of Cr.P.C., 1898, which has been substantially amended and now applicable provision is section 181(4) of Cr.P.C., 1973 inter alia providing jurisdiction to the Court within whose local jurisdiction any part of the property which is the subject of offence of criminal misappropriation or criminal breach of trust was required to be returned or accounted for, by the accused person. In fact the said judgment in the case of Mysore Manufacturers and Traders Bangalore (supra) is concerning section 182(4) of Cr.P.C. 1973 and supports the view which we are taking. In the said case the Metropolitan Magistrate, IIIrd Court, Bangalore City directed the return of the complaint for being presented to the appropriate Court. The Hon'ble Karnataka High Court while holding that Bangalore Court has jurisdiction inter alia observed in paragraph 4 as follows :-

“4..... The question in the present case would be whether the accused undertook to return the goods to the complainant at Bangalore. The case of the complainant is that the accused undertook to return the goods to him at Bangalore. If that be so, the proper venue for the trial of a case of criminal breach of trust is the area where the crime was committed. Where the accused is under a liability to deliver goods at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the court, within the local limits of whose jurisdiction that place is situated, may enquire into and try the offence under the provisions of Sub-section (4) of Section 181 of the Cr.P.C. In the present case, as alleged by the complainant, the accused undertook to deliver the goods at Bangalore through M/s. Umashankar Transport. Consequently, the Bangalore court has jurisdiction to enquire into and try the alleged offence of criminal breach of trust.”

The learned Counsel also relied on the Judgment of Allahabad High Court reported in 1983(2) Crimes 821 in the matter between K.L. Sachdeva

vs. Rakesh Kumar Jain. By appreciating the factual aspects involved in the said case, the Court has come to the conclusion that there can at the most be breach of contract, however, section 405 and 406 of I.P.C. are not attracted and also held that on the touchstone of section 181(4). Varanasi Court will have no jurisdiction. Thus the said case has no application to the present case.

37. The other judgments on which Mr.Niteen Pradhan, learned Counsel has relied upon are as follows :

- (i) A.R. Antulay vs. R.S.Nayak & Anr. (1988) 2 SCC 602;
- (ii) Shrishti Dhawan (Smt.) vs. M/s.Shaw Brothers 1992 (1) SCC 534;
- (iii) Arun Kumar & Ors. vs. Union of India & Ors. (2007) 1 SCC 732;
- (iv) Carona Ltd. vs. Parvathy Swaminath & Sons (2007) 8 SCC 559;
- (v) Srinivasa Rice Mills & Ors. vs. ESI Corpn. (2007) 1 SCG 705;
- (vi) Dashrath Rupsingh Rathod vs. State of Maharashtra (2014) 9 SCC 129;
- (vii) Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr. Civil Appeal No.10643-10644 of 2010.
- (viii) Kashi Ram Mehta vs. Emperor AIR 1934 All 499.

The said judgments are concerning the effect on trial conducted by the Courts having no jurisdiction. It has been held in the said judgments that the jurisdiction or power to try and decide a cause is conferred on the Courts by the law of the land enacted by the legislature and the Court cannot confer a jurisdiction on itself which is not provided in the law. It has been held in some judgments cited by the learned Counsel that mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or



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Tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. It has been further held that if the jurisdictional fact does not exist the Court cannot act. By erroneously assuming existence of such jurisdictional fact, no authority can confer jurisdiction upon itself which it otherwise do not possess. In the judgment in the case of Arun Kumar (supra) it has been held as follows :-

“84. From the above decisions, it is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of 'jurisdictional fact', it can decide the 'fact in issue' or 'adjudicatory fact'. A wrong decision on 'fact in issue' or on 'adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present.”

In the judgment in the case of Carona Ltd. (supra) it has been held as follows :

“36. It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.”

There is no dispute about the propositions of law which is emerging from the above authorities. However, as discussed above the learned Chief Judicial Magistrate, Nagpur has jurisdiction to deal with said C.C.No.147 of 2002 in view of the provision of section 181(4) of Cr.P.C., 1973 for the

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reasons set out hereinabove. Even as regards other criminal cases which are subject matter of all these criminal applications, the respective Courts in which trials are pending have jurisdiction to deal with said respective criminal cases on the touchstone of the criteria enumerated in section 181 (4) of Cr.P.C., 1973,

38. In the judgment in the case of Dashrath Rupsingh Rathod (supra) the question involved was concerning Court's territorial jurisdiction concerning criminal complaints filed under Chapter XVII of the Negotiable Instruments Act, 1881. However, in the present case we are concerned with jurisdiction of the Court as specifically contemplated by section 181(4) of Cr.P.C. 1973 and, therefore, the said Judgment has no relevance to the present case.

39. The learned Advocate General has relied on the judgment in *Asit Bhattacharjee* (supra) and particularly paragraph 29 of the said judgment. The said paragraph 29 reads as under :

“29. Fraudulent representation being one of the essential ingredients in respect of commission of an offence under section 420 of the Indian Penal Code, a place where such fraudulent misrepresentation has been made would, thus, give rise to a cause of action for prosecuting the accused. Similarly, having regard to the ingredients of an offence under section 406 where the entrustments were made as also the situs where the offence was completed in the sense that the amount entrusted had not been accounted for by the agent to the principal will also have a nexus so as to enable to the Court concerned to exercise its jurisdiction of taking cognizance. Furthermore, whether the offence forgery of some documents committed or some other criminal misconducts are said to have been committed in furtherance of the commission of the principal offence of cheating and misappropriation wherefor the respondents are said to have entered into a criminal conspiracy; are required to be investigated. The Chief Metropolitan Magistrate, thus, had jurisdiction in the matter in terms of section 178 read with section 181(4) of the Code of Criminal Procedure.”

(Emphasis Supplied)



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40. The learned Advocate General also relied on CBI, AHD, Patna (supra) and particularly relied on paragraph 38 of the said judgment which reads as follows :

“38. In this context it is useful to refer to Section 181 of the Code which falls within Chapter XIII, comprising of provisions regarding jurisdiction of the criminal courts in inquiries and trials. Section 181 pertains to place of trial in case of certain offences. Sub-section (4) thereof deals with the jurisdiction of the courts if the offence committed is either criminal misappropriation or criminal breach of trust. At least four different courts have been envisaged by the sub-section having jurisdiction for trial of the said offence and any one of which can be chosen. They are: (1) the court within whose local jurisdiction the offence was committed; (2) the court within whose local jurisdiction any part of the property which is the subject of the offence was received; (3) the court within whose local jurisdiction any part of the property which is the subject of the offence was retained; and (4) the court within whose local jurisdiction any part of the property which is subject of the offence was required to be returned or accounted for, by the accused.”

(Emphasis Supplied)

41. The learned Advocate General has also relied on Lee (supra) and particularly relied on paragraphs 40 and 42. The same are reproduced hereinbelow :

“40. Lastly, reference may be made to Section 182 of the Criminal Procedure Code which is being reproduced hereunder:-

“182. Offences committed by letters, etc. – (1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.



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(2) Any offence punishable under Section 494 or Section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by first marriage has taken up permanent residence after the commission of offence.”

A perusal of Section 182 (extracted above) reveals that the said provision can be invoked to determine jurisdiction in respect of a number of offences which include cheating as a component. When acts of fraud/ dishonesty/ deception, relating to the offence(s), contemplated under Section 182 aforementioned, emerge from communications/messages/letters etc., the place(s) from where the communications/messages/letters etc. were sent, as also, the places at which the same were received, would be relevant to determine the court of competent jurisdiction.”

“42. Section 179 of the Code of Criminal Procedure vests jurisdiction for inquiry and trial in a Court, within whose jurisdiction anything has been done with reference to an alleged crime, and also, where the consequence of the criminal action ensues. Section 181(4) of the Code of Criminal Procedure leaves no room for any doubt, that culpability is relatable even to the place at which consideration is required to be returned or accounted for. Finally, Section 182 of the Code of Criminal Procedure postulates that for offences of which cheating is a component, if the alleged act of deception is shown to have been committed, through communications/letters/messages, the court within whose jurisdiction the said communications/letters/messages were sent (were received), would be competent to inquire into and try the same. Thus viewed, it is not justified for the appellants to contend, that the allegations levelled by the complainant against the accused, specially in respect of the five appellants herein, are not relatable to territorial jurisdiction in India, under the provisions of the Code of Criminal Procedure.”

(Emphasis Supplied)

42. The learned Advocate General also relied on Evangelical Alliance Ministries Trust and Others (supra) wherein after noticing the difference between section 181(2) of Cr.P.C., 1898 and section 181(4) of Cr.P.C., 1973



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and effect of the same on the Full Bench judgment in re Jivandas Savchand (supra), the Co-ordinate Bench of this Court has observed in paragraph 8 as follows :

“8. The words “or was required to be returned or accounted for” appearing in sub-section (4) of section 181 were not there in earlier section 181(2) which was under scrutiny before the Full Bench in aforesaid decision. The Full Bench in the aforesaid case on the basis of the then applicable provisions came to the conclusion that the Court at Bombay where the accused therein were required to give accounts of the partnership business, had no jurisdiction. The facts of the present case are different and all the more the law on the subject has also been further modified and therefore the above decision of the Full Bench is not applicable to the present case. We do not see any reason to entertain this writ petition and exercise our extra-ordinary jurisdiction. Hence, writ petition is dismissed.”

(Emphasis Supplied)

43. Thus, the various judgments on which the learned Advocate General is relying also supports our view that the provision now applicable has been substantially amended being section 181(4) of Cr.P.C., 1973 than earlier section 181(2) of Cr.P.C., 1898 and, therefore, said Full Bench judgment in re Jivandas Savchand (supra) has no application.

44. It is very important to note that the Court within whose local jurisdiction any part of the property which is subject of offence of criminal misappropriation or of criminal breach of trust is required to be returned or accounted for has also got jurisdiction to deal with such criminal case as per section 181(4) of Cr.P.C., 1973. In this case the monies of the share holders and the depositors of NDCCB were inter alia transferred from Nagpur to Mumbai account of said NDCCB in Maharashtra State Central Co-operative Bank, Fort Branch at Mumbai and, therefore, it is very clear that the said

monies ultimately are required to be returned to or accounted to the share holders and the depositors of NDCCB at Nagpur and, therefore, the said Court of Chief Judicial Magistrate, Nagpur has jurisdiction to deal with said C.C. No.147 of 2002.

45. Shri B. B. Tiwari, learned Advocate appearing for Respondent No.4 in Application No.624 of 2014 also advanced the arguments. He submitted that transaction between Nagpur District Central Co-operative Bank, Osmanabad District Central Co-Operative Bank and Wardha District Central Co-Operative Bank are interlinked with each other. He submitted that very purpose of filing FIR in Nagpur, Osmanabad and Wardha is to tarnish the image of the Chairman of Nagpur District Central Co-Operative Bank. He relied on the depositions, of certain witnesses examined in R.C.C. No. 147 of 2002 pending in the Court of Additional Chief Judicial Magistrate, Nagpur to contend that the entire transaction with respect to purchase and sale of securities has happened in Mumbai and therefore, submitted that case be transferred to Mumbai. He relied on the judgment of the Hon'ble Supreme Court in the matter of Kaushik Chatterjee (Supra). The paragraph Nos.34 to 41 of the said judgment are reproduced hereinbelow for ready reference:-

“34. In Raj Kumari Vijn Vs. Dev Raj Vijn, which also arose out of a case filed by the wife for maintenance against the husband, the Magistrate rejected a prayer for deciding the question of jurisdiction before recording the evidence. Actually the Magistrate passed an order holding that the question of jurisdiction must await the recording of the evidence on the whole case. Ultimately the Magistrate held that he had jurisdiction to entertain the application. One of the reasons why he came to the said conclusion was that in the reply filed by the husband there was no specific denial of the wife's allegation that the parties last resided together within his jurisdiction. When the matter eventually reached this Court, this Court relied upon the decision in Purushottam Das Dalmia Vs.State of West Bengal⁶ to point out that there are two types of jurisdictional issues for a criminal Court namely (i) the jurisdiction with respect of the power of the Court to try particular kinds of offences and (ii) its territorial

jurisdiction.

35. It was specifically held by this Court in Raj Kumari Vijnh (supra) that the question of jurisdiction with respect to the power of the Court to try particular kinds of offences goes to the root of the matter and that any transgression of the same would make the entire trial void. However, territorial jurisdiction, according to this Court "is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused and the convenience of the witnesses who have to appear before the Court.

36. After making such a distinction between two different types of jurisdictional issues, this Court concluded in that case, that where a Magistrate has the power to try a particular offence, but the controversy relates solely to his territorial jurisdiction, the case would normally be covered by the saving clause under Section 531 of the Code of 1898 (present Section 462 of the Code of 1973).

37. From the above discussion, it is possible to take a view that the words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (1). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461 (1) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do.

38. But be that as it may, the upshot of the above discussion is :-

38.1 That the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence. .

38.2 That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code.

38.3. That these questions may have to be raised before the court

trying the offence and such court is bound to consider the same.

39. Having taken note of the legal position, let me now come back to the cases on hand.

40. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction, atleast as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshaled. Hence the transfer petitions are liable to be dismissed. Accordingly, they are dismissed.

41. However, it is open to both parties to raise the issue of territorial jurisdiction, lead evidence on questions of fact that may fall within the purview of Sections 177 to 184 read with Section 26 of the Code and invite a finding. With the above observations the transfer petitions are dismissed. There will be no order as to costs.”

46. Thus, it is clear that the issue regarding jurisdiction can be raised before the learned Magistrate who is trying the offence. However, it is to be noted that the contention of Advocate Tiwari that as entire transaction has taken place in Mumbai and therefore, only Mumbai Court will have jurisdiction to deal with the aforesaid criminal cases is not correct and said submission is contrary to the provision of section 181(4) of Cr. P.C., 1973. If the issue of jurisdiction is raised the learned Magistrate after taking into consideration the evidence led in the respective criminal cases is duty bound to decide the said issue. However, the learned Magistrate will have to take into consideration the provision of section 181(4) of Cr. P.C., 1973 and other applicable provisions and the legal position enumerated herein.

47. Mr. D.H.Sharma, learned Advocate appearing for Respondent Nos. 5 to 7, 9, 11 to 13 in Criminal Application No.627 of 2014 submitted that the



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said Criminal Application is concerning transfer of Regular Criminal Case No. 573 of 2002 from the Court of the learned Chief Judicial Magistrate, Wardha to the Competent Court at Mumbai. He submitted that he is opposing the prayer for transfer of the case. He submitted that the trial of the said Regular Criminal Case No. 573 of 2002 has progressed substantially and, therefore, the trial be not transferred. He further submitted that the Directors of said bank, namely Accused No.2 and Accused No.4 i.e. present Respondent Nos.2 and 4 had moved similar Application before the learned Chief Judicial Magistrate, Wardha to transfer the case and said Application was rejected on 9th January, 2013 and Criminal Application No.2 of 2013 moved before the Nagpur Bench of this Court challenging said order was withdrawn by them on 1st February, 2013 without seeking liberty to file any fresh Application and thereafter present Application is filed by another Director of said Bank i.e. present Applicant on the same grounds. He, therefore, opposed the prayer of the Applicant.

48. Hereinafter we will deal with briefly the factual position involved in other Criminal Applications (except Criminal Application No.628 of 2014). It is to be noted that the learned Counsel appearing for the Applicant has submitted written note regarding each Criminal Application giving gist of the investigation. The Applicant has produced alongwith the Criminal Application copies of F.I.R., summary of charge etc.

Criminal Application No. 624/2014

F.I.R. at C.R.No.83 of 2005 came to be registered at Santacruz Police Station at the instance of Shri Sudhir Shah, Senior Manager Trustee - Mafatlal Services Ltd., alleging non delivery of GOI-S worth Rs.35,77,316.86/-, at the instance of M/s.Giltedge Management Services Ltd.

Shri Kaushal Kailash the Accountant of a M/s. Fosma Maritime Institute and Research Organization, filed Complaint with EOW, Mumbai



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against M/s. Giltedge Management Services Ltd., for non delivery of GOI-S worth Rs.1,21,20,000/-

Shri Prakash Sawant - Personal Officer - Steelage Industries Employees Ltd., in the capacity of Trustee Steelage Industries Employees Provident Fund filed Complaint with the BOW, against M/s.Giltedge Management Services Ltd., for non delivery of GOI-S worth Rs.22,22,419/-.

Shri Vilas Jadhav Assistant Finance Management Eureka Forbes Ltd., filed a Complaint against M/s. Giltedge for delayed delivery of GOI-S worth Rs.11,75,361.11/-.

It is inter alia the allegation that the amounts collected towards provident fund amounts, deducted from salary of the employees and managerial staff by virtue of contribution of employees and managerial staff of Mafatlal group of Government of India Securities and the accused failed and neglected to refund the amount nor have given delivery of the said Government of India Securities.

All these Complaints, were investigated by EOW, Mumbai, under C.R.No.13 of 2005. It is alleged that M/s.Giltedge Management Services Ltd., was to receive securities from M/s.Home Trade Ltd., which were not received. After the investigation was complete, chargesheet was filed in the Court of the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai for offence punishable under Sections 409, 420, 34 Indian Penal Code against the Accused i.e. the Directors and office bearers of M/s. Giltedge Management Services Ltd., and M/s. Home Trade.

The Applicant has been cited as Accused No.2. Statement of 17 witnesses have been recorded by the Investigating Officer. The case has been numbered as C.C.No.412/PW/2007.

We are prima facie satisfied that the said Mumbai Court has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.



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Criminal Application No.625/2014

F.I.R. at C.R.No.81 of 2002 came to be registered at L.T.Marg Police Station at the instance of Shri Vilas Rajaram Kulkarni, the Special Auditor, under the Divisional Joint Registrar, Cooperative Societies (Audit), Bombay Division, New Bombay, against the Directors and office bearers of Raghuvanshi Cooperative Bank Ltd., and M/s.Home Trade Ltd. It is alleged that there was non delivery of GOI-S to the said Bank to the tune of Rs.5.40 Crores.

The said crime was transferred to EOW, GB, CB, as CID, Mumbai, which registered the same C.R. No.63 of 2003.

After investigation, chargesheet has been filed against 9 Accused for offence punishable under Sections 409, 420 r.w 120B of Indian Penal Code. The Applicant has been cited as Accused No.3.

Statements of 30 witnesses have been recorded by the Investigating Officer. The case is numbered as C.C.No.324/P/2002 and is pending on the file of the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai.

In the said case one of the charge was that the accused No. 1 to 8 along with wanted accused mentioned at sr. no. 9 between 23/08/2000 and 15/02/2002 at Greater Mumbai agreed to do illegal acts to make a false representation that they would purchase Government Securities on behalf of Raghuvanshi Co-operative Bank Ltd. and they utilized the money so entrusted for their own purpose and thereby committed Criminal Breach of Trust in respect of Rs.26,23,01,211.12 Crores by cheating the bank by giving Contract Notes and bills and thereby accused No. 1 to 8 and wanted accused mentioned at sr. no. 9 committed offences punishable U/s. 120(B) IPC r/w Section 409, 420 of I. P. C.

We are prima facie satisfied that the said Mumbai Court has



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jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.

Criminal Application No. 626/2014

F.I.R. at C.R.No.298 or 2004 has been registered on 5/8/2004 at Santacruz Police Station at the instance of Shri Shahrukh Berjor Vevaina, the Financial Controller with Breach Candy Hospital Trust Staff Provident Fund, for non delivery of GOI-S of Rs. 76.89 Lakhs by M/s.Giltedge Management Service Ltd.

Shri P.S.Subramanian of M/s. Rhone Paulenc Chemical (1) Ltd., also filed a written complaint on 20/8/2004 with EOW, Mumbai against M/s.Giltedge Management Services Ltd., for non delivery of GOI-S worth Rs. 19.44 lakhs. This complaint is regarding money advanced by M/s.Rhone Pauline Chemical India Ltd. Employees Fund Trust.

Both the said Complaints were investigated by EOW, Mumbai, under F.I.R. at C.R.No.50 of 2004.

It was alleged that M/s. Giltedge Management Services Ltd., was to receive the Securities from M/s.Home Trade Ltd. Since M/s.Home Trade Ltd., failed to deliver on time, the deliveries could not be given to Complainant.

After investigation was complete, chargesheet has been filed in the Court of the learned Additional Chief Metropolitan Magistrate, 70 Court, Esplanade, Mumbai against the Accused.

The Applicant has been cited as Accused No.1. Statements of 13 witnesses have been recorded by the Investigating Officer. The case has been numbered as C.C.No.197 PW/2007 and is pending trial.

We are prima facie satisfied that the said Mumbai Court has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.



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Criminal Application No. 627/2014

The General Manager of Wardha District Central Cooperative Bank ("WDCCB") Shri Rajan Salpekar, lodged F.I.R. at C.R. No. 110 of 2002 at Wardha City Police Station against the Directors and office bearers of M/s Home Trade alleging non delivery of GOI-S worth Rs 25 Crores.

The Special Auditor Department of Cooperation, Shri G.M. Taywade after inquiry into the affairs of WDCCB, lodged FIR at CR No 124 of 2002 against the Directors and Office Bearers of WDCCB and M/s.Home Trade Ltd.

Both the Crimes ie, C.R.No.110 of 2002 and C.R.No.124 of 2002 were investigated into by the Local Crime Branch, Wardha, and a single chargesheet was filed in the Court of the learned Chief Judicial Magistrate at Wardha which was numbered as R.C.C.No.573 of 2002.

The Applicant has been cited as Accused No.1. The chargesheet reveals 13 Accused and 34 witnesses out of which 10 witnesses have been examined.

The factual position shows that the Wardha District Co-op. Bank transferred hug amount of about Rs.25 crores to the account of Home Trade at Wardha.

One of the charge framed in R.C.C.No.573/2002 is as follows :

"That you accused no.1 Sanjay being a Director, accused no.2 Subodha being a Chartered Accountant, accused no.4 Nandkishor being an Executive Director of the Home Trade Ltd. Company, or about the month of the April 2002, at Wardha in furtherance of your common intention cheat Wardha District Central Co-operative Bank, Wardha, by dishonestly inducing it to to invest the amount of Rs.25,24,72,083.33 through your company to get the Government security and as per your assurance the amount was delivered to Home Trade Ltd. by the said bank. But you neither invested the amount nor it was refunded to the bank, and thus you all thereby committed an offence punishable under section 420 r/w 34 of Indian Penal Code,



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and within my cognizance.

We are prima facie satisfied that the said Wardha Court has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.

Criminal Application No. 629/2014

F.I.R. at C.R. No.65 of 2002 came to be lodged at Vishrambang Police Station, Pune at the instance of Shri Dadubhau Kale, the Special Auditor, Cooperative Society, Division-11. against the Directors and officer bearers of Suvarnayug Sahakari Bank Ltd., Pune and, M/s. Home Trade Ltd.

The allegations are that the said Bank suffered a loss of Rs.5.64 Crores on account of non delivery of GOI-S at the instance of M/s. Home Trade Ltd. The said Bank has opened account in HDFC Bank for the purpose of said transactions.

The Applicant has been cited as Accused No.1.

The said Crime was investigated by State CID, Pune pursuant to which chargesheet was filed in the Court of the learned Judicial Magistrate First Class, Court No.4, Shivaji Nagar, Pune, and case is numbered as C.C.No.357 of 2002.

In the said Crime, 11 have been cited as Accused, for offence punishable under Sections 406, 409, 420, 465, 467, 468, 471, 34 and 109 Indian Penal Code and statement of 104 witnesses have been recorded by the Investigating Officer.

The main allegation in the said criminal case is that huge amounts of the shareholders and depositors of the said Suvarnayug Sahakari Bank Ltd., Pune were misappropriated by the accused.

We are prima facie satisfied that the said Pune Court has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.



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Criminal Application No. 630/2014

F.I.R. at C.R.No.75 of 2002 came to be registered at City Kotwali Police Station at Amravati at the instances of Shri Babarao Bihadi, the Divisional Assistant Registrar, Cooperative Department, Audit Branch, Amravati Division.

The crime was registered against the Directors and office bearers of M/s. Amravati People's Cooperative Bank Ltd., M/s. Century Dealers Pvt. Ltd., M/s. Giltedge Management Services Ltd. The offences alleged are under Sections 406, 409, 420, 468, 34 Indian Penal Code.

It is alleged that Amravati Peoples Co-operative Bank Ltd., entered into transaction with M/s. Giltedge Management, who in turn entered into transaction with M/s. Home Trade which could not deliver Government of India Securities to M/s. Giltedge Management. The total misappropriation is alleged to the tune of Rs.9.70 Crores. The said case is pending trial. The Applicant has been cited as Accused No.21.

After investigation chargesheet was filed in the Court of the learned Chief Judicial Magistrate, Amravati against 23 Accused and statement of 121 witnesses have been recorded. The case is numbered as C.C.No.847 of 2003.

The main allegation in the said criminal case is that huge amounts of the shareholders and depositors of the said M/s. Amravati Peoples Cooperative Bank Ltd., were misappropriated by the accused.

We are prima facie satisfied that the said Amravati Court has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.

Criminal Application No.631/2014

C.R.No.102 of 2002 came to be registered at Pimpri Police Station, Pune, at the instance of Shri Changdev Yashwant Pimple, the District Special Auditor, Division-I, Cooperative Societies, Pune against the Directors and



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office bearers of Shri Sadguru Jangali Maharaj Sahakari Bank Ltd., Chinchwad, Pune and M/s. Home Trade Ltd.

It was alleged that there was a loss of Rs.48.53 Crores to the Bank, on account of non delivery of GOI-S at the instance of M/s.Home Trade Ltd. The Applicant has been cited as Accused No.1.

The said crime was investigated by the State CID, Pune, and chargesheet filed in the Court of the learned Judicial Magistrate First Class, Pimpri, against 14 Accused for the offence punishable under Sections 406, 407, 420, 465,467, 468, 471 r.w. 34 Indian Penal Code.

Statement of 69 witnesses were recorded by the Investigating Officer. The said case has been numbered as C.C.No.498 of 2002 and is pending trial.

The main allegation in the said criminal case is that huge amounts of the shareholders and depositors of the said Shri Sadguru Jangali Maharaj Sahakari Bank Ltd., Pune were misappropriated by the accused.

We are prima facie satisfied that the Court of learned J.M.F.C., Pimpri has jurisdiction to deal with the said case as per section 181(4) of Cr.P.C. 1973.

Criminal Application No. 1022/2014

The then Chairman Shri Pawan Raje Nimmbalkar (since deceased) of Osmanabad District Criminal Co-operative Bank Ltd., Osmanabad got registered F.I.R. being C.R.No.158 of 2002 at MRA Marg Police Station, Mumbai against Sunil Kedar, the then Chairman of NDCCB and the Directors of M/s.Home TradeLtd, for offence punishable under Sections 420, 120B Indian Penal Code. The allegations made were regarding non delivery of GOI-S worth Rs.30 Crores to ODCCB.The said C.R.No.158 of 2002 was transferred toEOW, CB, CID, Mumbai, for its investigation.

Inquiry by Divisional Assistant Registrar, of Cooperation, Latur



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Department led to registration of F.I.R. at C.R.No.106 of 2002 on 08.05.2002 at Osmanabad Police Station against the then Chairman of ODCCB Shri Bhupalsingh @ Pawan Santajeerao Raje Nimbalkar as well as the Chairman and Director of M/s.Home Trade Ltd., for offence punishable under Sections 406, 409, 420 r.w. 34 Indian Penal Code.

Pursuant to the order passed by the High Court in Writ Petition No.764 of 2004, C.R.No.45 of 2002 of EOW (original C.R.No.158 of 2002) came to be transferred to Osmanabad Police Station for its joint investigation.

After completion of investigation a single chargesheet was filed in the Court of the learned Judicial Magistrate First Class, Osmanabad and numbered as C.C.No.398 of 2002 The chargesheet lists 10 Accused and 38 witnesses The Applicant has been cited as Accused No.7.

The Applicant preferred an Application at Exhibit- 529 in C.C.No.398 of 2002 invoking the provisions of Section 181(4) and 182(1) Code of Criminal Procedure and praying for the transfer of case to a competent Court at Mumbai having jurisdiction to try the same. The learned Chief Judicial Magistrate Osmanabad after hearing both the sides by order has been pleased to reject the same. The said order was challenged by the Applicant before the Sessions Court, Osmanabad under Criminal Revision Application No.111 of 2013. The learned Additional Sessions Judge, Osmanabad, has been pleased to reject the same. The said order was challenged by the Applicant before the Aurangabad High Court in Criminal Application No.4366 of 2014. The said Application was, however, withdrawn with a liberty to raise the said issue, as and when the exigency would arise.

In the meanwhile in C.C.No.398 of 2002, the Applicant had also preferred Discharge Application at Exhibit-407. The learned Chief Judicial Magistrate, Osmanabad by order dated 07.08.2013 was pleased to reject the same.



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The learned Chief Judicial Magistrate, Osmanabad held that the amount of approx Rs.29 Crores, frozen in the Bank of NDCCB belonged to ODCCB. The said order was challenged by NDCCB in Criminal Writ Petition No.3 of 2005 before the Aurangabad Bench. By the order dated 13.03.2013 High Court was pleased to dismiss the said Petition. The said order was challenged before the Hon'ble Supreme Court by NDCCB. The Hon'ble Supreme Court was pleased to expedite the trial in C.C.No.398 of 2002, and if possible to be completed within six months. In this case trial has commenced and in all 10 witnesses have been examined.

Thus points raised in Criminal Application No.1022 of 2014 are already raised and decided. In any case we are prima facie satisfied that the said Osmanabad Court has jurisdiction to deal with said case as per section 181(4) of Cr.P.C., 1973.

49. There is substance in the contention of the learned Advocate General that the real question involved in all these criminal applications is not whether the Mumbai Court has got jurisdiction to deal with all the criminal cases but the question to be decided is whether respective Courts in which respective trials are pending have got jurisdiction to deal with those cases. We are satisfied that there is no substance in the contention of the Applicant that all these cases are interlinked with each other. We are satisfied that the respective Courts in which the respective trials of this criminal cases are pending are having jurisdiction to deal with those cases on the touchstone of various criterias enumerated in section 181(4) of Cr.P.C., 1973.

50. The Applicant has invoked power of this Court under Section 407 and 482 of Cr.P.C., 1973. The main contention of the Applicant is that only the Court at Mumbai has jurisdiction to try all these criminal cases. The said contention is contrary to section 181(4) of Cr.P.C., 1973 and the same has



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been adequately dealt with hereinabove. The other contention of the Applicant is that most of the witnesses are from Mumbai, most of the accused are from Mumbai and therefore, the trial of all these criminal cases be transferred to Mumbai. In this behalf the learned Advocate General in his Brief Note has submitted in paragraph No.7 as follows:-

“7. Indisputably, admitted facts of all these matters taken together will demonstrate that each and every Criminal Case is independent. In other words, none of these cases are either interconnected, interlinked or interdependent, though certain set of limited number of accused therein are common, including the present petitioner. It is true that the modus operandi of commission of crime, involved in all these cases, is similar if not identical. However, there is fundamental difference in all these cases in as much as the following aspects thereof are concerned:

- a. The place where the registered offices or head offices the banks are situate;
- b. The revenue districts over which the banks have jurisdiction to operate;
- c. The office bearers of these banks;
- d. The officials i.e. servants of these banks who are involved in the respective cases and have been made accused therein;
- e. The amounts involved;
- f. The Chronology of events and the nature of transactions;
- g. The set of documents;
- h. The set of witnesses to be examined;
- i. The investigating agencies who have investigated the respective offences and have filed charge sheet;

It is therefore absolutely clear, ex facie that, it is not possible to have a common trial or a consolidated recording of evidence or a common hearing, of these cases.”

The learned Counsel appearing for the Applicant as well as other Advocates supporting the plea of transfer has not pointed out any material which is

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contrary to the above submission of the learned Advocate General. Apart from this, it is to be noted that the trial of some of the said criminal cases have progressed substantially and therefore, at this stage transferring the trial of all these criminal cases to Mumbai will affect the progress of said criminal cases.

51. It is to be noted that the power under section 407 (c) of Cr.P.C., 1973 is to be exercised in following three circumstances:-

- (i) If an order under the said section is required by any provision of Cr.P.C., 1973 .
- (ii) Will tend to the general convenience of the parties or witnesses
- (iii) Is expedient for the ends of justice.

As we have already discussed in detail the position that as per section 181(4) of Cr.P.C., 1973, the respective Courts where respective trials are pending have jurisdiction and therefore the above referred clause (i) will not apply. The learned Counsel appearing for the Applicant and other Advocates supporting the plea of transfer have not pointed out any other provision of Cr.P.C., 1973 requiring the transfer of case.

52. As far as the aspect regarding general convenience of parties or witnesses are concerned, trial in some of the said criminal cases have progressed substantially. Apart from that, the aspects which the learned Advocate General has pointed out in paragraph 7 of his Brief Note which are set out hereinabove, clearly shows that in fact transfer will inconvenience the parties and witnesses. Taking overall view of the matter transferring trial of all these criminal cases will not be in the interest of justice.

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53. Therefore, for the reasons set out hereinabove this is not a fit case to exercise power of transfer under section 407 of Cr.P.C., 1973 and section 482 of Cr.P.C., 1973.

54. Hereinafter we will deal with the contentions raised in Public Interest Litigation No. 15 of 2020. In this PIL, the Petitioners have sought relief that appropriate action be initiated against Respondent Nos.5 – Sunil Chhatrapal Kedar and 6 – K.D. Choudhari in said PIL No.15/2020 and also against Chief Judicial Magistrate, Court No.I, Nagpur, under the provisions of Contempt of Courts Act, 1971, for failure to act in consonance with the order dated 23/12/2014 passed in PIL No.25/2014 and the orders dated 5/05/2017, 6/04/2018 and 4/03/2019 passed in Civil Application No.519/2017 in PIL No.25/2014 and further seeking prayer to direct the Registry of Nagpur Bench of this Court to take appropriate action for remittance of the Record and Proceedings in C.C. No.147/2002 (Old C.C.No.101/2002).

55. Mr.Bhandarkar, learned Senior Counsel pointed out various orders passed in PIL No.25/2014 and Civil Application No.519/2017 in PIL No.25/2014 and also pointed out various orders passed in Civil Application No.1701/2019 in PIL 25/2014.

56. The said Civil Application No.1701/2014 was numbered as PIL No.58/2019 (Nagpur) pursuant to directions dated 4/10/2019 passed by Nagpur Bench of this Court. The said PIL is transferred to this Court by order dated 11/02/2020 passed by Hon'ble Chief Justice in Criminal Application No.60/2020 with Criminal Application No.61/2020 and after transfer of the same to Principal Seat at Mumbai said PIL is numbered as PIL



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No.15/2020. By the Administrative order dated 21/02/2020, the said PIL No.15/2020 is clubbed together with the above nine Criminal Applications.

57. Mr.Bhandarkar, learned Senior Counsel further submitted that inspite of several directions expediting trial and completion of the same by time bound manner, the said directions were not complied with and, therefore, the Petitioners have filed present PIL seeking above referred prayers. However, he further states that presently trial in Criminal Case No.147/2002 is nearing completion and only three witnesses have remained to be examined. He states that therefore he has instructions not to press the reliefs sought in PIL, however, he states that further orders be passed directing expeditious completion of trial in Criminal Case No.147 of 2002 and some time bound program be fixed as under pretext of Covid-19 restrictions, the trial is being delayed.

58. Dr.Abhinav Chandrachud, learned Counsel appearing for Respondent Nos.5 and 6 submitted that as the Petitioners are not pressing reliefs sought in the PIL., he has no submissions to advance.

59. Mr.Kumbhakoni, learned Advocate General submitted that steps are being taken for expeditious completion of trial in all the criminal cases.

60. The PIL No.25/2014 before Nagpur Bench of this Court was filed by the PIL Petitioners seeking to initiate immediate steps for recovery of misappropriated amount to the tune of Rs.150 crores from Respondent No.5 – Sunil Kedar and Respondent No.6 – K.D. Chaudhari and further seeking expeditious disposal of Regular Criminal Case No.147/2002 along with



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other criminal cases pertaining to misappropriation of funds pending on the file of the learned Judicial Magistrate, First Class, Court No.I, Nagpur.

61. In this PIL, we are not concerned with prayer regarding recovery of misappropriated amounts and we are only concerned with expeditious disposal of criminal cases. A Co-ordinate Bench of this Court at Nagpur by order dated 23/12/2014 inter alia passed the following directions regarding criminal case :

“Insofar as the Criminal case is concerned, the trial Court could not proceed since one of the accused is absconding.

The learned Government Pleader, on instructions from the Public Prosecutor appearing before the trial Court, makes a statement that steps would be taken for separating the trial of the absconding accused and the trial would proceed expeditiously insofar as the other accused are concerned.

In that view of the matter, we also direct the learned Judicial Magistrate, First Class, Court No.1, Nagpur to expedite the trial and conclude the same as expeditiously as possible and in any case, within a period of one year from today.”

62. In the meanwhile all aforesaid criminal applications were filed and the learned Single Judge by order dated 25/11/2014 issued notice to the Respondents and made the same returnable on 9/12/2014 (except in Criminal Application No.628/2014). In Criminal Application No.628/2014 the learned Single Judge granted leave to move the Hon'ble Chief Justice for appropriate orders. Thereafter in Criminal Application No.628/2014 the learned Single Judge issued notice to the Respondents and made same returnable on 14/05/2015 and granted ad-interim order in terms of prayer clause (b) till then. Thereafter learned Single Judge by order dated

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10/04/2015 passed in all aforesaid nine criminal applications recorded the submissions of Mr.Pradhan, learned Counsel of the Applicant that only the Courts in Mumbai would have jurisdiction to deal with offence in question. The learned Single Judge observed that question raised is primarily of lack of territorial jurisdiction which needs to be decided in accordance with law. The learned Single Judge inter alia passed following order in Criminal Applications on 10/04/2015 :

“5. Nevertheless, the question that has been raised is primarily of lack of territorial jurisdiction, which needs to be decided in accordance with law. In view of the fact that, two of the cases are part heard, it would be essential to dispose of these applications expeditiously. However, in the meanwhile, the trials cannot be permitted to proceed.”

63. C.A.No.519/2017 was filed in PIL No.25/2014 and a Co-ordinate Bench of this Court (Nagpur) by making reference to the order dated 10/04/2015 passed by the learned Single Judge in above Criminal Applications issued following clarification on 6/04/2018 :

“4. We therefore clarify that said order would not come in the way of learned trial Judge to conduct the trial, except against the person in whose case the order is passed by the learned Single Judge of this Court in Bombay.”

64. It appears that in spite of clarification given by this Court as set out hereinabove the learned Chief Judicial Magistrate, Nagpur before whom the said trial was pending, was not proceeding further with said criminal case and therefore the Division Bench (Nagpur) passed the following order on 6/03/2019 in C.A. No.519/2017 in PIL No.25/2014 :



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“In compliance of order dated 4/3/2019, we have received report dated 5/03/2019 from Chief Judicial Magistrate, Nagpur along with records and proceedings wherein it is informed that though proceedings are expedited by this Court vide order passed in P.I.L. No.25/2014, due to further orders in Criminal Application Nos.624/2014 to 631/2014, 332/2015, 333/2015, 322/2015 and 1022/2015 by the Principal Seat of High Court at Mumbai granting stay to proceedings, criminal case could not be decided in a time bound frame and same is pending.

We from the report conclude that learned Magistrate failed to appreciate the order passed by Division Bench as against the order passed by learned Single Judge of the Principal Seat and in that reference, mechanically adjourned the proceedings holding that same are stayed by the orders of High Court. The facts mentioned in the report thus clearly establish that in spite of expediting trial as aforesaid, same is pending without sufficient reason. The learned Chief Judicial Magistrate in fact, in his report, has undertaken to decide the case within a period of two months from the date of further order, if any issued by this Court.

Considering the fact that there is no stay to the proceedings and as learned Chief Judicial Magistrate has shown his readiness to complete trial within two months, we accept his undertaking and direct that steps be taken by the Court of learned Chief Judicial Magistrate for deciding Regular Criminal Case No.147/2002 pending on his file. In spite of two months, we grant him one more month and grant period of three months for completion of trial.

Stand over to 3/4/2019 for establishing part compliance of the order.

R & P be sent back to the concerned Court forthwith.”

65. In spite of aforesaid directions the trial was not being completed and as records and proceedings were sent to Mumbai pursuant to the order passed in Criminal Application No.628 of 2014, the Petitioners filed above referred C.A.No.1701/2019 in PIL No.25/2014. This Court (Nagpur Bench) by order dated 4/10/2019 issued following directions :

“The record and proceedings of criminal case No.147/2002 (Crime No.101/2002 registered with Police Station Ganeshpeth, Nagpur) be called immediately and placed before the Court of Chief



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Judicial Magistrate, Nagpur so that the trial of the case except against the accused (Sanjay H. Agrawal) whose trial has been stayed by the learned Single Judge at Mumbai proceeds further in compliance with the directions given many a times by this Court earlier. If any record of the criminal case pending against said Sanjay Hariram Agrawal would be required by Mumbai Court, the learned Chief Judicial Magistrate shall separate that part of the record which pertains to the said accused and sent it to Mumbai Court. Special bailiff be deputed for bringing the record and proceedings.

These steps are necessary because the criminal case, which is pending, involves serious offences like those punishable under sections 406, 409, 468, 471 read with section 120-B and section 34 of Indian Penal Code involving a scam of 150 crores of rupees, perpetrated way back in the year 2002 and today in the year 2019, the trial has not moved even an inch. It stands almost at same stage at which it stood in the year 2002. Definitely, the justice administration system owes an explanation to the society for such inordinate delay, especially when public money to the tune of Rs.150 crores and interests of unsuspecting victims, largely poor agriculturists and depositors are at stake.”

66. This Court by said order dated 4/10/2019 directed that said C.A.No.1701/2019 be registered as separate PIL and accordingly, the same was thereafter renumbered as PIL No.58/2019 (Nagpur Bench).

67. By order dated 7/11/2019 passed in PIL 58/2019, the Nagpur Bench directed setting up of a dedicated Court for trying the criminal case No.147/2002 and issued several directions including directing the Presiding Officer of the Dedicated Court to submit periodical reports at interval of every 15 days about progress of the case. It appears that in view of aforesaid directions the trial has considerably progressed and now only three witnesses have remained to be examined.



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68. In view of the said progress, Mr.Bhandarkar, the learned Senior Counsel fairly submitted that although he has instructions not to press the reliefs sought in PIL, however, effective directions be passed for expeditious time bound completion of the said trials.

69. In view of the facts and circumstances of these criminal cases and the legal position discussed hereinabove, we are disposing of all these matters by issuing certain directions. We are issuing these directions as said criminal cases are concerning very serious offences punishable under sections 406, 409, 468, 471 read with 34 of IPC. In C.C.No.147 of 2002 the scam of more than Rs.150 crores is involved which took place in or about year 2000. The said monies which were misappropriated were belonging to share holders and depositors of NDCCB and is public money. The factual position involved in other criminal cases are also similar and in few cases even the amount of Provident Fund are misappropriated.

70. Although we are dismissing all the criminal applications we clarify that the reasoning recorded in this order on the factual aspects involved in all the nine criminal cases are prima facie observations and recorded for the purpose of deciding these Criminal Applications. The learned Courts conducting trial of all these Criminal cases are free to decide the point of jurisdiction on the basis of the evidence led in respective criminal cases and by keeping in mind the relevant provisions of law and the legal position as set out in this order. This clarification is necessary in view of observations of Hon'ble Supreme Court as contained in paragraph nos.34 to 41 of the judgment in the matter of Kaushik Chatterjee (supra). The Trial Courts will take into consideration that section 181 (4) of Cr.P.C., 1973 contemplates that jurisdiction lies to various Courts as provided in that section. Various

Courts contemplated under section 181(4) of Cr.P.C. 1973 will have jurisdiction to inquire into or try offence of criminal misappropriation or criminal breach of trust. Courts within whose local jurisdiction (i) offence was committed or (ii) any part of the property which is the subject of the offence was received by the accused or (iii) any part of the property which is the subject of the offence was retained by the accused or (iv) any part of the property which is subject of the offence was required to be returned by the accused or (v) any part of the property which is subject of the offence was required to be accounted for by the accused, all these Courts will have jurisdiction to try said offences. Thus the question to be taken into consideration by respective Trial Courts is whether the Court in which the respective trials are pending have jurisdiction and not whether any other Court has jurisdiction and the same will have to be decided on the touchstone of criteria prescribed under section 181(4) of Cr.P.C., 1973.

71. Thus we dispose of all these matters by passing the following order :

(i) All Criminal Applications are dismissed with costs, subject to clarification as contained in paragraph 70.

(ii) We direct that the respective Trial Courts dealing with respective criminal cases as mentioned in para No. 1 to complete the trial of said cases expeditiously.

(ii) We direct that the trial in said C.C.No.147/2002 (Crime No.101/2002 registered with Ganesh Peth police station, Nagpur) be completed by passing final Judgment and Order within maximum period of four months from today. We make it clear that we are granting maximum four months time in view of Covid-19 restrictions. With these directions although we are disposing of the PIL No.15/2020, however, we direct that the learned Presiding Officer dealing with said criminal case shall file monthly report of

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progress of trial of C.C.No.147 of 2002 to this Court.

(iii) We make it clear that after completion of trial in said C.C.No.147/2002 (Crime No.101/2002 registered with Ganesh Peth police station, Nagpur) against other accused except the Applicant, the trial against Applicant be commenced by conducting the same expeditiously and preferably on day to day basis and the same be completed within a period of four months after commencement of trial against present Applicant.

(iv) In view of dismissal of all Criminal Applications, Interim Application made therein do not survive and disposed of as such.

[MADHAV J. JAMDAR, J.]

[A. A. SAYED, J.]



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

P.I.L. No.25 of 2014

Omprakash Bhaurao Kamdi and Ors. vs. State, through its Secretary, Deptt. of Co-op. and Textiles,
Mantralaya and Ors.

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

Court's or Judge's orders

Mr.S.P.Bhandarkar, Adv. for the petitioners.
Mrs.Bharti Dangre, G.P. for respondent nos. 1 to 3.
Mr.M.V.Samarth, Adv. for respondent no.5.
Mr.D.V.Siras, Adv. for respondent no.6.

CORAM : B. R. GAVAI AND
V. M. DESHPANDE, JJ.

DATE : 23.12.2014.

Heard.

The petitioners have approached this Court for various reliefs including direction to respondent nos. 1 to 4 to take immediate steps for recovery of amount from respondent nos. 5 and 6.

The appeal filed by some of the Directors of the Bank is allowed and the State Government has directed an enquiry u/s.88 of the Maharashtra Co-operative Societies Act, 1960 to be conducted de novo. In that view of the matter, the question of recovery of amount would arise only after the enquiry is completed.

Though the learned Government Pleader states that the statutory period for completing the enquiry is two years, the enquiry shall be completed as expeditiously as possible.

We, therefore, direct the Enquiry Officer, who is said to be a lawyer, to conclude the enquiry within a period of six months from today.

It is further directed that the contesting parties shall co-operate with the enquiry. If in concluding the enquiry expeditiously any party indulges in delaying tactics, the Enquiry Officer would be at liberty to draw such inference as is permissible in law.

Insofar as the Criminal case is concerned, the trial Court could not proceed since one of the accused is absconding.

✓ The learned Government Pleader, on instructions from the Public Prosecutor appearing before the trial Court, makes a statement that steps would be taken for separating the trial of the absconding accused and the trial would proceed expeditiously insofar as the other accused are concerned.

In that view of the matter, we also directed the learned Judicial Magistrate, First Class, Court No.1, Nagpur to expedite the trial and conclude the same as expeditiously as possible and in any case, within a period of one year from today.

Mr.S.P.Bhandarkar, learned Counsel for the petitioners submits that, in view the afore-said directions, the grievance of the petitioners stands satisfied as of now. However, he reserves liberty to take such steps as are permissible in law, at an appropriate

stage.

In view of the above, the petition is disposed of by reserving the right of the petitioners, as prayed for.

JUDGE

JUDGE

*jaiswal



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

CIVIL APPLICATION NO. 1701 OF 2019

IN

PUBLIC INTEREST LITIGATION NO. 25 OF 2014

(Omprakash Bhaurao Kamdi and Ors. Vs. State of Maharashtra and others)

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

Court's or Judge's orders.

Mr. S.P. Bhandarkar, Advocate for petitioner.
Mr. M.K. Pathan, AGP for Respondent No. 1 to 3.
Mr. M.V. Samarth, Advocate for Respondent No.4.
Mr. A.A. Naik, Advocate for Respondent No. 5
Mr. D.V. Siras, Advocate for Respondent No. 6.

CORAM : SUNIL B. SHUKRE AND
MILIND N. JADHAV, JJ.

DATE : 04.10.2019.

After hearing Shri Bhandarkar, learned counsel for the applicants who are the original petitioners, Shri Pathan, learned AGP appearing for the respondent Nos. 1 to 3, Shri Samarth, learned counsel for Respondent No. 4, Shri Naik, learned counsel respondent No. 5 and Shri Siras, learned counsel for respondent No. 6, we find that the grievance of the petitioner, which was earlier found to be satisfied to a large extent and which was the reason for

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disposing of the PIL No. 25/2014 by an order passed by this Court on 23.12.2014, has resurfaced again as, *prima facie*, the Court of Chief Judicial Magistrate, Nagpur, has frustrated the whole purpose which was sought to be achieved by the order passed on 23.12.2014.

By the order dated 23.12.2014, this Court directed the concerned Criminal Court, which is the Court of Chief Judicial Magistrate, Nagpur, to expedite the trial and conclude the same as expeditiously as possible and in any case within the period of one year from 23.12.2014. It was also indicated by this Court that the trial of the absconding accused be separated. Relevant paragraphs of the order dated 23.12.2014, for the sake of convenience, are reproduced as under :

“CORAM: B. R. GAVAI AND V. M. DESHPANDE, JJ

Heard.

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In that view of the matter, we also directed the learned Judicial magistrate, First Class, Court No. 1, nagpur to expedite the trial and conclude the same as expeditiously as possible and in any case, within a period of one year from today.....”

However, the trial did not move forward and the reason given by the learned Magistrate was that after the order dated 23.12.2014 was passed, one of the accused Sanjay Hariram Agrawal, moved several criminal applications before the Principal Seat of High Court of Bombay in which stay was granted by learned Single Judge at Mumbai to that criminal trial which was pending before a court amenable to territorial jurisdiction of this Court.

This Court, therefore, was compelled to make some observations while passing the order dated

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06.04.2018. This Court observed that it was difficult to appreciate as to how the learned Single Judge at Bombay had entertained the challenge to the proceedings pending before the Court which was situated within the territorial jurisdiction of Nagpur Bench. This Court then went on to clarify the whole issue so that the trial, as directed earlier, could be completed by the criminal court at Nagpur expeditiously.

Let us not forget, the criminal trial is pending before Nagpur Court since the year 2002 and therefore, the interest of justice required that the trial was concluded as early as possible. Showing sensitivity to the issue involved, this Court then by the order passed on 06.04.2018, observed that the stay order passed by the learned Single Judge at Bombay would not come in the way of learned trial Judge to conduct the trial except against the person in whose case the order was passed by the learned Single Judge of this Court at Bombay. Relevant paragraphs in which these observations and clarifications appear in the order passed on 6.4.2018



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are reproduced as under :-

*“CORAM : B.R. GAVAI AND M.G. GIRATKAR,
JJ*

date : 6/4/2018

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3. Firstly, it is difficult to appreciate as to how learned Single Judge as Bombay could have entertained the proceedings pending before the Court which is situated within the territorial jurisdiction of Nagpur Bench.

4. We therefore clarify that said order would not come in the way of learned trial Judge to conduct the trial, except against the person in whose case the order is passed by the learned Single Judge of this Court at Bombay.”

Inspite of such clarification, it appears, nothing had had any impact on the concerned criminal court and the trial continued to remain standstill. This fact was again brought to the notice of this court on 06.03.2019 by which time report of the concerned Chief Judicial Magistrate, was already called and placed before the Court. On going through this report, this Court again concluded that the learned Magistrate mechanically adjourned the proceedings holding that the same were stayed by the orders of the High



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Court. This Court also found that no sufficient reason was assigned by the learned Magistrate for the delay that occurred in the case. This Court then noted that the learned Chief Judicial Magistrate, in his report had undertaken to decide the case within the period of two months from the date of further order, if any, issued by this Court. However, the trial was not taken forward, in any manner, much less completed, which was in breach of the undertaking given by the learned Magistrate himself to this Court and also specific directions given by this Court. Yet, this Court treated the learned Magistrate with indulgence, perhaps undeservedly for the learned Magistrate, and, therefore, this Court granted further two months' time to him to conclude the trial. The relevant paragraphs of the order dated 06.03.2019, for the sake of convenience, are reproduced as below :

*"CORAM : P. N. DESHMUKH AND ROHIT B.
DEO, JJ
DATED : MARCH 6, 2019*

.....



We from the report conclude that learned Magistrate failed to appreciate the order passed by Division Bench as against the order passed by learned Single Judge of the Principal Seat and in that reference, mechanically adjourned the proceedings holding that same are stayed by the orders of High Court. The facts mentioned in the report thus clearly establish that inspite of expediting trial as aforesaid, same is pending without sufficient reason. The learned Chief Judicial Magistrate in fact, in this report, has undertaken to decide the case within a period of two months from the date of further order, if any issued by this Court.

Considering the fact that there is no stay to the proceedings and as learned Chief Judicial Magistrate has shown his readiness to complete trial within two months, we accept his undertaking and direct that steps be taken by the Court of learned Chief Judicial Magistrate for deciding Regular Criminal Case No. 147/2002 pending on his file. In spite of two months, we grant him one more month and grant period of three months for completion of trial.

.....
.....
.....”

Once again, the matter was listed before this Court on 13.09.2019. All these events which have taken place earlier and the directions which have been given by



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this Court from time to time, were summarized in this order and report of the learned Principal District Judge was called. Now, the report has been received and it shows that the present Chief Judicial Magistrate, Nagpur, has recently joined after having taken charge of the post on 10.06.2019 before which date, the period of two months granted by this Court for conclusion of the trial had already expired. He has also expressed difficulty to proceed with the trial as the record and proceedings of the whole case have already been sent to the Court of the learned Single Judge at Principal Seat, Mumbai.

The facts and circumstances discussed above would show that far from reaching the stage of satisfaction of the grievance of the petitioners, there has been aggravating and ballooning of the grievance of the petitioners as it existed before the PIL was disposed of on 23.12.2014. It has therefore, become necessary to deal with the grievance of the petitioner by directing the registration of this application as fresh PIL. The order dated 23.12.2014



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has also granted liberty to the petitioners to take such steps as are permissible in law.

Registry is, therefore, directed to treat the application as a fresh and separate Public Interest Litigation in which case the notices shall stand issued to the respondents in which event, learned Assistant Government Pleader would waive notice for respondent Nos. 1 to 3; learned counsel Mr. Samarth would waive notice for respondent Nos. 4 and Mr. Naik, learned counsel would waive notice for respondent No. 5. We direct the petitioners to add Shri Sanjay Hariram Agrawal as party-respondent to this petition by carrying out amendment. Necessary amendment be carried out within two weeks from the date of the order. Notice be issued to the newly added respondent Sanjay Hariram Agrawal returnable on 05.11.2019.

Learned Registrar (Judicial) is requested to ensure that the notice is served upon Sanjay Hariram Agrawal with the assistance of the Commissioner of Police,



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Nagpur. The Commissioner of Police, Nagpur, or his nominated officer shall submit before this Court his report regarding due service of notice on Sanjay Hariram Agrawal on or before the next date.

The record and proceedings of criminal case No. 147/2002 (Crime No. 101/2002 registered with Police Station Ganeshpeth, Nagpur) be called immediately and placed before the Court of Chief Judicial Magistrate, Nagpur, so that the trial of the case except against the accused (Sanjay H. Agrawal) whose trial has been stayed by the learned Single Judge at Mumbai proceeds further in compliance with the directions given many a times by this Court earlier. If any record of the criminal case pending against said Sanjay Hariram Agrawal would be required by Mumbai Court, the learned Chief Judicial Magistrate shall separate that part of the record which pertains to the said accused and send it to Mumbai Court. Special bailiff be deputed for bringing the record and proceedings.

These steps are necessary because the criminal



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case, which is pending, involves serious offences like those punishable under Sections 406, 409, 468, 471, read with section 120-B and Section 34 of the Indian Penal Code involving a scam of 150 crores of rupees, perpetrated way back in the year 2002 and today in the year 2019, the trial has not moved even an inch. It stands almost at same stage at which it stood in the year 2002. Definitely, the justice administration system owes an explanation to the society for such inordinate delay, especially when public money to the tune of Rs. 150 crores and interests of unsuspecting victims, largely poor agriculturists and depositors are at stake.

We would also request the learned Principal District & Sessions Judge, Nagpur to send to this Court names of all the Presiding Officers, who had an occasion to deal with the aforesaid criminal cases since 23.12.2014 till date so as to enable us who examine the issue of contempt of court appropriately.

Liberty is granted to applicants to file documents, if any, on record by next date. A true copy, duly

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authenticated, be supplied to all the concerned:

JUDGE

JUDGE

Prity

Annexure- E

32/109

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R.C.C.No.147/2002
State -Vs- Sunil Kedar & Ors

ORDER BELOW EXH.No.1.
(Dated 14th November, 2019)

1] Heard learned APP, Adv. Mr Bhangade for accused No.2, and the reply argument on behalf of all other accused except accused No.3 Sanjay Agrawal and the absconding accused No.10 Kanan Mewawala.

2] It is submitted on behalf of the accused persons that there is nothing on record to demonstrate any prima facie case against them. The Court has no territorial jurisdiction to entertain and try the case as such. All the alleged transactions have been done at Mumbai. The entire proceedings of this case are stayed by the order of Honorable High Court, Principal Bench at Mumbai. The case is required to be dealt with by the Special Public Prosecutor. The learned APP ought to have provided draft of charges, however the same has not been done. There is nothing on record to demonstrate that there was any criminal conspiracy and that the accused have committed any crime. The prosecution itself does not know the amount of misappropriation. In addition to above, on behalf of accused No.1, 2 and 11 it is further submitted that, these accused had never prepared any false document and not committed any forgery. In fact, initially the accused No.1 had reported the matter to Police. Therefore, no role whatsoever can be attributed to them in the alleged crime. Hence, there is no material in framing the charge against any of the accused and that the accused are required to be discharged.

3] On the other hand, learned APP has submitted that there is ample material on record to demonstrate the involvement of accused persons in the alleged crime. The charge-sheet alongwith annexures is provided to accused persons long back. They are having complete idea from the charge-sheet and documents supplied to them, as to under which penal provision they are chargesheeted. Therefore, there is no need and even no provision in law for providing any draft of charges. The charge-sheet and documents

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demonstrate the entire link of criminal conspiracy reached upon by the accused persons to withdraw and misappropriate the money entrusted by the Bank. That apart, there is ample evidence even to disclose that the accused have common intention to commit the alleged crime and that they have committed the same.

4] In reply, learned counsel for accused submitted that the charge under Section 120(B) and 34 of Indian Penal Code can not be raised simultaneously. There is no evidence of meeting of minds between accused to commit the crime. The charge of conspiracy is not at all made out and Advocates Mr. Ahuja and Mr. Purohit would submit that it is a pure case to discharge all the accused under Section 239 of the Code of Criminal Procedure.

5] Having heard the arguments as above and upon considering the charge-sheet and its annexures, this Court is of the considered view that there is sufficient material to frame the charge against accused persons under Section 120(B) and Sections 406,409,468,471 read with section 120(B), in alternative read with Section 34 of the Indian Penal Code. The defence of inadequacy of evidence or falsity of prosecution case can not be considered at this stage as against the charge-sheet and documents produced on record.

6] So far as territorial jurisdiction is concerned, the charge-sheet would disclose the allegation that the accused persons had means rea to form a criminal conspiracy for withdrawing the money of Nagpur District Central Co-operative Bank by anyhow obtaining sanction for withdrawal of such amount and accordingly, by using illegal means they obtained the same from Headquarter of Bank at Nagpur. Therefore, only because bank at Nagpur was having account at Mumbai and that the monetary transactions were taken place through that account is not sufficient to oust the

jurisdiction of this Court to entertain and try the case. As per the allegations in the charge-sheet, the main part of criminal conspiracy to anyhow create some documents/illegal resolution for transferring the amount to various companies handled by and in the name of various accused persons under the guise of purchasing government securities was done at Nagpur itself. Hence, the submission on behalf of accused about lack of territorial jurisdiction to proceed with the trial appear to be meritless and required to be rejected.

7] The submission on behalf of accused that the case is required to be handled by a Special Public Prosecutor can not be considered at all. It is for the Prosecution to decide as to who should represent the case on its behalf. Accused can not dictate the prosecution for appointment of a Special Public Prosecutor. It is contended on behalf of accused persons that proceedings is stayed by our Honorable High Court, Principle Bench at Mumbai. However, the fact remains that this trial is being held as per the directions issued by our Honorable High Court, Bench at Nagpur in P.I.L. No. 25/2014 and P.I.L.No. 58/2019 Omprakash Kamdi and others Vs. State and others, vide orders dated 23/12/2014 and 07/11/2019 respectively.

8] As such, the submissions/objections raised on behalf of accused persons are devoid of any merits. Hence, upon consideration of the charge-sheet and the documents filed with it and after hearing the learned counsels for accused and Learned A.P.P. this Court is of the considered view that there is sufficient ground to frame the charge against all the accused persons for the offences punishable under Section 120(B) and Sections 406, 409, 468, 471 read with section 120(B), in alternative read with Section 34 of the Indian Penal Code.

9] In view of above discussion following order is hereby passed.

ORDER

1] All the objections raised on behalf of accused persons on the point of framing of charges alongwith prayer to discharge the accused hereby stand rejected.

2] The matter shall be proceeded ahead as against accused persons excluding accused No.3 Sanjay Hariram Agrawal and accused No.10 Kanan Vasant Mewawala who appears to be absconding since long.

Dt. 14.11.2019

Sd/-
(S.R.Totla)
Jt. Civil Judge Senior Division,
Nagpur.

Certificate

I affirm that the contents of this PDF Order are same word to word, as per original Order.

Name of Stenographer :- Ku. G.A. Joshi (Grade II)



Order Below
EXH.1-2

Digitally signed
by Shekhar
Ramnathji Totla

Location: Nagpur
Date: 2019.11.16
17:56:30 +0530

RCC No. 147/2002
State of Mah.
..Vs..
Sunil Kedar & Ors.

ORDER PASSED BELOW EXH.3596
(Passed on 16/04/2024)

Accused No.3 has filed the instant application for issuing direction to the prosecution to file split-up chargesheet against him.

2. It is submitted that the police station Ganeshpeth, Nagpur has filed chargesheet against the present accused alongwith other 10 accused vide chargesheet No.150/2002 on 21/11/2002. The accused No.3 was also implicated in other similar type of offences around the state of Maharashtra, therefore he had filed writ petition before the Hon'ble Bombay High Court for clubbing all the cases to be tried by one Court. During the pendency of that petition, all the criminal cases pending against the accused No.3 were stayed and the trial of the present case was directed to be separated against rest of the accused from the applicant/ accused No.3. The trial was concluded on 22/12/2023 against the other accused and the case was disposed of.

3. It is further submitted that after conclusion of the trial of the present case, the accused No.3 was directed by the Hon'ble Apex Court and the Hon'ble High Court to remain present before this Court for facing the trial of the present case. Now, this Court is proceeding to frame the charge against the accused No.3.

4. It is the submission of the accused No.3 that after separation and conclusion of the trial of the present case against the other accused,

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the prosecution has not filed the copy of split-up chargesheet against the present accused No.3. According to him, after splitting of the case against the present accused, the Court shall assign a fresh number to the split-up case and thereafter to comply the provisions of Section 207 of the Cr.P.C. Hence, it is necessary to give appropriate directions to the prosecution to furnish split-up chargesheet against the accused No.3 and to register the same. Due to absence of split-up chargesheet, great prejudice will be caused to the accused and it is also necessary for the fair trial of the case. The documents filed by the prosecution alongwith the chargesheet have been exhibited during the trial of the case against the other accused. Under such circumstances, if the split-up chargesheet is not filed on record then those exhibited documents would cause serious injustice upon the present accused No.3.

5. The learned Spl.A.PP has strongly opposed the application by filing her reply (Exh.3597). It is submitted that the chargesheet of the present case has been filed against all the accused including the present accused No.3 and the copy thereof was duly received by all the accused on 22/11/2002. Thus, the provisions of Section 207 has been duly complied.

6. The accused No.3 had received the copy of the chargesheet as well as supplementary chargesheet and all the documents on 25/08/2003. He had chosen to remain out of the trial from other accused. He was not absconding, therefore no question of filing of split-up chargesheet arises. No prejudice will be caused to the accused if the present application is rejected as it is a tactic to prolong the case. Hence, it is prayed for rejection of the application.

7. Heard the learned counsel for accused No.3, Shri Purohit and

the learned Spl.A.PP Smt. Chawariya at length. Perused the record.

8. It is not disputed that initially, the chargesheet No.150/2002 was filed against all the accused including the accused No.3. They have been supplied the copy of chargesheet alongwith all the documents and the supplementary chargesheet long back in the year 2002 and 2003. The present accused No.3 has acknowledged the receipt of the chargesheet through his learned counsel and it is duly reflected from the record of the case.

9. The main submission of the learned counsel for accused No.3 is that the trial of the case had been separated against the other 10 accused from the present accused No.3 and it came to be concluded. During the trial, the documents of the prosecution were exhibited. Therefore, if those documents would be considered while trying the case against the present accused, great prejudice will be caused to him. Therefore, the prosecution needs to be directed to file split-up chargesheet and the case needs to be registered separately against the present accused No.3. In support of his submission, he has placed his reliance on the case of **H. Aarun Badshah Vs. State represented by the Inspector of Police**, reported in **2018 SCG Online Madras 12845** wherein the Hon'ble Apex Court has issued various guidelines for dealing with the cases of the absconding accused and to follow the procedure under Section 299 of Cr.PC.

10. On going through the supra case, it is seen that the facts of that case and the case in hand are totally different. In that case, the accused was absconding and the chargesheet was filed against rest of the co-accused who were present. Thus, on account of absconding of some of

the accused, the splitted chargesheet was filed against the accused who were present but in the case in hand, the present accused No.3 was never absconding. The chargesheet was filed against all the accused including the present accused and the provisions of Section 207 of Cr.PC. was also duly complied by supplying the copy of the chargesheet to all the accused. However, due to filing of the writ petition by the present accused No.3 for clubbing all the cases against him before Single Court, the trial of the case was separated against the other 10 accused from the present accused No.3 and the same was disposed of but the case was kept pending against the present accused No.3. Under such circumstances, no question of filing of split-up chargesheet by the prosecution against present accused arises.

11. So far as the submission of the learned counsel for accused regarding exhibiting of documents of the prosecution during the trial of the other accused is concerned, indisputably, prosecution has to prove its case against the present accused No.3 independently. Moreover, the accused No.3 would also get opportunity of cross-examination of prosecution witnesses and of rebuttal of the documents, if any proved by the prosecution during the trial against him. Hence, no question of causing of any prejudice to the present accused No.3 would arise. On the other hand, prejudice will be caused to the prosecution if the direction to file split-up chargesheet is given as the prosecution has already filed the chargesheet against all the accused. Furthermore, it would also cause unnecessary delay and complications.

12. Hence, considering the supra discussion, I hold that there is no substance in the present application and filing of split-up chargesheet against the present accused No.3 is not necessary nor warranted.

the learned Spl.A.PP. Smt. Chawariya at length. Perused the record.

8. It is not disputed that initially, the chargesheet No.150/2002 was filed against all the accused including the accused No.3. They have been supplied the copy of chargesheet alongwith all the documents and the supplementary chargesheet long back in the year 2002-and 2003. The present accused No.3 has acknowledged the receipt of the chargesheet through his learned counsel and it is duly reflected from the record of the case.

9. The main submission of the learned counsel for accused No.3 is that the trial of the case had been separated against the other 10 accused from the present accused No.3 and it came to be concluded." During the trial, the documents of the prosecution were exhibited, Therefore, if those documents would be considered while trying the case against the present accused, great prejudice will be caused to him. Therefore, the prosecution needs to be directed to file split-up chargesheet and the case needs to be registered separately against the present accused No.3. In support of his submission, he has placed his reliance on the case of H. Aarun Badshah Vs. State represented by the Inspector of Police, reported in 2018 SCC Online Madras 12845 wherein the Hon'ble Apex Court has issued various guidelines for dealing with the cases of the absconding accused and to follow the procedure under Section 299 of Cr.P.C.

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the accused, the splitted chargesheet was filed against the accused who were present but in the case in hand, the present accused No.3 was never absconding. The chargesheet was filed against all the accused including the present accused and the provisions of Section 207 of Cr.PC. was also duly complied by supplying the copy of the chargesheet to all the accused. However, due to filing of the writ petition by the present accused No.3 for clubbing all the cases against him before Single Court, the trial of the case was separated against the other 10 accused from the present accused No.3 and the same was disposed of but the case was kept pending against the present accused No.3. Under such circumstances, no question of filing of split-up chargesheet by the prosecution against present accused arises,

11. So far as the submission of the learned counsel for accused regarding exhibiting of documents of the prosecution during the trial of the other accused is concerned, indisputably, prosecution has to prove its case against the present accused No.3 independently. Moreover, the accused No.3 would also get opportunity of cross-examination of prosecution witnesses and of rebuttal of the documents, if any proved by the prosecution during the trial against him. Hence, no question of causing of any prejudice to the present accused-No.3 would arise. On the other hand, prejudice will be caused to the prosecution if the direction to file split-up chargesheet is given as the prosecution has already filed "the chargesheet against all the accused. Furthermore, it would also cause unnecessary delay and complications.

12. Hence, considering the supra discussion, I hold that there is no substance in the present application and filing of split-up chargesheet against the present accused No.3 is not necessary nor warranted.

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R.C.C. No. 147/2002

Order below application (Exh.3596)

Accordingly, the present application needs to be rejected. Hence, the following order-

ORDER

- 1] The application (Exh.3596) is rejected.
- 2] List the case for hearing before framing of charge.

Nagpur.

Date : 16/04/2024

Order
Digitally signed by
SHAHIDAFROZ
ZAFAR KHAN
Location: Nagpur
Date: 2024.04.16
16:39:24 +0530

(S.Z. Khan)

2nd Addl. Chief Judicial Magistrate
Nagpur.

Annexure-6 118

280-124



Annexure-6 For PRIVATE USE ONLY

HE

Presented by Advocate: M...

Asstt Supdt. District Court Nagpur

IN THE COURT OF HON'BLE DISTRICT AND SESSION

JUDGE NAGPUR

SHP

CRIMINAL REVISION NO. 118 OF 2024

APPELLANT: SANJAY HARIRAM AGRAWAL, Age 58 years, Occ: Business, Residing at 7 Hari Sava Street, Kidderpore, Kolkata, 700023

//VERSUS//

RESPONDENT: STATE OF MAHARASHTRA Through Ganesh Peth Police Station Nagpur



REVISION UNDER SECTION 397 OF THE CODE OF CRIMINAL PROCEDURE 1973.

216/24 29/5/24

Issue name to application: Sanj 4.11.24

The appellant (Accused No.3) most respectfully and humbly begs to submit as follows:-

Being aggrieved by the Order passed by Hon'ble 2nd Add. CJM NAGPUR on dated 16/04/2024 in RCC No. 147/2002 State Versus Sunil Kedar and others thereby Learned Lower Court rejected the

Examined ordered to be registered as Criminal Appeal Criminal Revision Misc Cri Application

application for directing the prosecution to furnish/place on record copy of split up Charge Sheet. The Appellant Prefer Revision on

Following Facts and Grounds:-

Asstt Supdt. District Court Nagpur



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FACTS

i. The Accused No.3 i.e Appellant herein facing trial under section 406, 409, 468, 471, 34, 120 B of Indian Penal Code. The Appellant has filed application for directing the prosecution to furnish/place on record copy of split up Charge Sheet of accused No.3 as remaining accused in Case Number RCC No. 14/2002 already decided therefore accused No.3/Appellant prayed application for directing the prosecution to furnish/place on record copy of split up Charge Sheet as per law. The applicant prefers the present revision on the following amongst others ground, which are in alternative and without prejudice to each

GROUND

1. Order of Learned Lower Court based on factually incorrect submission and also interpreting the applicable provisions of law in incorrect manner.
2. The Learned trial court failed to appreciate the legal provisions in the subject matter legally and validly and pass the order, causing rejection of the application of the applicant.



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3. The Learned trial court failed to appreciate the basic concept of the circumstances in respect of split of cases and therefore incorrectly, rejected the application of the applicant.

4. The Learned trial court have not considered the ratios laid down in judgment, H. Aarun Basha VS inspector of Police (Cr. LOP No. – 28952 of 2018) therefore wrongly and under misconception, rejected the application of the applicant.

5. The Learned Lower Court has not considered the submissions of the applicant that this circumstances in the subject matter needs split of cases and separate trials however, the trial court failed to consider the afforded analogy of the applicant and rejected the application.of the applicant.

6. The Learned trial court failed to consider that even on earlier occasion, the split of cases was not in accordance with law, and the submission of the applicant was not considered at all by the trial court and caused rejection of the application of the applicant.

7. The Learned trial court failed to consider that the applicant has approachcd the learned trial court with proper and



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valid legal submissions in respect of the split of the cases as also the stay granted earlier. It is pertinent to not even the trial code on factually also incorrectly observed in respect of the stay granted earlier in the subject matter and other matters and accordingly under misconception, the trial court rejected the application of the applicant.

8. The said order is the basic principle of law and also against the principle of natural justice, and therefore libel to be set aside by this honorable court.

9. The order of learned lower court even otherwise is not based on true and correct facts and legal propositions and therefore liable to be set aside.

10. Learned lower court failed to take into consideration that the entire charge sheet of RCC No. 14/2002 already exhibited and other accused prefer Criminal Appeal for challenging their conviction order.

ii. The applicant respectfully submit that the present revision is filed in Hurry and therefore reserve his right to add, altar or modify

Page | 4



or delete any of the ground or submission with the leave of this on rebel court. The revision is well within limitation.

iii. The appellatant has no other equally efficacious remedy than to approach this Hon'ble Court by challenging the impugned judgment and order.

iv. The appellatant has not moved to the Hon'ble Supreme Court of India regarding the subject matter of the present appeal any time before in the past. And this is the first memo of revision preferred before this Hon'ble Court.

PRAYER: Under the circumstances it is therefore prayed that this Hon'ble Court be. graciously pleased :-

- A. Allowed present Revision and directed to the Prosecution to furnish /place on record copy of split up charge sheet.
- B. To call for the records and proceeding in Case No. RCC No.147/2002 from the Hon'ble Add.CJM, Nagpur and. And to pass any other relief as this Hon'ble Court may deem fit and proper.



S. Anand
APPELLANT

30/4/24

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COUNSEL FOR APPELLANT

SOLEMN AFFIRMATION

I SANJAY HARIRAM AGRAWAL, Age 58 years, Occ: Business
Residing at 7 Hari Sava Street, Kidderporc, Kolkata, 700023 do
hereby takes an oath and states on this Solemn Affirmation that the
contents of the above said paras of Revision are true and correct to
the best of my knowledge and belicf, it read over to me in a
vernacular language known to me. Hence, signed on this 30 th
APRIL 2024 at Mumbai .

[Signature]

I know and identify the deponent

(ADVOCATE)

S. Harawal
DEPONENT

30/4/24

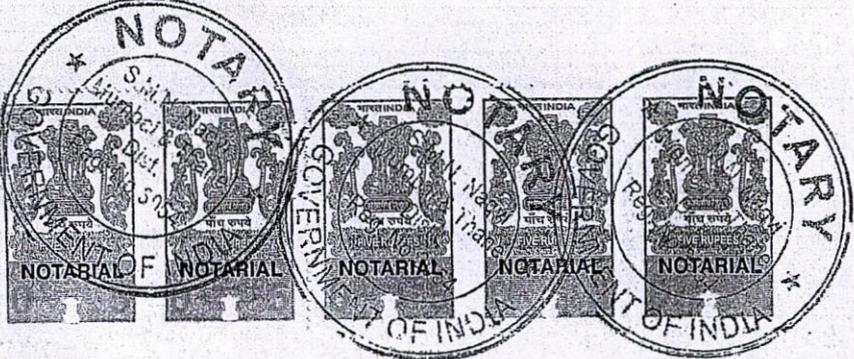
BEFORE ME

Smy
30-4-24

S. M. N. Naqvi
NOTARY
Government of India
Mumbai & Thane Dist.

SR No. 611 P No. 52

NOTARY Register. 11/24 Date 30/4/24



MHNG010051772024



Presented on : 09.05.2024
Registered on : 14.05.2024
Decided on : 18.11.2024
Duration : 00 Y. 06 M. 09 D.

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IN THE COURT OF ADDITIONAL SESSIONS JUDGE-12, NAGPUR
(Presided over by Smt. S.S. Nagur)

CRIMINAL REVISION NO.118/2024

Sanjay Hariram Agrawal
Aged : 58 yrs., Occ – Business
R/o 7, Hari Sava Street,
Kidderpore, Kokata

... Applicant

Versus

State of Maharashtra
Through P.S.O., Ganeshpeth
Police Station, Nagpur

... Non-applicant

ORDER BELOW EXH.1
(Passed on 18th November, 2024)



REVISION UNDER SECTION
397 OF THE CODE OF CRIMINAL
PROCEDURE.

The applicant has filed the revision against the order dated 16.04.2024 passed by 2nd A.C.J.M., Nagpur in R.C.C. No.147/2002 State Vs Sunil Kedar and others at Exh.3596. The learned trial court rejected the application filed by applicant to direct the prosecution to file split charge sheet against the applicant. The applicant is accused No.3 in the said trial filed under section 406, 409, 468, 471 and 120(B) of Indian Penal Code.

2] The applicant stated that the learned trial court failed to

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appreciate the legal provisions in the subject matter. **Ratio in H.Aarun Basha Vs Inspector of Police** [Cri.LOP No.28952 of 2018] is not considered. The entire charge sheet of R.C.C.No.147/2002 exhibited and other accused have preferred Criminal Appeal to challenge their conviction. Hence, prayed to allow the revision.

3] The Non-applicant filed reply at Exh.8 and objected on the ground that the applicant received copy of charge sheet on 22.11.2002 through his counsel therefore, the compliance of section 207 of Cr.PC. was done by the Hon'ble Court. The applicant has also received the copy of all the documents placed by the prosecution along with charge sheet. The applicant approached the Hon'ble High Court to club all the matter pending against him. The applicant has also received supplementary charge sheet on 25.08.2003. The applicant choose to remain out of trail from other accused. The applicant is trying to prolong the matter. Hence, prayed to reject the application.

4] In view of the above facts, following points arise for my determination and reasons with findings thereon are as under :-

Sr.No.	POINTS	FINDINGS
1	Whether the order dated 16.04.2024 passed by 2 nd A.C.J.M., Nagpur in R.C.C. No.147/2002 requires any interference?	No
2.	What order?	The revision is dismissed with cost.



REASONS

AS TO POINT NO.1 AND 2 :-

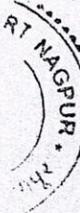
5] Heard Adv. Shri.Pankaj Tamboli for applicant and APP

S.M.
18.11.24

Smt.Nair for non-applicant. Perused contents of revision application and say. I have also gone through the written notes of argument filed by applicant at Exh.6

6] The Adv. Shri.Pankaj Tamboli for applicant has relied on authority reported in **A.T. Mydeen and another Vs Asstt. Commissioner (2022) 14 SCC 392** and **H.Aarun Basha Vs State** represented by the **Inspector of police 2018 SCC Online Madras 12845** that the accused could not participate in the proceeding and after his appearance it is necessary to file split charge sheet by the prosecution. These cases pertain to absconding accused and the charge sheet filed under section 299 of Cr.PC. against them.

7] I have gone through the order passed by learned trial court vide Exh.3596 dated 16.04.2024. The applicant is not denying that when the charge sheet was filed he was not absconding. On the contrary, he has received the copy of charge sheet along with other accused. The applicant preferred petition before Hon'ble High Court to club together various cases pending against him at Mumbai, Wardha, Pune, Nagpur and Usmanabad. The said petition [in Cri.Appln.No.628/2014 with Interim appln.No.63/2020 in Cri.Appln.No.628/2014; Cri.Appln.No.889/2019 in Cri.Appln.No.332/2015; Cri.Appln.No.332/2015 in Cri. Appln.No.624/2014; Cri.Appln.No.333/2015 in Cri.Appln.No.624/2024 with Cri.Appln.No.624/2014; Cri.Appln.No.625/2014, Cri.Appln.No.626/2014; Cri.Appln.No.627/2014; Cri.Appln.No.629/2014; Cri.Appln.No.630/2014; Cri.Appln.No.631/2014; Cri.Appln.No.1022/2014 and Civil PIL No.15/2020] is disposed of by Hon'ble High Court on 9th July, 2021. The Hon'ble High Court in para No.71(iii) directed the learned trial court that "*we make it clear that after completion of trial in said C.C.No.147/2002 (Crime No.101/2002 registered with Ganesh Peth Police station) against other accused except the applicant, the trial against applicant be commenced by conducting the same expeditiously and preferably on day to day basis and the same be completed within a period of four months after commencement of trial against present applicant*".



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Cri.Rev.
with this

8] The Criminal Case R.C.C.No.147/2002. was disposed of against other accused by judgment dated 22.12.2023. The appellant due to the petitions filed by him on the point of jurisdiction and to club together his case pending at various places did not participate in the proceeding. The applicant is well aware of the above order passed against him on 9th July, 2021. All the applications to club the cases together and to be tried at Mumbai Court is dismissed.

9] The application is preferred by the applicant to file split charge sheet against him only on the ground that the earlier charge sheet is exhibited. It is not the case of applicant that he was absconding and there was no investigation carried out against him by the concerned police station. The applicant was arrested and after investigation against him, the charge sheet was filed bearing R.C.C.No.147/2002.

10] The applicant has succeeded in prolonging the case till date. Now also be preferring the above applications, the applicant is trying to prolong the case against him though, he is well aware that the case is to be expidited and proceeded on day-to-day basis. Since beginning the applicant is making an attempt to pass time so that he will not face trial in the case. Once, the charge sheet is filed after investigation by the concerned police station, the question of split charge sheet will not arise. Therefore, the learned trial court has rightly rejected the application of the applicant. The ratio of the authority relied by the applicant is not applicable to the present facts of the case. No interference is required in the order passed by learned trial court. Accordingly, answering **Point No.1 in negative**. The applicant has again attempted to prolong the case though well aware of the order passed by Hon'ble High Court to proceed expiditiously on day-to-day basis. Therefore, it is necessary to impose heavy costs on the applicant and



5397
18.11.24

with this observes, pass following order:-

ORDER

- i) The Criminal Revision Application No.118/2024 is dismissed with cost of Rs.20,000/- (Rupees Twenty Thousand).
- ii) The applicant should appear before the trial court on the date to frame charge.
- iii) Accordingly, the criminal revision application is disposed of.

Nagpur

Date : 18.11.2024

SSJ
18.11.24
(S.S. Nagur)

Additional Sessions Judge-12,
Nagpur

Case argued on	: 16.11.2024
Order dictated on	: 18.11.2024
Transcription ready on	: 18.11.2024
Order checked and signed on	: 18.11.2024

CERTIFICATE

I affirm that the contents of this P.D.F. of the order are word to word as per original order.

Name of Stenographer :- V. M. Wasnik (Grade-I)



TRUE COPY

[Signature]
For Asst. Supdt.
Copying Branch
Dist. Court, Nagpur

P-11
Copying Charges ... Rs. 1161
Comparing Charges ... Rs. f
Express Charges ... Rs. f
Total ... Rs. 1161

The date on which copy applied to 19/11/24
the date on which the application is completed in all respects 19/11/24
the date given to the Applicant for taking delivery 19/11/24
the date on which the copy was ready for delivery 19/11/24
the date on which it was delivered 13/11/24

[Signature]
For Asst. Supdt. Record Keeper

In the High Court of Judicature at Bombay;

Nagpur Bench; Nagpur.

Criminal Writ Petition No. 1009/2024.

Petitioner : Sanjay Hariram Agrawal
Aged about 58 years,
Occ. Business, R/o 7, Hari Seva Street,
Kidderpore, Kolkata.

-Versus-

Respondent : The State of Maharashtra through
Police Station Officer,
Police Station Ganeshpeth,
Nagpur.
Through State Crime Investigation
Department Nagpur

Reply on behalf of Respondent.

The respondent above named most respectfully
submits as under :-

1. The present petitioner has approached this Hon'ble
Court by way of invoking the extra ordinary writ jurisdiction of
this Hon'ble Court under Articles 226 & 227 of the Constitution of
India, whereby praying for staying the order dated 18/11/2024

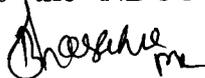


✓ passed by the learned Additional Sessions Judge-12, Nagpur in Criminal Revision No. 118/2024 and also order dated 16.04.2024 passed by the 2nd Additional Chief Judicial Magistrate, Nagpur in R.C.C. No. 147/2002. The petitioner further praying stay on the proceeding vide R.C.C. No. 147/2002 pending before the learned 2nd Additional Chief Judicial Magistrate, Nagpur till the disposal of the present writ petition.

2. The brief facts of the prosecution case is that, the employee of NABARD namely Vinod Gunderao Deshmukh and Laxmidhar Krushnachand Das carried out the statutory audit of Nagpur District Central Co-operative Bank (NDCC) for the period commencing from 01.04.1999 to 31.03.2001 During the said period, the inspection/audit was done between 04.02.2002 to 26.02.2002 as per the guidelines issued by the RBI and NABARD. During inspection, they found that the investment port-folio of the NDCC bank was increased notably. From 05.02.2001 to 28.03.2001 NDCC bank had done various transactions of sale and purchase of physical securities. As on 31.03.2001 physical



✓ securities of Rs. 124.76 crore were due to the NDCC bank. It was also found that there were many irregularities and violations of legal provisions and also that of the circulars issued by the RBI from time to time. On being asked to produce physical securities for inspection, only Xerox copies were put up before them and those were also in the name of 'Home Trade Limited' (in short "HTL") and not in the name of the NDCC bank. It was also revealed that till 31.03.2001 NDCC bank had entered into transactions of Government of India (physical) securities only through HTL, but thereafter transactions were also done through other brokers like Indramani Merchants Private Limited, Kolkata, Syndicate Management Services Private Limited, Ahmedabad, Century Dealers Private Limited, Kolkata and Gultedge Management Services Ltd., Mumbai (hereinafter referred to as four companies). Accused No.3 to 10 were the Directors/employees of HTL and these 4 broker companies were directly handling the transaction in question. The present applicant was the accused No.3 and during the inspection it was found that 149.83 crore were due to the NDCC bank towards Government of India securities.

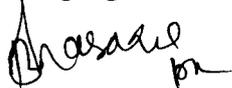


Original Government of India (physical) securities were not produced before the inspection team till 26.02.2002. Accordingly the detail inspection report was sent to the NDCC bank, RBI, Registrar of Cooperative Societies and Maharashtra State Cooperative Bank. Thereafter above directions given by Cooperative Commissioner and Registrar, Cooperative Societies, State of Maharashtra, Pune vide letter dated 20.04.2002, Divisional Joint Registrar, Cooperative Societies, Nagpur vide letter dated 24.04.2002 directed the Special Auditor, Class-I (Bank) of Cooperative Societies, Nagpur namely Bhaurao Vishwanath Aswar i.e. the informant to carry out inspection of sale and purchase transactions of Government securities in NDCC bank and some other banks. Accordingly, the informant carried out the inspection. He found that on approval of accused Nos. 1 and 2 Government of India (Physical) security transactions were carried out through HTL and 4 broker companies. Out of them, only HTL was the authorized dealer of Security and Exchange Board of India (in short 'SEBI'). Four other broker companies were not the authorized dealers of SEBI.



v

3. It was also revealed in the inspection that during 25.01.2002 to 05.02.2002 total amount of about Rs. 153.04 crores including premium and interest was invested on behalf of NDCC bank towards purchase of Government (physical) securities through HTL and 4 other broker companies. Transactions about sale and purchase of Government Securities in physical form were never brought to the notice of the board of Directors and their approval was never sought. Original Government securities, bonds, holding certificates, receipts about investment of money etc. were also not available in the head office of the NDCC bank. Therefore, it was doubtful whether the Government securities were actually purchased or not. All these transactions were done at the instance of and with the approval of accused No.1 and 2. Accused No. 1 and 2 being Chairman and General Manager respectively and in turn, being the bankers were entrusted to manage the funds of share holders and depositors. They were morally as well legally responsible to strictly adhere to banking rules and regulations while managing the financial affairs of the NDCC bank. However, they



✓ illegally invested these amounts through unauthorized dealers without following prescribed legal mandate. Therefore, transactions were causing loss to the depositors and share holders of the NDCC bank therefore, the First Information Report came to be lodged on 29.04.2002 in Ganeshpeth Police Station, Nagpur against accused No.1, 2, HTL and 4 other broker companies for offence punishable under section 406, 409, 468, r/w section 34 of Indian Penal Code.

4. In crime No. 101/2002 came to be registered for offence punishable under section 406, 409, 468 r/w 34 of I.P.C. Prior to registration of the First Information Report in Crime No. 101/2002 the informant accused No.1 had also lodged the First Information Report with Ganeshpeth Police Station, Nagpur against HTL and 4 broker companies for offence punishable under section 406, 420 r/w section 34 of Indian Penal Code vide Crime No. 97/2002 came to be registered.

For completing the investigation of the aforesaid nature the Special Investigation Team including the then Deputy,



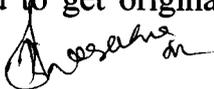
✓ Superintendent of Police Bele, Sawade, Porate, Police Inspector Kukde, Deshpande and other police officials was established to carry out investigation. Thorough investigation was done and relevant documents and muddemal were seized by drawing various seizure panchanama thereof. Bank accounts of the respective employees and the other concerned persons came to be freezed and statement of witnesses were also recorded. Information were also collected from various banks like RBI, NABARD, SEBI and National Security Exchange Board. As well as the handwriting expert opinion were also sought with regard to the various signatures which were found on those Xerox copies of the securities furnished during the course of inspection showing the involvement of the NDCC bank.

5. During investigation it is revealed that the accused No.1 Sunil Kedar who was Chairman of the NDCC bank from 1999 to 2002 whereas accused No.2 and 11 were the General Manager and Chief Accountant of the said bank respectively. Similarly, accused Nos. 3 4 and 9 were the then Directors of HTL. Accused No.4 was also the Director of Giltedge. Accused Nos. 5 ,

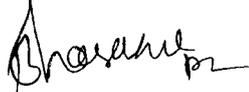
A handwritten signature in black ink, appearing to read 'Anil Kedar', with a small 'm' written below it.

✓ 6 and 7 were the then Directors of Centrury Dealers, Indramani and Syndicate respectively and accused Nos. 8 and 10 were the employees and authorized signatories of HTL during relevant period. Accused Nos. 3, 4 and 9 were also Directors of Euo Discover India Ltd. (in short "EDIL").

6. The gist of the allegations against HTL of which the applicant is Director can be stated that during 05.02.2001 to 12.06.2001 total amount of Rs. 185.70 crore came to be transferred to the account of HTL from the account of NDCC bank towards investment in Government of India (physical) securities. However, these original physical securities were never sent by HTL to the NDCC bank. No steps were taken by above accused persons to get original securities from the HTL. During 21.03.2001 to 31.10.2001 total amount of Rs. 38.15 crore was repaid by HTL to NDCC bank from time to time. Still in the year 2001 amount of Rs. 147.54 crore was due to NDCC bank from HTL towards purchase transactions of Government of India (physical) securities. However, still no steps were taken by the accused to get original Government of India (physical) securities ✓



from HTL. The amount so received by the HTL from the NDCC bank and the other 4 broker companies were never appropriated for purchasing Government of India (physical) securities for the NDCC bank. They have never purchased any Government securities and not invested any amount. On the contrary these amounts came to be misused by the HTL for paying salaries to its employees and giving loans to them so also for purchasing office furniture and other articles. Moreover, ²above stated entire investment was done in violation of various circulars issued by R.B.I., Cooperative and Banking laws and bye-laws of NDCC bank. Moreover, accused Nos. 8 and 10 prepared securities of Rs. 370 crore and handed over to accused No.2. Those were also in the name of HTL. Not only this, accused No.2 also prepared two letters with forged contents to mislead the NABARD inspection team stating that he was sending original physical securities to HTL for sale. Accused No. 8 and 9 also sent various letters to NDCC bank stating thereby that HTL is holding original Government of India (physical) securities and NDCC bank is the principal owners thereof. As per report given by RBI none of



✓ NDCC bank owners of those securities were different therefore, all those letters were forged and used as genuine only to mislead and cheat NABARD inspection team.

7. Accordingly, after completing investigation initially Chargesheet came to be filed in 2002 against the present petitioner and other accused persons and the copy of Chargesheet was also handed over to the counsel for the petitioner at that time itself and he has accepted the copy of chargesheet on behalf of the petitioner and after conducting further investigation in terms of the provision of section 173(8) of the Code of Criminal Procedure came to be filed on 25.08.2003 and the physical copy of the Chargesheet was handed over to the petitioner at that point of time itself in the court and thereafter the charges came to be framed against the rest of the accused.

8. It is submitted that apart from the aforesaid crime there are other offences of similar nature which are pending against the present applicant. The below chart shows the involvement of Applicant in similar nature of offence. ✓

Cri. Appln. No.	C.R. No. Police Station	Case No. and Court	Offence punishable under sections	Status of Applicant.
624/2014	83/2005 and 13/2005 Santacruz Police Station	C.C. No.412/2007 Addl. Chief Metropolitan Magistrate 47 th Court, Esplanade, Mumbai	409, 420, 34 I.P.C.	Accused No.2
625/2014	C.R. No. 81/2002 L.T. Marg Police Station, Mumbai	C.C. No. 324/P/2002 Addl. Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai	409,420 r/w 120(B) of I.P.C.	Accused No.3
626/2014	C.R. No. 50/2004 E.O.W., Mumbai, C.R. No. 298/2004 Santacruz Police Station	C.C. No. 197/PW/2007 Addl. Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 465, 120(B) of I.P.C.	Accused No.1
627/2014	C.R. 110/2002 and No. 124/2002 Wardha Police Station	C.C. No. 573/2002 Chief Judicial Magistrate Wardha	406, 409, 420 r/w 34 I.P.C.	Accused No.1
628/2014	C.R. No. 101/2002 (original C.R. No. 97/2002 of Ganeshpeth Police Station, Nagpur	C.R. No. 147/2002 Additional Chief Judicial Magistrate, Nagpur.	406, 409, 468, 471, r/w 120-B r/w section 34 of I.P.C.	Accused No.3
629/2014	C.R. No. 65/2002 Vishrambag Police Station, Pune	C.C. No. 357/2002 J.M.F.C., Shivaji Nagar, Pune.	406,409, 420, r/w 34 of I.P.C.	Accused No.1
630/2014	C.R. No. 75/2002 City Kotwali Police Station, Amravati.	C.C. No. 847/2002 Chief Judicial Magistrate, Amravati.	406, 409, 420, 468, 34, 120B of I.P.C.	Accused No.21,
631/2014	C.R. No. 102/2002 Pimpri Police Station, Pune	C.C. No. 498/2002 Judicial Magistrate First Class, Pimpri Pune.	465, 467, 468, 471, 406, 408, 420, 34 of I.P.C.	Accused No.20
1022/2014	C.R. No. 45/2002 of EOW (original C.R. No. 158/2002	C.C. No. 398/2002 Chief Judicial Magistrate, Osmanabad	406, 409, 420, 468, 471, r/w section 34 of I.P.C.	Accused No.7.

Prasanna

✓ In view of the aforesaid involvement of the petitioner in various crime the petitioner made an application for clubbing of all the independent separate First Information Report jointly at Mumbai and accordingly he preferred the petition before the Hon'ble Single Judge of Principal Seat vide Criminal Application No. 628/2014 and accordingly he has filed separate petition at Principal Seat related to the Crime No. 101/2002 registered with Police Station Ganeshpeth, Nagpur. The petitioner has preferred Criminal Application No. 628/2014 accordingly the Hon'ble Court was pleased to grant stay on 19.12.2014 to the further proceeding of the trial against the petitioner. In view of the pendency of the various applications which were moved by the petitioner for clubbing of the offence and joint trial, the charges could not be framed against the petitioner and the charges were framed against the other accused persons and the trial came to be proceed in view of the directions issued by this Hon'ble Court in P.I.L. No. 25/2014.

All these application came to be decided by the Hon'ble Division Bench comprising Justice Shri A.A. Sayed &



^W Madhav Jamdar on 09.07.2021 wherein all these criminal applications came to be dismissed and interim application made therein do not survive. So far as the chargesheets which were earlier submitted against the present petitioner along with other accused was converted into the trial bearing C.C. No. 147/2002. It is also already stated that as there was stay of the Hon'ble Court not to proceed against the petitioner in the trial and charges were not framed against the present petitioner in C.C. No. 147/2002 along with other accused persons. At that point of time the said order of the Hon'ble High Court was in operation.

9. It is submitted that the applicant has adopted tactics to protracted the trial by making one and other application and himself not participated in the trial, when the trial was already proceeded against the other accused persons in terms of the directions issued by the Hon'ble Division Bench in P.I.L. No. 25/2014 and Civil Appeal No. 1701/2019 dated 04/10/2019 Coram Justice B.R. Gawai & Justice V.M. Deshpande.



✓ 10. It is submitted that now the petitioner has challenged the order passed by the Learned Session Judge-12, Nagpur in Criminal Revision No. 118/2024, whereby the Revision of the petitioner challenging the order passed by the learned 2nd A.C.J.M. Nagpur in R.C.C. No. 147/2002 State Vs Sunil Kedar and others vide order dated 16.04.2024 came to be rejected.

11. It is submitted that, it is contended herein that, the applicant has received the copy of Charge sheet on 22.11.2002 through his counsel therefore there is compliance of section 207 of Criminal Procedure Code. The petitioner has also received copy of all the documents placed by the prosecution along with Chargesheet, as the applicant approached the Hon'ble Court to club all the matters pending against him. The applicant has also received the supplementary chargesheet on 25.08.2003 it was sweet wish and choice of the petitioner to keep himself aloof from the trial and he has himself obtained the stay that trial could not be proceeded against him. The aforesaid tactics of the petitioner prima facie shows that the petitioner was trying to protract the trial



✓

✓ against him and he was successful in doing so by obtaining the order from the Principal Seat, Mumbai.

12. It is submitted that one of the ground raised by the petitioner is that he has already prayed for filing of split charge sheet against him. It is submitted that the chargesheet is filed way back in the year 2002 and it was duly received by the counsel for the petitioner. At that point of time the petitioner has never raised any objection that the separate chargesheet should be filed against him. Moreover, the accused cannot dictate the nature of investigation and filing of chargesheet which is exclusive domain and under the authority of Investigating Officer. Looking to the collusion between Sanjay Agrawal (present petitioner) and other co-accused, other employees and Chairman, Directors of the NDCC bank all these accused were hand-in-glove and in collusion with each other they have committed a systematic fraud causing loss to the gullible customers and the investors of the NDCC bank. Therefore, there was no question at all for the Investigating Officer to split charge sheet at the instance of the accused whose



✓ involvement was prima facie found during the course of investigation and later on substantiated by the evidence collected by the Investigating Officer in the nature of various documents, statements of witnesses and other material which has culminated into filing of charge sheet and for framing the charges against the present petitioner including the other accused therein for the offence under the provisions of Indian Penal Code for which they came to be charged.

13. In view of the aforesaid nature of the factual situation the attempt made by the petitioner to split the chargesheet against him is nothing but to cause the delay in the trial. One of the content of the petitioner is that those documents which were part of the earlier charge sheet have been already exhibited during the course of trial and the trial has already proceeded against the other accused persons and they have been found guilty and they have been punished and sentenced by the learned Trial Court. Therefore, those documents can cause prejudice against the petitioner, in response to the aforesaid contention it is submitted that the process ✓



✓ of the trial will be adhere by the learned trial court while proceeding with trial against the petitioner. The prosecution has to prove its case on its own without resorting to the already exhibited documents. Exhibition of the documents during the earlier trial will not automatically lead the prosecution to read the contents of the documents against the present applicant without proving the contents therein, without adopting the formal procedure required for proving the documents as per the Evidence Act and the petitioner will also get full opportunity to challenge the document or other material which can be put against the petitioner during the course of trial. Therefore, some already exhibited documents during the course of earlier trial will not give any advantage to the prosecution against the petitioner. On the contrary the prosecution will have to follow the entire procedure to prove its case against the petitioner independently. Therefore, this contents of the petitioner is misconceived and made just to cause delay in trial to proceed against the petitioner.

A handwritten signature in black ink, appearing to read 'Shankar', with a horizontal line underneath it.

✓ 14. It is submitted that the petitioner is also trying to derive the help with the order passed by this Hon'ble Court in P.I.L. No. 15 and 25 wherein the passing remarks came to be made by this Hon'ble Court against the petitioner that if the learned Single Judge found the case of petitioner different, can call for the records pertaining to chargesheet alleged against the petitioner, that will not give any independent right in favour of the petitioner to claim for filing of split chargesheet exclusively against the petitioner, now the chargesheet is already filed against the petitioner in 2002 initially and thereafter in 2003 the supplementary chargesheet. In view of the aforesaid and looking to the complex nature of economic crime committed by the white collar accused persons the attempt of the petitioner for seeking the split chargesheet is nothing but an attempt to further cause delay in trial to be proceeded against him. In view of the aforesaid, the learned Trial Court have rightly considered all the aspects and also as per the order passed by the Hon'ble High Court Principal Seat has directed in paragraph No. 71(iii) "*we make it clear that after completion of trial in said C.C. No. 147/2002 (Crime No. 101/2002 registered with*

Phogah

✓
Ganeshpeth Police Station, Nagpur) against other accused except the Applicant, the trial against applicant be commenced by conducting the same expeditiously and preferably on day to day basis and the same be completed within a period of four months after commencement of trial against present applicant”.

In view of the aforesaid nature of directions issued by the Hon'ble Division Bench the trial needs to be expeditiously commenced and progress against the petitioner but the petitioner is on some or the other pretext avoiding to face the trial and therefore, he approached this Hon'ble Court by challenging the order of Revision Court as well Trial Court dated 16.04.2024 and 18.11.2024.

15. Looking at the seriousness of the offence and long standing delay for commencement of trial against the petitioner almost 23 years have been lapsed that the petitioner has been chargesheeted and still the petitioner wants to avoid the trial for the reasons best known to him. ✓



16. In view of the aforesaid circumstances, the instant petition is devoid of any merits and substance and the prosecution should be given opportunity to proceed with the trial against the petitioner in terms of the directions issued by the Hon'ble Division Bench at Principal Seat. Therefore, the petition is hereby strongly opposed and same may kindly be dismissed.

Nagpur.

Date : 15.01.2024.

Drafted by,



(M. J. Khan)
Addl. Public Prosecutor,

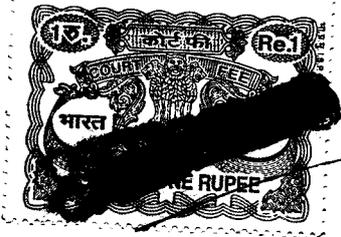



Respondent No.2.

एम. जे. खान - मिराट

PI CFO Nagpur

13/02/2025



cf=21

OR

13-2-25

-149-

Solemn Affirmation

I, Mahadeo Uttam Bharsale

aged about 43 years, working as, Police Inspector

CID Nagpur

do hereby state on solemn affirm as under :-

That the contents of above paragraphs 1 to 16 are drafted by my counsel in accordance with my instructions, written as well as oral. I have carefully gone through the said contents and found them to have been correctly drafted. I say that the contents of above paragraph 1 to 16 are based on information received from official records and believed to be true by me.

Hence verified and signed at 13 Feb on this th day of Feb January, 2025.



Deponent.

14-5-2025

PR CID Nagpur

13/02/2025



I know the deponent.

①
Solemnly affirmed before me by
Mahadeo U. Bharsale
Who is identified by Advocate whom
personally know. M. J. Khan
This 13 day of 02 2025

M. J. Khan
Section Officer
M. J. Khan
M. J. Khan
M. J. Khan