

ORDER BELOW EXH.529

In this case in all 10 accused are charge-sheeted for having committed alleged offences of criminal conspiracy (S. 120-B IPC), preparation of false record (S. 218 IPC), criminal breach of trust (S. 406 IPC), criminal breach of trust by banker (S. 409 IPC), cheating (S. 420 IPC), forgery for the purpose of cheating (S. 468 IPC) and using a forged documents as genuine (S. 471 IPC) r/w. 34 IPC. Out of said accused the accused Nos. 1, 2 and 6 have passed away and hence case against them stood abated. When the matter was fixed for framing of charge the accused No.7 has made this application Exh.529 with following prayers -

- a) that by invoking the provisions of section 181(4) and section 182(1) of Criminal Procedure Code, 1973 the Honorable Court may please pass the order of Transfer of the Entire Present Case to the Competent Court at Mumbai having jurisdiction to try the same by holding that this Honorable Court has got no jurisdiction to entertain and decide the present case,
- b) that during the pendency of the decision of this application, the further proceeding of this case be stayed,
- c) to grant any other relief deemed fit and proper in the facts and circumstances of the case.

2 Before dealing with the contentions raised in this application the prosecution case may be briefly narrated as under -

That all ten accused have hatched a criminal conspiracy to cheat the Osmanabad District Central Cooperative Bank Ltd. Osmanabad (for short "O.D.C.C. Bank")for Rs. 30 crores. Deceased

accused No.1 Pawanraje Nimbalkar was the Chairman of said ODCC Bank whereas deceased accused No. 2 was the General Manager, accused No.3 was the Chief Accountant, accused No.4 was Deputy Chief Officer and accused No.5 was Chief Officer, Administration and deceased accused No.6 was a Deputy General Manager of the said ODCC Bank. Accused No.10 Sunil Kedar was the Chairman of Nagpur Dist. Central Co-op. Bank Ltd., Nagpur (for short, " the N.D.C.C.Bank"). Accused Nos. 7 to 9 stated to be Directors of Home Trade Ltd., New Mumbai, an unauthorized broker. There was a collusion between accused No.1 and 10 to purchase Government securities through the said Home Trade. Thereafter on 31/1/2002 the N.D.C.C. bank got credited their 30 crores as a deposit in the account of O.D.C.C. bank maintained with Maharashtra State Cooperative Bank Ltd. Mumbai. Then on 1/2/2002 the accused No.4, Deputy Chief Officer of O.D.C.C.Bank, at the instance of accused No.1 and 3, unauthorizedly got credited the said 30 crores in the account of said Home Trade Ltd. for purchasing Government securities and on the same day Home Trade Ltd. got credited an amount of Rs. 29,99,99,766-67 ps. in the account of N.D.C.C.Bank with the Maharashtra State Co-operative Bank Ltd. Mumbai. Thus it is the case of prosecution that deceased accused No.1, Chairman of O.D.C.C.Bank and accused No.2 to 6 being main officer bearers of the said bank, without having prior permission from the Commissioner, Cooperative Societies, accepted a deposit of Rs. 30 crores from N.D.C.C.Bank and in violation of R.B.I. directions paid sum of Rs. 29,99,34,591/- to Home Trade for Government securities. Thus all accused, in furtherance of their common intention, have committed offences punishable under sections 120(B), 218, 406, 409, 420, 468, 471 r/w. 34 of I.P.C.

3 At the relevant time ODCC Bank, NDCC Bank and Home Trade were having their respective accounts with Maharashtra State Cooperative Bank Ltd., Fort, Mumbai (Apex Bank). The aforesaid transaction of 30 crores initially from the account of NDCC Bank to the account of ODCC Bank, transferring said amount from ODCC Bank account to the bank account of the Home Trade and again transferring said amount from the account of Home trade to the account of NDCC Bank, have taken place in the said Apex Bank. According to prosecution, Home Trade has issued contract notes to the ODCC Bank stating that they have purchased Government securities worth Rs. 29,99,34,591/-. For difference amount of 65409/- the Home Trade had issued cheque in the name of ODCC Bank which was encashed.

4 In this application Exh. 529 the accused No.7 has contended that as per prosecution story ODCC Bank and Home Trade had acted and accepted transaction of Government securities and even contract notes were issued at Mumbai. The said cheque of Rs. 65174/- (it should be Rs. 65409/-) was deposited by ODCC Bank in their account with Apex Bank at Mumbai. According to accused No.7, in view of above factual aspects of the case no criminal case as alleged is maintainable in this Court and no charge can be framed against him. It is further contended that the aforesaid contract notes are subject to jurisdiction of Court in Mumbai. As per said notes any dispute arising between parties should be referred to Arbitration in Mumbai. Even the deceased accused No.1 in his written complaint dt. 29/4/2002 addressed to Deputy Commissioner of Police, Economic Office Wing, Crime Branch, CID, Mumbai, had alleged that events leading to filing of that complaint have taken place in Mumbai. There was no

representation at Osmanabad nor there was any entrustment of properties at Osmanabad at any point of time by accused No.7. It is also contended that ODCC Bank had decided to sell the purchased securities without taking the delivery and requested Home Trade to issue cheque of the sale proceeds of the securities. The said cheque was issued by Home Trade from the Apex Bank, Mumbai and it was deposited by ODCC Bank in that Bank. The aforesaid difference amount Rs. 65174/-by cheque was paid from the account of Home Trade with the Apex Bank, Mumbai and same was received by ODCC Bank in their account with Apex Bank, Mumbai.

5 According to accused No.7, in the above facts and circumstances of the prosecution case the charges leveled against him are improper and the same are required to be tried by the Court at Mumbai and this court has no jurisdiction to try and decide the presence case. The case, therefore, requires to be transferred to Mumbai in view of Sections 181(4) and 182(1) Cr.P.C. Accused No. 7 has also contended that since he has raised the point of jurisdiction it should be decided first.

6 Ld. A.P.P. has filed say at Exh. 534 and opposed this application, contending that the ODCC Bank by issuing their letter dt. 29/1/2002 from their office in Osmanabad showed their willingness to accept Rs. 40 crores as deposit from NDCC Bank. It is also contended that looking to the prosecution case, statements of witnesses and documents collected the offences in question have taken place at different places i.e. Osmanabad, Nagpur and Mumbai and therefore in view of Section 178 Cr.P.C. the Court at said places have got

jurisdiction to entertain and try the case. It is further contended that this application is made with a view to prolong the matter as accused No.7 had never raised the plea of jurisdiction in his discharge application Exh.407 which has been disposed of by order dated 7/8/2013. Lastly it is contended that this Court has very much jurisdiction to try the case.

7 In addition to the contentions raised in this application the Ld. Adv. Shri.M.S.Patil for accused No.7 has submitted that deceased accused No.1 had filed written complaint dt. 29/4/2002 with Mumbai Police as it was proper place for lodging FIR inasmuch as offences in question were committed in Mumbai. He further submitted that even as per prosecution case accused Nos.1 to 3 and Directors of Home Trade had discussed transaction in Hotel Oberai, Mumbai. It is also submitted that contract notes allegedly issued on behalf of Home Trade have clarified that dispute would be subject to jurisdiction in Mumbai. In the submission of Ld. Adv. for accused No.7, the said clause of jurisdiction would also make it clear that the parties have agreed on the point of jurisdiction. The entire episode had taken place at Mumbai and therefore there was no entrustment at all in Osmanabad. Relying on Ss. 181(4) and 182(1) Cr.P.C. Ld. Adv. has submitted that it is Court at Mumbai that got jurisdiction to try the case.

8 Per contra, Ld. APP has submitted that the transaction started when deceased accused No.1 talked to accused on phone. ODCC Bank issued letter dt. 29/1/2002 from Osmanabad to NDCC Bank, Nagpur for accepting deposit. In Mumbai, only the transaction of transfer of amount took place.

9 When the question of jurisdiction is raised it must be decided before the commencement of trial. Chapter XIII Cr.P.C. deals with the jurisdiction of the criminal Courts in inquiries and trials. U/s. 177 Cr.P.C. “ Every offence shall ordinarily be inquired into and tried in a Court within whose jurisdiction it was committed.” The word “ordinarily” in S. 177 means except in the cases provided in other sections to the contrary. Use of the word “ordinarily” indicates that the provision in S. 177 is a general one and must be subject to the special provisions contained in the Code. In K. Bhaskaran V/s. Sankaran (1999 (7) SCC 510) the Apex Court observed in para 12 that, the rule that every offence shall be tried by a court within whose jurisdiction it was committed, is not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word “ordinarily” to indicate that the rule is not invariable in all cases. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case.

10 In the instant case, admittedly ODCC Bank is having its head office in Osmanabad town from where the transaction started when that bank sent a letter dt. 29/1/2002 to NDCC Bank whereby it showed its readiness to accept Rs. 40 crores from NDCC Bank on interest @ 10 % per annum. Prosecution comes out with a case that there was conspiracy to cheat the ODCC Bank and due to offences in

question that bank suffered wrongful loss to the extent of Rs. 30 crores. After deposit of 30 crores from the account of ODCC Bank in the account of Home Trade the contract notes for Government securities worth Rs. 29,99,34,591/- stated to be issued. For remaining Rs. 65409/- the Home Trade issued a cheque to ODCC Bank which was then encashed and credited in the account of ODCC Bank. It further appears that since the O.D.C.C. Bank did not receive RBI receipts of Government securities from Home Trade the accused No.1 was insisting on Home Trade to return the amount. Accordingly, Home Trade issued a cheque of Rs. 30,89,07,975/-for returning amount to the O.D.C.C. Bank. But that cheque was dishonored. It further appears that the Home Trade never issued Government securities, it only issued contract notes.

11 It further appears from prosecution case that on 1/2/2002 accused No.8 got credited Rs. 29,99,99,766-67 ps from the above 30 crores received, to the account of N.D.C.C. Bank. According to prosecution, Home Trade has issued a false receipt to O.D.C.C. Bank, that the Home Trade is unauthorized company dealing in Government securities and that accused No.7 to 9 are its directors. Rs. 30 crores received from N.D.C.C. Bank by ODCC Bank hurriedly got transferred in the account of Home Trade who, in turn, immediately transferred to N.D.C.C. Bank and according to prosecution, this is nothing but a misappropriation of huge amount of Rs. 30 crores by the Chairman and Bank Officers of O.D.C.C. Bank and all accused have committed criminal conspiracy for misappropriation etc.

12 It further appears that the Investigating Officer has issued

notice under section 102 Cr.P.C. to freeze the said 30 crores which went in the account of N.D.C.C. Bank as it is a “stolen property” within the meaning of section 410 Cr.P.C. The N.D.C.C. Bank tried to contend that amount received from Home Trade was exclusively belongs to them as it was a sale proceed of their Government securities sold by Home Trade. But this contention was not accepted by the Hon'ble Bombay High Court while disposing of N.D.C.C. Bank's Criminal Writ Petition No.3/2005, disposed of on 13/3/2013 wherein Hon'ble High Court has observed that primarily, the said amount belong to O.D.C.C. Bank which has been illegally transferred to the account of N.D.C.C. Bank. Further, it does not appear that prior to investment of 30 crores through Home Trade in Government securities the O.D.C.C. Bank approved it in the meeting of Board of Directors. On 08/02/2002 a meeting of Board of Directors of O.D.C.C. Bank was held only for the purpose of discussion on the audit of 1999 to 2001 conducted by NABARD Bank as per Agenda of that meeting. The prosecution witnesses have told before Investigating Officer that in the said meeting except said subject on Agenda there was no discussion on any subject. According to prosecution, though there was discussion on the said sole subject in that meeting the accused Nos. 1 to 6 have prepared a false proceeding of meeting and it was tried to show that in the said meeting the subject of deposit of Rs. 30 crores by N.D.C.C. Bank and investment of that amount in Government securities through Home Trade was discussed and the said meeting has approved it. In the proceeding of that meeting it was also written that the said subject was proposed by the director Shivaji Gadhve and another director Uttamrao Tekale supported it and finally that resolution No.2 was passed. However, the said two directors have stated before I.O. that on 08/02/2002 there

was only one subject discussed in the meeting, however, their names have been shown in the proceeding for approval of said investment and it is not correct. According to prosecution, one Yashwant Parshsuram Giri, District Deputy Registrar, Co-operative Societies, Osmanabad also attended said meeting dated 8/2/2002 as a Government representative. He also stated before I.O. that in the said meeting after discussion on the inspection of NABARD was over he left the meeting.

13 Further case of prosecution is that again by writing false proceeding of the Board of Directors' meeting dated 11/3/2002 of O.D.C.C. Bank it was tried to show that the directors have approved the investment of 30 crores in the Government securities through Home Trade. The resolution to that effect stated to be proposed by the director Subhash More and supported by another director Rahul Mote. But these two directors have stated before I.O. that in the meetings on 8/2/2002 and 11/3/2002 there was no subject of investment through Home Trade but their names are falsely shown in the proceeding book.

14 One Nayumkhan Pathan is Junior Officer of O.D.C.C. Bank. He stated before I.O. that the proceeding of above meeting dated 8/2/2002 was written by accused No.5 who was Chief Officer of administration of O.D.C.C. Bank, that the accused No.5 got typed that proceeding from the typist Shri. Shaikh and it was kept in the meeting of 11/3/2002 and it was approved. The approved subjects then got written by accused No.5 from said Nayumkhan who then written it in the proceeding register which was then signed by deceased accused Nos. 1 and 6. This witness also stated that he has written proceeding at the instance of accused No.5 and the alleged resolution of

11/3/2002 about investment of 30 crores.

15 Thus, according to prosecution, every accused in this case has played important role while committing offences in question. At the relevant time the accused No.10 was Chairman of N.D.C.C. Bank. As per audit report of O.D.C.C. Bank on the basis of which present complaint was filed by Divisional Joint Registrar, Co-operative Societies, Latur, there were irregularities committed by O.D.C.C. Bank as previous sanction from competent authority was not obtained, that the bank did not verify whether Home Trade was authorized broker or not, that the bank was not having knowledge of members of Home Trade, no correspondence or agreement were made with Home Trade, that it was not verified whether Home Trade was a firm having RBI sanction, that the directives of RBI were not followed before making investment and RBI receipts have not been obtained from the Home Trade and thus, according to Auditor, the transaction of investment is illegal.

16 Section 178 Cr.P.C. provides for four contingencies -

- (1) When it is uncertain in which of several local areas an offence is committed ;
- (2) where an offence is committed partly in one local area and partly in another ;
- (3) where an offence is a continuing one, and continues to be committed in more local areas than one; and
- (4) where an offence consists of several acts done in different local areas.

In any of the above four cases the offence may be inquired into or tried by a Court having jurisdiction over any of such local area.

17 Prosecution witness Sahberao Manikrao Patil was Junior Officer of O.D.C.C. Bank at the relevant time. In his statement under section 161 Cr.P.C. he stated that on 30/1/2002 accused No. 3 V.D.Malvade, Chief Accountant of O.D.C.C. Bank, had asked him to prepare list of deposits with Maharashtra State Co-operative Bank Mumbai. Accordingly, he prepared that list, collected receipts, cheques etc. at the instance of accused No.3 and both of them went to Mumbai by Car. In the guest house at Kulaba of said Maharashtra State Co-operative Bank there was accused No.1. Thereupon accused No.1, 3 and said witness Sahebrao Patil immediately went to hotel Oberai, met Subodh Bhandari i.e. accused No. 8 and other persons of Home Trade. There accused No.1 discussed with them about purchase of Government securities and thereafter they all came to the Maharashtra State Co-operative Bank. Sahebrao Patil then at the instance of accused No.1 made inquiry with the bank officers. On 1/2/2002 in Mumbai accused Nos. 1, 3, witness Sahberao Patil, accused No.8 and others of Home Trade found that 30 crores of N.D.C.C. Bank were credited in the account of O.D.C.C. Bank. Thereupon there was discussion between accused Nos.1 and 3 about the purchase of Government securities. Thereafter, they have contacted accused No.4 (Deputy Chief Officer of O.D.C.C. Bank) on phone and asked him to send telephone message to the Maharashtra State Co-operative Bank for transferring aforesaid 30 crores in the account of Home Trade. Accordingly accused No.4 from ODCC Bank in Osmanabad sent message whereupon that amount went in the account of Home Trade.

That time accused Nos. 8 and others of Home Trade, accused No.1 and 3 discussed about purchase of Government securities. Witness Sahebrao Patil then at the instance of accused No.1 went to the office of Home Trade at Washi for collecting receipts. The value of Government securities was 29,99,34,591/-. For remaining Rs. 65409/- the Home Trade issued a cheque to O.D.C.C. Bank. That cheque was then encashed and credited in the account of O.D.C.C. Bank.

18 Thus, sending message by accused No.4 from ODCC Bank in Osmanabad was one of the series of acts of offences in question. As per sections 182(1) Cr.P.C. the Court from whose local jurisdiction such message is received gets jurisdiction to enquire into and try the case. Therefore this Court has got jurisdiction to inquire into and try the case.

19 It may also be pointed out that a Court gets jurisdiction to try the case of criminal breach of trust or misappropriation if within the local jurisdiction of that Court any part of the property which is the subject of offence was received or retained, or was required to be returned or accounted for, by the accused person. This is provided in S. 181(4) Cr.P.C. which reads as under -

“ 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.”

(emphasis supplied)

20 It appears from investigation papers that since ODCC Bank did not receive RBI receipts of Government securities from Home Trade that bank issued letters from time to time to Home Trade. The Home Trade then sent letters to ODCC Bank that securities and receipts would be sent as soon as received by it. However no receipts of securities were sent. Therefore, the deceased accused No.1 was insisting on Home Trade to return the amount to the bank. Accordingly Home Trade issued a cheque of Rs. 30,89,07,975/- for returning that amount to the bank. But that cheque was dishonored.

21 Thus, it appears from the prosecution case that ODCC Bank was insisting on accused Nos. 7 to 9, Directors of Home Trade, to return their money to their ODCC Bank in Osmanabad office or it be accounted for. That money is the subject of the offences in question. Home Trade was making correspondence and even intended to return money by sending cheques to the office of ODCC in Osmanabad. Therefore, Section 181(4) Cr.P.C., in fact, assists the contention of prosecution that this Court has jurisdiction to try this case.

22 It may also be pointed out that if the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of provisions of S. 223 Cr.P.C. the offences may be enquired into or tried by any Court competent to enquire into or try any of the offences as provided in S. 184 Cr.P.C. Section 223 (e) Cr.P.C. reads as under -

“The following persons may be charged and tried together, namely :-

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence ;”

23 Thus, in the instant case considering the prosecution case and above quoted S. 223(e) Cr.P.C. this Court has jurisdiction to try the case.

24 Further it may also be pointed out that u/s. 179 Cr.P.C. a person accused of the commission of an offence is triable by the Court within the local limits of whose jurisdiction the act amounting to offence has been done or the consequence of that act has ensued. In the instant case, according to prosecution, due to offences in question it is the ODCC Bank having its main/head office in Osmanabad has suffered wrongful loss to the extent of Rs. 30 crores. Thus, the consequences of offences stated to be ensued in Osmanabad i.e. within the local jurisdiction of this Court. On this count also this Court has got jurisdiction to try the case.

25 Ld. Adv. for accused No. 7 placed heavy reliance on the written complaint which was lodged by deceased accused No.1 with Mumbai Police. But because of that complaint the jurisdiction of this

Court cannot be ousted.

26 Thus, considering all aspects of the matter with regard to the jurisdiction of the Court I am of the opinion that there is no merit in this application. Hence the following order.

ORDER

Application Exh. 529 stands rejected.

sd/-

Date :- 23/10/2013.

(C.P.Gaddam)
Chief Judicial Magistrate,
Osmanabad.