

IN THE HIGH COURT OF JUDICATURE OF BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. OF 2026****DISTRICT : DHARASHIV**

Sanjay Hariram Agarwal ... PETITIONER

Versus

State of Maharashtra ... RESPONDENT

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PLACE : AURANGABAD [NIKHIL S. JAJU]
DATE : 16/07/2026 ADVOCATE FOR PETITIONER.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. _____ OF 2026

DISTRICT : DHARASHIV

Sanjay Hariram Agarwal ... PETITIONER

Versus

State of Maharashtra ... RESPONDENT

SYNOPSIS

S.NO. DATE

PARTICULARS

- | | | |
|---|----------|--|
| 1 | | FIR No. 106/2002 under section 120B, 218, 406, 409, 420, 468, 471 r/w 34 came to be registered at Osmanabad Police Station regarding alleged irregularities in transactions relating to Government Securities worth approximately Rs.30 Crores and R.C.C. No.398/2002 came to be instituted against several accused including the petitioner, who was arrayed as Accused No.7. |
| 2 | 8/5/14 | After rejection of the discharge application, charges came to be framed against the petitioner by the Learned Chief Judicial Magistrate, Osmanabad. |
| 3 | 17/11/14 | Prosecution Witness No.17, namely Shri Sunil Digambar Patil, was examined. On account of unavoidable absence of the petitioner's advocate, an adjournment application (Exh.791) was filed. The same was rejected and a "No Cross" order was passed, thereby closing the petitioner's right to cross-examine PW- |

17.

- | | | |
|---|-----------------|---|
| 4 | 2014
19/5/25 | Further proceedings in the trial remained stayed by orders passed by this Hon'ble Court and thereafter by the Hon'ble Supreme Court for a period of more than ten years. The petitioner was not responsible for the delay occasioned during this period. |
| 5 | 11/12/25 | This Hon'ble Court, in Criminal Revision Application No.366 of 2025, partly allowed the revision and directed framing of alternative charges. |
| 6 | 15/01/26 | Pursuant to the order passed by this Hon'ble Court, charges were re-framed by the Learned Trial Court. |
| 7 | 10/06/26 | Owing to serious illness of the earlier engaged Senior Counsel, the petitioner appointed a new advocate. During inspection of the record, it was noticed for the first time that PW-17 had remained un-cross-examined due to the "No Cross" order dated 17.11.2014. |
| 8 | 22/06/26 | The petitioner immediately filed an application below Exh.1202 under Section 311 of the Code of Criminal Procedure, 1973 (corresponding to Section 348 of BNSS, 2023), seeking recall of PW-17 for cross-examination in order to secure a fair trial. |
| 9 | 04/07/26 | The Learned Chief Judicial Magistrate, Dharashiv, rejected Exh.1202 mainly on the ground that the trial had been directed to be concluded within a stipulated time by the Hon'ble Supreme Court and held that the application was |

intended to delay the proceedings.

10

Being aggrieved by the impugned order dated 04.07.2026 and as denial of opportunity to cross-examine PW-17 seriously prejudices the petitioner's right to a fair trial, the petitioner has preferred the present Criminal Writ Petition.

POINTS TO BE HEARD :-

1] Whether the impugned order dated 04.07.2026 passed below Exh.1202 in R.C.C. No.398/2002 is illegal, arbitrary and contrary to the settled principles governing Section 311 of the Code of Criminal Procedure?

2] Whether the Learned Trial Court erred in refusing recall of PW-17 merely because the trial was time-bound, thereby defeating the petitioner's fundamental right to a fair trial and effective cross-examination under Article 21 of the Constitution of India?

3] Whether the testimony of PW-17, being the only prosecution evidence remaining untested by cross-examination, is essential for a just decision of the case and therefore required recall under Section 311 Cr.P.C. / Section 348 BNSS?

ACTS & RULES :-

- 1] Constitution of India.
- 2] Code of Criminal Procedure, 1973.
- 3] Bharatiya Nagarik Suraksha Sanhita, 2023.

AUTHORITIES :-

At present Nil.



PLACE : AURANGABAD

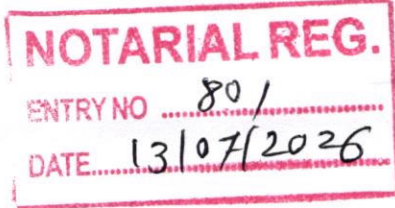
[NIKHIL S. JAJU]

DATE : 16/07/2026

ADVOCATE FOR PETITIONER.

IN THE HIGH COURT OF JUDICATURE OF
BOMBAY BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. _____ OF 2026



DISTRICT: DHARASHIV (O'BAD)

In the matter of Article 227 Of The
Constitution Of India;

AND

In the matter of Section 482 of the Code of
Criminal Procedure, 1973 (corresponding to
Section 528 of the Bharatiya Nagarik
Suraksha Sanhita, 2023);

AND

In the matter of Section 311 of the Code of
Criminal Procedure, 1973 (corresponding to
Section 348 of the Bharatiya Nagarik
Suraksha Sanhita, 2023);

AND

In the matter of Impugned Order dated
04.07.2026 passed by the Learned Chief
Judicial Magistrate, Osmanabad
(Dharashiv), below Exhibit 1202 in R.C.C.
No. 398 of 2002.



S. H. ...

1] Sanjay Hariram Agarwal,
Age: 60 Years, Occupation: Business,
R/o : 7, Hari Sava Street, Kidderpore, Kolkata,
West Bengal.

.... Petitioner

(Orig. Accused No. 7)

VERSUS

1] The State of Maharashtra,
Through Police Station, Osmanabad,
Taluka & Dist.: Dharashiv (O'Bad) **.... Respondent**

TO,
THE HON'BLE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES OF
THE HIGH COURT OF JUDICATURE OF
BOMBAY, BENCH AT AURANGABAD.



THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED:

MOST RESPECTFULLY SHOWETH AS UNDER:

1] The Petitioner is filing this Criminal Writ Petition under
Articles 227 of the Constitution of India, read with the

inherent powers of this Hon'ble Court, to challenge the impugned order dated 04.07.2026. This order was passed by the Learned Chief Judicial Magistrate, Osmanabad, below Exhibit 1202 in R.C.C. No. 398/2002. By the impugned order, the Learned Trial Court refused to set aside a "no cross", and rejected the Petitioner's request to recall Prosecution Witness No. 17 (PW-17) for cross-examination. The Trial Court rejected the application simply because the trial is time-bound. This refusal severely damages the Petitioner's right to a fair trial, as all other witnesses in this case have been cross-examined, leaving only this witness's testimony uncontested.

2] The Petitioner submits that, petitioner is arrayed as Accused No. 7 in R.C.C. No. 398/2002. The case is based on FIR No. 106/2002 under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 came to be registered at the Osmanabad Police Station. The allegations involve complex commercial transactions regarding the purchase of Government Securities worth Rs. 30 Crores. It is alleged that, the Petitioner was a Director of Home Trade Ltd. (HTL) at the relevant time. The



S. A. ASHAR

Petitioner has always respected the legal process and has actively participated in the trial. The petitioner submits that, petitioner filed application for discharge, which were unfortunately rejected. Subsequently, on 08.05.2014, the Trial Court framed charges against the Petitioner. As the trial progressed, the prosecution examined several witnesses. It is a matter of record that all other prosecution witnesses have been duly cross-examined by the defence, except for Witness No. 17. That, On 17.11.2014, PW-17, Mr. Sunil Digambar Patil, was examined by the prosecution. However, on that specific day, the advocate representing the Petitioner was not present due to unavoidable personal difficulties. The petitioner submits that, as the advocate of the petitioner was absent, an application for adjournment (Exhibit 791) was filed. The Learned Trial Court rejected this application on the same day and passed a "no cross" order, closing the Petitioner's right to cross-examine this important witness. The petitioner submits that, petitioner was not aware of this fact. The copy of Evidence, copy of application seeking adjournment and copy



of no cross order 17.11.2024, are annexed herewith and marked as **Exhibit – A.**

3] The petitioner submits that, after this event, the proceedings in this trial were stayed by this Hon'ble High Court, and later by the Hon'ble Supreme Court of India. The trial remained completely stayed and pending for over ten years, until the stay was finally came to an end on 19.05.2025. The Petitioner is in no way responsible for this ten-year time consumed. The copy of order passed by the Hon'ble Bombay High Court and Hon'ble Supreme Court, are annexed herewith and marked as **Exhibit – B.**

4] The petitioner submits that, after the stay came to an end, the Petitioner filed an application under Section 216 of the Criminal Procedure Code to alter the charges, pointing out that charges for criminal breach of trust and cheating cannot exist together. The petitioner submits that, the Trial Court rejected said application, the Petitioner approached this

5-Arrow

Hon'ble Court. On 11.12.2025, this Hon'ble Court partly allowed Criminal Revision Application No. 366 of 2025 and directed the Trial Court to frame the charges in the alternative. The charges were then re-framed on 15.01.2026. The copy of the order dated 11.12.2025, passed by this Hon'ble Court in Criminal Revision Application No. 366 of 2025, is annexed herewith and marked as **Exhibit – C**.

5] The petitioner submits that, unfortunately, the senior advocate previously engaged by the Petitioner suffered a serious medical condition and was hospitalized. As a result, the Petitioner had to appoint a new advocate on 10.06.2026. On this very day, the Petitioner's statement under Section 313 of the Criminal Procedure Code was recorded. The petitioner submits that, when the newly appointed advocate inspected the old case files, it came to light that PW-17 had never been cross-examined due to the 2014 "no cross" order. The petitioner submits that, to ensure a fair trial, the Petitioner immediately filed an application (Exhibit 1202) on 22.06.2026 to recall PW-17 under Section 311 of the CrPC



(Section 348 of the BNSS). The petitioner submits that, however on 04.07.2026, the Learned Chief Judicial Magistrate, Dharashiv, rejected this application. The Magistrate noted that the Supreme Court had directed the trial to be completed by 15.07.2026, and wrongly concluded that the Petitioner's genuine request was merely a tactic to delay the trial. The copy of application Exh. 1202 & copy of order dated 4/7/2026, are is annexed herewith and marked as **Exhibit – D.**



6] The petitioner being aggrieved and dissatisfied by the impugned order dated 04.07.2026, passed by Learned Chief Judicial Magistrate, Dharashiv, below Exh. 1202, in Regular Criminal Case No. 398/2002, prefers this writ petition under Article 227 of The Constitution of India & Section 482 of the Code of Criminal Procedure, 1973 (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) on the following amongst the others grounds and same are raised without prejudice to each other :

S. A. Wansale

GROUNDS

- I] That the Learned Trial Court committed a serious mistake by punishing the Petitioner for the absence of his advocate on 17.11.2014. It is a well-settled principle of law that a party should not suffer due to the fault, absence, or illness of their counsel. When the advocate was not present, the Court should have allowed the recall of the witness to ensure a fair trial.
- II] The Learned Trial Court has failed to consider that if a counsel is unavailable, the Court should take a liberal view and use its power to recall witnesses so that justice is done.
- III] That the Learned Magistrate has committed error in rejecting the application simply because the trial is "time-bound" by the orders of the Supreme Court. The purpose of a speedy trial is to help the accused, not to take away their basic rights.



IV] The Learned Trial Court has failed to consider that even if the Supreme Court has made a trial time-bound, the trial court cannot refuse to recall a witness if the advocate was previously unavailable. The right to a fair trial under Article 21 of the Constitution is supreme.

V] That the Learned Trial Court failed to understand the severe damage caused to the Petitioner. All other witnesses in this trial have been cross-examined. PW-17 is the only exception. If the evidence of PW-17 goes uncontested, it will be treated as admitted truth and will come directly into the way of the Petitioner's defence. The failure to test this evidence is fatal to the Petitioner's case and results in a complete miscarriage of justice.

VI] That recalling this witness will not harm the prosecution's case. The matter is currently pending for the examination of defence witnesses. If PW-17 is called for re-examination and cross-

S. A. M. M. M.

examination at this stage, it can be done quickly and alongside the defence witnesses. The Petitioner undertake not to seek any further adjournments for this witness. Therefore, no prejudice will be caused to the prosecution.

VII] That the Learned Magistrate incorrectly assumed the application was filed to delay the case. The time consumed in progress of prosecution from 2014 to 2025 was due to the stay orders from the High Court and Supreme Court. Furthermore, the new advocate was appointed on 10.06.2026, and the application to recall the witness was filed promptly on 22.06.2026. The Applicant's intention is solely to afford an opportunity for a fair trial, not to delay the matter.

VIII] That the law regarding the recall of witnesses under Section 311 of the CrPC (now Section 348 of the BNSS) is clear. The provision states that a Court shall recall a witness if their evidence



appears essential to the just decision of the case. Since PW-17's uncontested testimony would unfairly harm the Petitioner, cross-examining him is absolutely essential for a just decision. The Trial Court failed to exercise its mandatory duty under this law.

IX] Even otherwise impugned order is bad in law needs to be quashed and set aside.



X] That, the Learned Trial Court has failed to properly exercise the jurisdiction and discretion vested in it.

7] The petitioner crave leave to add, amend or alter the ground of writ petition if and when necessary.

8] That the petitioner undertakes to supply the English translation of Marathi documents as and when directed by this Honorable Court.

S. Anand

9] The petitioner has not filed any other or similar appeal in the Supreme Court of India or in any other Court touching the subject matter of this writ petition.

10] **IT, IS THEREFORE, PRAYED THAT :-**

- A] Writ Petition may kindly be allowed.
- B] That, impugned order dated 04.07.2026, passed by Learned Chief Judicial Magistrate, Dharashiv, below Exh. 1202, in Regular Criminal Case No. 398/2002, may kindly be quashed and set aside.
- C] Pending hearing and final disposal of the present criminal writ petition, further proceedings in Regular Criminal Case No. 398/2002 pending before Learned Chief Judicial Magistrate, Dharashiv, may kindly be stayed and suspended.
- D] Ad-interim relief in term of prayer clause 'C' may kindly be granted.



S. M. Kumar

E] And/ or to grant any other relief to which petitioner is found entitle to in the fact of the present case and law.

AND FOR THIS ACT OF KINDNESS THE PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

DATE : 13/07/2026

NIKHIL S. JAJU

PLACE : AURANGABAD

ADVOCATE FOR PETITIONER

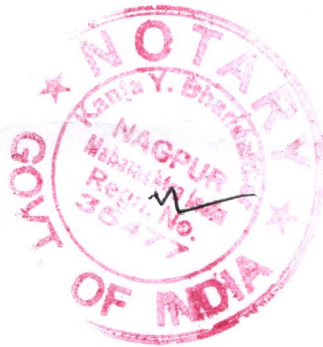


:: VERIFICATION ::

I, Sanjay Hariram Agarwal, Age: 60 Years, Occupation: Business, R/o : 7, Hari Sava Street, Kidderpore, Kolkata, West Bengal, do hereby state on solemn affirmation that, content of this writ petition in para 1 to 10 and payer clause A to E are read over to me and are explained to me in english and same are true and correct to the best of my knowledge and belief.

Hence, verified on this 13th day of July, 2026 at

Nagpur.



Identified by :

N.S. Giripunje

Advocate.

Deponent,

S. Agarwal

Sanjay Hariram Agarwal



Sworn before me on this 13 dt.
day of 07 20 26 at NAGPUR by
Shri/Smt./Ku. *Sanjay H. Agarwal*
R/o. *Nagpur* who has been identified
by Shri/Smt. *N.S. Giripunje*.
Advocate, NAGPUR.

Kanta Y. Bhandakkar

Kanta Y. Bhandakkar
NOTARY
NAGPUR (M.S.) INDIA

q/352
R.C.C. No. 398/2002
Exh. No.786

Deposition of witness No. 17 for State.

I do hereby state on solemn affirmation that:

My name is : Sunil Digambar Patil.
Age about : 50 years.
Occupation : Service.
Residence at : Kalyan.

Exam-in-Chief by Spl. P.P. Shri.B.N.Karanjkar for State.

On 01/02/2002 I was working as a Ledger Keeper in Head Office of Maharashtra State Co-operative Bank, Mumbai. On 1/2/2002 the amount of Rs. 30 crore of Osmanabad District Central Co-operative Bank was deposited in Home Trade. I received the voucher from the voucher department. The said voucher now shown to me, it is the same, it is at Exh. 787. Accordingly I taken the entry in the ledger. Now the verified copy of the ledger entry which is verified from the original shown to me , it is the same, it is at Exh.788. On the same day Home Trade has deposited Rs. 29,99,99,766=67/- in Nagpur District Central Co-operative Bank vide cheque. I myself made the entry regarding deposit of Rs. 30 Crore of Osmanabad District Central Co-operative Bank in Home Trade. Its voucher now shown to me, it is the same, it is at Exh. 789. On 5/2/2002 Home Trade had given the cheque of Rs. 65,409/- to deposit in Osmanabad District Central Co-operative Bank. I can identify the said cheuqe if shown to me. The cheque at Exh. 736 is the same. I myself had taken the entry in ledger book. The ledger entry which is shown to me, it is the same as per original ledger. It is at Exh. 790.

Cross.exam. by Adv. Shri.S.T.Tanwade for accused No.3

During the period from 1/2/2002 to 5/2/2002 except 30 Crore no other transaction was take place to Home Trade. It is true to say that

before deposit of 30 crore the amount of Rs. 1,15,969=11 ps. was balanced in the name of Home Trade. It is true to say that during the period 1/2/2002 to 5/2/2002 no amount was deposited by Nagpur District Central Co-operative Bank in the name of Home Trade. I cannot state for what purpose Rs. 30 Crore was deposited in the account of Home Trade.

Cross.exam. by Adv. Shri.S.V.Tambe for accused No.4

It is true to say that over Exh.789 there is no signature of the officer of the ODCC Bank.

Cross.exam. by Adv. Shri.A.D.Gapat for accused No.5

Adopted.

Cross.exam. by Adv. Shri.M.S. Patil for accused No.7

Adv. for the accused No.7 filed application Exh. 791 seeking time for cross-examination which was rejected. Hence no cross by adv. of accused No.7

Cross.exam. by Adv. Shri.R.R.Garad for accused No.8

Adv. for the accused No. 8 filed application Exh. 785 seeking time for cross-examination which was rejected. Hence no cross by adv. of accused No.8

Cross.exam. by Adv. Shri.V.V.Shinde for accused No.9

It is true to say that the transaction regarding giving of voucher and cheque used to take place during banking hours. It is not true to say that one Kalbhor was assigned the work for making the entry on the ledger. It is true to say that if any transaction was taken place by the employee of the bank after office hours to which bank shall not remain responsible. All the ledger entries are taken immediately after transaction.

Cross.exam. by Adv. Shri.P.M.Nalegaonkar for accused No.10

Adopted.

17

3
C/353

R.C.C. No. 398/2002
Exh. No.786

R.O. & A.C.

(U.T.Pol)

Chief Judicial Magistrate,
Osmanabad.

Re-exam. Nil.

Date :-17/11/2014.

18

D/2543 B-6791

In the Court of Hon'ble
Chief Judicial Magistrate

At Osmanabad

R.C.C. NO 398/2002
State

V/,

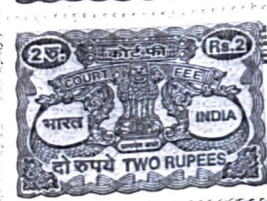
Pawanraje & others

Charge: U/s 420, 408 etc IPC

Herein the undersigned advocate of the
accused No 7 submit as under
May it please your Honour

It is submitted on behalf of the
accused No 7 that Just now accused No 7
and his Counsel representing him at Mumbai
High-Court inform that today the
matter was before Hon'ble High-Court
and it is intimated to me that next
hearing is kept on 25 of Nov 2014 and
then the present examination &
cross of the witness be deferred & according
to the above matter may kindly be kept after
25-11-2014 grt is prayed

That today's hearing & examination and
cross examination of the P.W. may
kindly be deferred by reserving right to
cross examination and matter may kindly
be fixed after 25-11-14 for the reasons
mentioned above
Date 17-11-2014
For Accused No 7



Soy
strongly rejected as the witness
is from Bombay



D/2544

R.C.C. No. 398/2002.

State/Pavanraje.

ORDER BELOW EXH.791

This is an application filed by accused No.7 granting permission to cross-examine the PW 17 on next date inter alia on contention counsel for accused No. 7 informed that the matter was before the Hon'ble High Court. Today he intimated him to keep the next hearing on 25th November, 2014 and the cross-examination be deffered.

Ld. Spl.P.P. has strongly objected application as witness is came from Mumbai.

Perused the application. Say filed by Spl.P.P. It is material to note that the witnesses are coming from Mumbai. They had repeatedly came to depose in this case three times. In this case Hon'ble Apex Court has directed to dispose of the matter on or before 31st October, 2014. It is material to note that as per the request of accused No.7 documents were also called which is required for the cross-examination. Witness also produced the said document today. The reason stated in the application does not appears to be convincing one. Considering the urgency in the matter application ought to be rejected. Hence I proceed to pass the following order.

ORDER

1. Application is rejected.
2. No order as to costs.

Date :- 17/11/2014.

(U.T.Pol)

Chief Judicial Magistrate,
Osmanabad.

TRUE COPY

सहायक अधीक्षक

मुळ न्यायमंडळाधिकारी वॉर न्यायालय

उस्मानाबाद

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&
Compared by

In the Court of Hon'ble Chief Judicial Magistrate
at Osmanabad,
RCC Number 398 of 2002
State versus Pawan Raje and others,
Charge under Section 420, 406, etc., IPC.

Herein the undersigned advocate of the accused number 7 submit as under.

May it please Your Honour.

It is submitted on behalf of The accused No.7, that just now accused No.7 and his counsel representing him at Mumbai High Court, informed that today the matter was before Hon'ble High Court and it is intimated to me that next hearing is kept on 25th of November 2014, and till then the present examination, cross of the witnesses be deferred and according the advocate representing state was informed. So the above matter may kindly be kept after 25-11-2014.

It is prayed that today hearing and examination and cross-examination of the accused, PW may kindly be deferred by reserving right to cross-examination and matter may kindly be fixed after 25-11-14 for the reasons mentioned above.

Date 17-11-2014.

Sd/-

For Accused No.7

SAY

strongly object as the witness is from Bombay

R.C.C. No. 398/2002.

State/Pavanraje.

ORDER BELOW EXH.791

This is an application filed by accused No.7 granting permission to cross-examine the PW 17 on next date inter alia on contention counsel for accused No. 7 informed that the matter was before the Hon'ble High Court. Today he intimated him to keep the next hearing on 25th November, 2014 and the cross-examination be deffered.

Ld. Spl.P.P. has strongly objected application as witness is came from Mumbai.

Perused the application. Say filed by Spl.P.P. It is material to note that the witnesses are coming from Mumbai. They had repeatedly came to depose in this case three times. In this case Hon'ble Apex Court has directed to dispose of the matter on or before 31st October, 2014. It is material to note that as per the request of accused No.7 documents were also called which is required for the cross-examination. Witness also produced the said document today. The reason stated in the application does not appears to be convincing one. Considering the urgency in the matter application ought to be rejected. Hence I proceed to pass the following order.

ORDER

1. Application is rejected.
2. No order as to costs.

Date :- 17/11/2014.

sd/-
(U.T.Pol)
Chief Judicial Magistrate,
Osmanabad.

R.C.C. No. 398/2002.

State/Pavanraje.

ORDER BELOW EXH.785

This is an application filed by Ld. counsel for accused No.8 granting time for cross-examination of witness present today inter alia on contention that in this case prosecution has produced certain documents which are required to be studied and therefore time be granted for cross-examination of witness.

Ld. Spl.P.P. for the State objected the application on contention that documents which are produced are supplied to the defence by prosecution and therefore reason for adjournment is not convincing and hence prayed to reject it.

Perused the application and say filed by Ld. Spl.P.P. Heard Ld. counsel for accused and Ld. Spl. P.P. for the State.

It is material to note that all the documents produced by the Spl.P.P. are available on the record for the study to the Ld. counsel for the accused. I even direct him to cross-examine the witness after lunch session after study of the documents. Already Hon'ble Apex Court has directed to dispose of the matter on or before 31st October, 2014. According to me, the reason stated by the Ld. counsel for the accused No.8 does not appears to be convincing one to grant time for cross-examination of the witness No.17. Hence application is ought to be rejected. Hence I proceed to pass the following order.

ORDER

1. Application is rejected.
2. No order as to costs.

Date :- 17/11/2014.

sd/-
(U.T.Pol)
Chief Judicial Magistrate,
Osmanabad.

True copy



N.S.Jaju Adv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 627 OF 2014

Sanjay Hariram Agarwal .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.Niteen Pradhan a/w Ms.S.D.Khot & Ms.Ameeta Kuttikrishnan,
Advocate for the Applicant.
Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 25th NOVEMBER, 2014.

P.C. :

1 Heard.

2 Leave to move the Hon'ble The Chief Justice for appropriate orders.

3 For the time being, stand over to 02/12/2014.

(ABHAY M.THIPSAY, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.624 OF 2014
 WITH
 CRIMINAL APPLICATION NO.625 OF 2014
 WITH
 CRIMINAL APPLICATION NO.626 OF 2014
 WITH
 CRIMINAL APPLICATION NO.627 OF 2014
 WITH
 CRIMINAL APPLICATION NO.628 OF 2014
 WITH
 CRIMINAL APPLICATION NO.629 OF 2014
 WITH
 CRIMINAL APPLICATION NO.630 OF 2014
 WITH
 CRIMINAL APPLICATION NO.631 OF 2014
 WITH
 CRIMINAL APPLICATION NO.1022 OF 2014
 (For Transfer Case)

Sanjay Hariram Agarwal ... Applicant
 V/s.

The State of Maharashtra ... Respondent

.....

Ms.Ameeta Kuttikrishnan, Advocate for the Applicant.

Mr.Deepak Thakre, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 15TH JANUARY, 2015

P.C.

1. Heard.

2. Stand over to **22nd January, 2015.**
3. Ad-interim order shall continue to remain in force, till then.

(ABHAY M. THIPSAY J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.625 OF 2014
 WITH
 CRIMINAL APPLICATION NO.626 OF 2014
 WITH
 CRIMINAL APPLICATION NO.627 OF 2014
 WITH
 CRIMINAL APPLICATION NO.628 OF 2014
 WITH
 CRIMINAL APPLICATION NO.629 OF 2014
 WITH
 CRIMINAL APPLICATION NO.630 OF 2014
 WITH
 CRIMINAL APPLICATION NO.631 OF 2014
 WITH
 CRIMINAL APPLICATION NO.1022 OF 2014

Sanjay Hariram Agarwal ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Nitin Pradhan i/b. S.D.Khot, Advocate for the Applicant.

Mr.M.R.Tidke, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 22ND JANUARY, 2015

P.C.

1. Stand over to 28th January, 2015.

2. Interim order shall remain in force till then.

(ABHAY M. THIPSAY J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.624 OF 2014
 WITH
 CRIMINAL APPLICATION NO.625 OF 2014
 WITH
 CRIMINAL APPLICATION NO.626 OF 2014
 WITH
 CRIMINAL APPLICATION NO.627 OF 2014
 WITH
 CRIMINAL APPLICATION NO.628 OF 2014
 WITH
 CRIMINAL APPLICATION NO.629 OF 2014
 WITH
 CRIMINAL APPLICATION NO.630 OF 2014
 WITH
 CRIMINAL APPLICATION NO.631 OF 2014
 WITH
 CRIMINAL APPLICATION NO.1022 OF 2014

Sanjay Hariram Agarwal ... Applicant
 V/s.
 The State of Maharashtra ... Respondent

.....

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

....

CORAM : ABHAY M. THIPSAY J.

DATED : 28TH JANUARY, 2015

P.C.

1. Ad-interim order shall continue to remain in force till 23rd February, 2015.

(ABHAY M. THIPSAY J.)

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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 exists. 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 recorgnized 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	112.25 crores
	=====

(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 हिशोबनिस,

सरव्यवस्थापक

हिशोबनीस

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

मा. अध्यक्ष

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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:-

“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 it's account in the Maharashtra State Co-operative Bank Limited, Fort Branch, Mumbai was belonging to the shareholders and depositors of 'NDCCB', Nagpur. The are 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:

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“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)

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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

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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

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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 SCC 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, relatable 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

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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 (l). 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 (l) 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

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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 Eurekha 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 to EOW, 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

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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.]

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Petition (Criminal) No.367/2024

SUBODH BHANDARI

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

(FOR ADMISSION and IA No.95106/2024-STAY APPLICATION)

WITHT.P.(Cr1.) No. 368/2024 (II-B)

(FOR ADMISSION and IA No.95231/2024-STAY APPLICATION)

T.P.(Cr1.) Diary No(s).16754/2024([TO BE TAKEN UP ALONG WITH TP(Cr1) NO.367/2024]....)

Date : 22-04-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Aastha Mehta, Adv.
Ms. Prerana Mohapatra, Adv.
Ms. Yasha Goyal, Adv.
Ms. Deepanwita Priyanka, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Siddharth Bhatnagar, learned Senior Counsel
appearing for the petitioner(s).

Signature Not Verified
Digitally signed by
Vijay Kumar
Date: 2024.04.24
10:48:50 IST
Reason: [S]

Issue notice, returnable in six weeks.

In the meanwhile, there shall be stay of further proceedings in :-

1. GR No. 2053 of 2002 pending before the Ld. ACJM Baruipur Court, West Bengal; and
2. TR No.655 of 2003 pending before Ld. ACJM Alipore, West Bengal; and
3. RCC No.398 of 2002 pending before CJM Osmanabad, Maharashtra.

(VIJAY KUMAR)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRL) NO.358/2024

SUBODH BHANDARI

PETITIONER (S)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

RESPONDENT (S)

WITH

TRANSFER PETITION (CRL.) NO. 426/2024

O R D E R

We are not inclined to transfer the matter(s).

The Transfer Petitions stand dismissed.

Pending application(s), if any, shall stand disposed of.

..... J.
[M.M. SUNDRESH]

..... J.
[RAJESH BINDAL]

NEW DELHI;
MAY 19, 2025.

ITEM NO.32

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10625-10626/2024

[Arising out of impugned final judgment and order dated 19-03-2024 in CRLWP No. 466/2015 19-03-2024 in CRLA No. 2224/2015 passed by the High Court of Judicature at Bombay at Aurangabad]

THE OSMANABAD
DISTRICT CENTRAL CO-OPERATIVE BANK LTD.

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

WITH

SLP(Crl) No. 4753-4754/2024 (II-A)

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 81426/2024

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 85030/2024

FOR EXEMPTION FROM FILING O.T. ON IA 85031/2024

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 90066/2024

FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 113645/2024

FOR EXEMPTION FROM FILING O.T. ON IA 113649/2024

T.P.(Crl.) No. 367/2024 (II-B)

IA No. 110453/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

T.P.(Crl.) No. 358/2024 (II-A)

IA No. 93518/2024 - EX-PARTE STAY

IA No. 108901/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

T.P.(Crl.) No. 368/2024 (II-B)

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 110926/2024

T.P.(Crl.) No. 426/2024 (II-A)

IA No. 107576/2024 - EX-PARTE STAY

IA No. 110417/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 19-05-2025 These petitions were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE RAJESH BINDAL**

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
 Dr. R. R. Deshpande, AOR
 Mr. Bhagwant Deshpande, Adv.
 Ms. Priyanka Deshpande, Adv.

 Mr. Siddharth Bhatnagar, Sr. Adv.
 Ms. Aastha Mehta, Adv.
 Ms. Deepanwita Priyanka, AOR
 Ms. Prerana Mohapatra, Adv.
 Ms. Prina Sharma, Adv.

 Mr. Shyam Divan, Sr. Adv.
 Mr. Satyajit A Desai, Adv.
 Mr. Shubham Singh, Adv.
 Mr. Sachin Singh, Adv.
 Mr. Siddharth Gautam, Adv.
 Mr. Abhinav K. Mutyalwar, Adv.
 Mr. Ananya Thapliyal, Adv.
 Ms. Anagha S. Desai, AOR
 Mr. Pratik Singh, Adv.

For Respondent(s) Ms. Meenakshi Arora, Sr. Adv.
 Dr. R. R. Deshpande, AOR
 Ms. Priyanka Deshpande, Adv.
 Mr. Bhagwant Deshpande, Adv.
 Ms. Vibha Kapoor, Adv.

 Mr. Kunal Mimani, AOR
 Ms. Shraddha Chirania, Adv.

 Mr. Shyam Diwan, Sr. Adv.
 Mr. Sachin Singh, Adv.
 Mr. Satyajit A. Desai, Adv.
 Mr. Shubham Singh, Adv.
 Mr. Siddharth Gautam, Adv.
 Ms. Anagha S. Desai, AOR
 Mr. Abhinav K. Mutyalwar, Adv.
 Mr. Ananya Thapliyal, Adv.

 Ms. Damini Chawla , AOR
 Mr. Shiv Shankar Banerjee, Adv.
 Ms. Madhurima Ghosh, Adv.

 Mr. Aaditya Aniruddha Pande, AOR
 Mr. Abhikalp Pratap Singh, Adv.
 Mr. Siddharth Dharmadhikari, Adv.
 Ms. Aagam Kaur, Adv.
 Mr. Kartikey, Adv.

Ms. Gayatri Agarwal, Adv.
Ms. Shubhangi Agarwal, Adv.
Mr. Utkarsh Kumar, Adv.

Ms. Surabhi Guleria, AOR

Mr. S. Nagamuthu, Sr. Adv.
Mr. Amit Kumar Pathak, AOR

Mr. Shyam Diwan, Sr. Adv.
Mr. Sachin Singh, Adv.
Mr. Satyajit A. Desai, Adv.
Mr. Shubham Singh, Adv.
Mr. Siddharth Gautam, Adv.
Ms. Anagha S. Desai, AOR
Mr. Abhinav K. Mutyalwar, Adv.
Mr. Ananya Thapliyal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

TRANSFER PETITION (CRL) NO.358/2024 (32.3)
TRANSFER PETITION (CRL) No. 426/2024 (32.5)

The Transfer Petitions stand dismissed in terms
of the signed order.

Pending application(s), if any, shall stand
disposed of.

SLP [CRL.] NOS.10625-10626/2024 AND (32)
SLP (Crl) No. 4753-4754/2024 (32.1)

Inasmuch as the stay granted earlier by this
Court having been vacated, and the Transfer Petitions
being Transfer Petition (Crl.) No.358/2024 and
Transfer Petition (Crl.) No.426/2024 are dismissed,
the concerned Trial Court in Osmanabad, Maharashtra
shall proceed with the Trial in RCC No.398/2002.

List the matters in the month of July, 2025.

T.P.(CrI.) No. 367/2024 (32.2)

T.P.(CrI.) No. 368/2024 (32.4)

Detagged.

(ASHA SUNDRIYAL)
DEPUTY REGISTRAR

(POONAM VAID)
ASSISTANT REGISTRAR

[Common signed order in T. P. (CRL) NO.358/2024 and
T. P.(CRL) No. 426/2024 is placed on the file]

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N.S.Jaju Adv



EXHIBIT C

CriRevn-366-2025

-1-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 366 OF 2025

Sanjay Hariram Agarwal,
Age : 60 Years, Occu: Business,
R/o 7, Hari Sava Street, Kidderpore,
Kolkata – 700 023,
West Bengal.

... Applicant
[Orig. Accused]

Versus

The State of Maharashtra,
Through Police Station, Osmanabad,
Tq. & Dist. : Osmanabad.

... Respondent

.....

Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. N. S. Jaju,
Advocate for the Revision Petitioner.
Mr. S. A. Gaikwad, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.12.2025

Pronounced on : 11.12.2025

JUDGMENT :

1. Revisionist-original accused no.7 hereby takes exception to the order dated 13.10.2025, rejecting his application Exhibit 953 seeking alteration or dropping of charges by invoking Section 216 of Cr.P.C.

2. In nutshell, it is the case of revision petitioner that, FIR No. 106 of 2002 was registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34

-2-

of IPC against in all ten persons on the premise that, deceased accused no.1 and accused no.10 were Chairman of District Central Cooperative Bank, Osmanabad and Nagpur respectively. That, by colluding and conniving with each other and other accused, it is alleged that, an amount of Rupees Thirty Crores was transferred and credited from Nagpur District Central Cooperative Bank (NDCC Bank), of which accused no.10 was Chairman, to the account of Osmanabad District Central Cooperative Bank (ODCC Bank), of which accused no.1 was Chairman, and thereafter, at the instance of accused no.4, who was Deputy Chief Officer of Osmanabad District Cooperative Bank, along with accused nos. 1 and 3, unauthorizedly credited the above amount in the account of one Home Trade Limited (of which accused no.7-present revision petitioner is Director) for purchasing Government Securities and that, on the same day, an amount of Rs.29,99,99,766/- was again transferred to account of NDCC Bank. These all transactions, according to informant, were illegal, without prior permission of Commissioner of Cooperative Societies and moreover, it was in violation of rules of RBI. On above accusations, FIR came to be registered for above offence.

3. Learned senior counsel for revision petitioner pointed out that, revision petitioner is arraigned as accused no. 7 in above crime and

moreover, he is falsely involved in the above crime. According to learned senior counsel, there was no material to connect present revision petitioner with other accused in conspiring or conniving to commit above alleged transactions. Therefore, learned senior counsel pointed out that, when investigation did not reveal any incriminating material against present revision petitioner, he had applied for discharge under Section 239 of Cr.P.C. but the same came to be dismissed by order dated 07.08.2013.

4. Learned senior counsel would further submit that, here, there is patent illegality and irregularity on the part of investigating machinery as well as trial court in invoking both the provisions i.e. under Sections 406 and 420 of IPC, in one and the same case. Learned senior counsel would emphasize that, both these provisions cannot co-exist in one and the same case, as the same are antithetical and cannot go hand in hand. According to learned senior counsel, in spite of so and there being clear law laid down by the Hon'ble Apex Court regarding the above, charges have been framed which comprises both, the offence under Section 406 as well as under Section 420 of IPC along with other offences, which, according to learned senior counsel, is impermissible in the eyes of law.

5. Apart from above submissions, learned senior counsel would submit that, here, even going by the nature of allegations, there is no criminality attributable to the accused as the transactions were purely civil in nature, of which there is clear remedy of recovery by way of civil proceedings. Consequently, criminal action, according to learned senior counsel, is misdirected.

6. Learned senior counsel criticized the observations of the trial court in its order dated 13.10.2025 pointing out that there is non-consideration of settled legal position and now, at the time of answering Section 313 Cr.P.C., learned senior counsel submits that, because of the ambiguity created by virtue of charges being framed both, under Section 406 and Section 420 of IPC, accused is not in a position to take up his defence and as such, according to learned senior counsel, revision petitioner would be deprived of fair trial. For all above reasons, learned senior counsel has raised following prayers :

“C. The impugned order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002, quashed and set aside and the application Exh. 953, under Section 216 Cr.P.C. be allowed by directing alteration of the contradictory and antithetical charges under Sections 406 and 420 and;

D. Pending hearing and final disposal of present revision application the further proceedings in R.C.C. No. 398 of 2002 may kindly be stayed.”

7. Learned senior counsel, in support of his contentions, has placed reliance on the following rulings :

- a. *Delhi Race Club (1940) Limited and others v. State of Uttar Pradesh and another* (2024) 10 SCC 690.
- b. *Shikhar Chemicals v. State of Uttar Pradesh and another* 2025 SCC OnLine SC 1643.
- c. *Bharat Uttam Rajurkar and others v. The State of Maharashtra* [Cri. WP No. 1232 of 2017 decided on 12.01.2018 by this Court at Nagpur].
- d. *Om Prakash v. State of U.P.* 2023 SCC OnLine All 2817.
- e. *Anant Prakash Sinha alias Anant Sinha v. State of Haryana and another* (2016) 6 SCC 105.

8. In answer to above, learned APP pointed out that, there is no infirmity and illegality in the impugned order. He would point out that, at the time of framing charge, all accused were made aware of the nature of charge. That, subsequently, even charge has been framed and explained and plea of the accused is also recorded. Consequently, it is his submission that, there is no merit in the revision urging to alter or drop charge by invoking Section 216 of

Cr.P.C. According to learned APP, present revision petition itself is misconceived and not maintainable as, according to him, discharge application has already been rejected by the trial court. He would submit that, draft charges were made available and both sides were appraised about the contents of the charge and thereafter charge has been framed and so, objection raised at belated stage is, according to him, a clear attempt to evade or prolong trial. He further pointed out that present attempt of petitioner is merely to prolong and protract the trial which is already made time bound by the Hon'ble Apex Court being of the year 2002. He seeks reliance on the rulings of the Hon'ble Apex Court in *K. Ravi v. State of Tamil Nadu and another* reported in 2024 DGLS (SC) 816 and *P. Kartikalakshmi v. Ganesh and another*, reported in 2017 (3) SCC 347.

9. After considering the above submissions and on going through the papers, here, there seems to be challenge to the order of rejection to alter charge, pressed into service by present revision petitioner who is arraigned as accused no.7 in above referred crime bearing no. 106 of 2002 registered at Osmanabad Police Station for commission of offence under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 of IPC.

10. Primary and fundamental submission of learned senior counsel is that, here, crime has been registered under both, Section 406 as well as 420, amongst other offences, however, above both charges cannot be invoked in one and the same matter as they are antithetical to each other. Learned senior counsel's another submission is that, accused is supposed to answer under Section 313 Cr.P.C. and therefore, he is unable to take a specific defence in view of charges being framed both, under Section 406 and 420 of IPC. Consequently, he has prayed for altering the charge/dropping the charge. Before the trial court, he had preferred application below Exhibit 953 in R.C.C. No. 398 of 2002 for either altering the charge or dropping either of the charge, and the same has been rejected.

11. Record shows that, in this case, FIR was registered on 05.05.2002. After investigation, charge has already been framed. Vide applications Exhibits 306, 407 and 502, present revision petitioner, along with other accused, had prayed for discharge by invoking Section 239 of Cr.P.C. The learned Chief Judicial Magistrate, Osmanabad, by order dated 07.08.2013, observed that, there was *prima facie* case for framing charge against all accused and no case being made out on merit for discharge, application Exhibit 407 of present revision petitioner along with other applications of two other

accused bearing nos. 306 and 502 came to be rejected by order dated 07.08.2013.

12. Record shows that, again present revision petitioner tendered application Exhibit 606, again seeking discharge and even this application, by order dated 06.05.2014, has been rejected and learned trial court has, in the concluding para observed that, matter is for framing charge but on account of absence of accused nos. 7 to 10, framing of charge has been adjourned to 08.05.2014. The learned Chief Judicial Magistrate also took a note and observed in the very order that, there were directions of the Hon'ble Apex Court to dispose off the matter by end of October, 2013 and such time has been extended till 31.10.2014, and thereby clearly directed all accused to remain present to answer the charge on 08.05.2014 without fail. Record shows that, on said date charge was also framed by learned Chief Judicial Magistrate.

13. Now, it appears that almost after more than a decade and when matter has reached the fag end of trial, in view of stage under Section 313 of Cr.P.C., surprisingly third attempt is taken, that too on the ground that Sections 406 and 420 cannot co-exist and do not go hand in hand and for the same, above referred rulings of the Hon'ble Apex Court are taken recourse to.

14. There is no dispute that, in view of above rulings of the Hon'ble Apex Court, both charges under Sections 406 and 420 cannot co-exist and are antithetical. Here, charge is already framed and there is no dispute to that extent. From copy of the charge it is emerging that amongst other offences, charges, both under sections 406 and 420 are framed. However, in view of the law laid down by the Hon'ble Apex Court in above relied cases, the same is not permissible. But, both charges can be framed in alternative and there is no illegality in the same. Consequently, to that extent, interference is called for. Hence, the following order :

ORDER

- I. Criminal Revision Application is partly allowed.
- II. The order dated 13.10.2025 passed below Exhibit 953 in R.C.C. No. 398 of 2002 by the learned Additional Chief Judicial Magistrate, Osmanabad is hereby quashed and set aside.
- III. Learned trial court to re-frame and explain the charge by framing charge under Section 406 and 420 in the alternative.
- IV. The revision is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

True copy

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N.S.Jaju Adv

IN THE COURT OF THE HON'BLE CHIEF JUDICIAL
MAGISTRATE, AT DHARASHIV

R.C.C. No. 398 of 2002

State of Maharashtra

V/s

Pavanraje and others

Exh. 1202

Claim :- Application for setting aside "no cross" order
and for recall of pw-17 for cross-examination

Herein above matter accused No. 7 Sanjay Hariram Agrawal most
humbly begs to submit as under:-

MAY IT PLEASE YOUR HONOUR

- 1) That the present matter is fixed on today's board of this Hon'ble Court. The statement U/s. 313 of Cr.P.C. of accused No. 7 was recorded on 10/06/2026. Thereafter matter is posted for defence evidence of accused.
- 2) That, prosecution Witness No. 17, namely Sunil Digambar Patil (hereinafter referred to as "PW-17"), was examined-in-chief by the prosecution on 17/11/2014.
- 3) That on the said date, the then engaged advocate for the Accused was constrained due to some issue and, therefore, an application for adjournment/time for cross-examination of PW-17 was moved on behalf of the present accused at exh. 791. However, the said application for time came to be rejected by this Hon'ble Court and an order of no-cross was passed closing the right of the Accused to cross-examine PW-17.
- 4) That, thereafter further proceedings in the present case came to be stayed by the order of Hon'ble High Court for a period of about ten years, and thereafter by the Hon'ble Supreme Court of India for about

S. Agrawal S Agrawal



*Call say of
Prosecution
22/6/2026*

one year till 19/05/2025 and thus the trial remained in abeyance during the said periods of stay.

5) That after vacation of the stay, further prosecution witnesses have been examined and thereafter the statement of the Accused No. 7 under Section 313 of the Code of Criminal Procedure has been recorded, and the matter has now reached the stage of defence evidence. Meantime senior advocate of present accused No. 7 is suffering from serious condition and hospitalized till today. Therefore, new advocate was appointed on 10/06/2026.

6) That due to the long lapse of time, change of counsel, and the intervening stay orders, the accused was under the bona fide impression that all material prosecution witnesses had been duly cross-examined. Only when the present counsel for the accused recently inspected the entire record and proceedings, after his engagement consequent upon the serious medical problems of the earlier advocate, then it came to light that PW-17 had not been cross-examined and that the "no cross" order dated 17/11/2014 was in force.

7) That the earlier advocate for the accused has, in the meantime, suffered serious medical issues, the Accused has been constrained to change his counsel due to such circumstances.

8) That PW-17 is a material witness for the prosecution, and Proper and effective cross-examination of PW-17 is absolutely essential for enabling the accused to put forth his defence and to test the veracity, correctness and completeness of the testimony of PW-17.

9) That the accused has never intended to abandon or waive his right of cross-examination of PW-17; on the contrary, an application for adjournment was moved on the very day of the examination-in-chief, which unfortunately came to be rejected, resulting in closure of cross-examination. The failure to cross-examine PW-17 is thus not voluntary or deliberate, but is the result of (i)

S. H. W. M. W.



rejection of adjournment, (ii) subsequent long-drawn stays by superior courts, and (iii) serious medical condition of the earlier advocate, culminating in change of counsel and late discovery of the omission.

10) That cross-examination is a substantive right of the accused and is an integral component of the right to fair trial guaranteed under Article 21 of the Constitution of India. Denial of an effective opportunity of cross-examination of a material prosecution witness would cause grave prejudice to the present accused and seriously impact the fairness of the trial.

11) That this Hon'ble Court is vested with very wide powers under Section 311 of the Code of Criminal Procedure to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of any inquiry, trial or other proceeding, if such evidence appears to be essential to the just decision of the case.

12) That in several decisions, the Hon'ble Supreme Court has held that the power under Section 311 CrPC must be exercised to advance the cause of justice and to ensure a fair trial, and that where denial of cross-examination would result in miscarriage of justice, recall of a prosecution witness for cross-examination may be permitted, even at a later stage of the trial.

13) That considering facts and circumstances of the present case, recall of PW-17 for cross-examination will not result in any undue prejudice to the prosecution. On the contrary, it will enable this Hon'ble Court to have the benefit of a full and fair adjudication of the rival versions and thereby reach a just decision in the matter. The Accused undertakes that he shall not seek any unnecessary adjournment and that the cross-examination of PW-17 shall be conducted on the date fixed by this Hon'ble Court without fail.

14) That the present application is made bona fide, in the interest of justice and fair trial, and not with a view to delay the proceedings or to

S. H. NAWAL

fill up any lacunae in the defence. All other grounds which are not specifically mentioned herein will be advanced at the time of argument of present application.

Hence it is prayed

That, present application may be allowed and Set aside the "no cross" order dated 17/11/2014 passed in respect of PW-17 in the present case; and Prosecution Witness No. 17, Sunil Digambar Patil may be recalled for the purpose of recording of cross-examination on behalf of the present accused No. 7.

Date :- 22/06/2026

Accused No. 7

S. Hariram
Sanjay Hariram Agrawal

Through,

Sanket S. Tambe

Adv. Sanket S. Tambe,

Dharashiv

Say of A.P.P.

Hon'ble & Respected;

In above matter already
accused No 7 on DT 25/11/2014
moved an application vide EX 791
cross examine witness No 17 and
said application rejected on material
ground, as matter is time bound
by Hon'ble Supreme Court.
So, considering above facts & circumstances
application rejected, & strike.

DT - 22/6/2023.

Through
V.S. Shewaskar
V.S. Shewaskar

R.C.C.No. 398/2002
State / Pawanraje and others



ORDER BELOW EXHIBIT NO.1202.
(CNR No. MHOS03-000396-2002)

Accused No.7 viz. Sanjay Hariram Agrawal has filed present application and thereby prayed to set aside No Cross Order passed against him on dated 17.11.2014 in respect of P.W. No. 17 viz. Sunil Digambar Patil vide Exh.786 and further to recall P.W. No. 17 viz. Sunil Digambar Patil for the purpose of recording of his cross-examination.

2. It is contended that, the present matter is fixed for defence evidence. Further, the prosecution had examined P.W. No. 17 viz. Sunil Digambar Patil on 17.11.2014. On that day, the earlier Advocate of the accused No. 7 had moved an adjournment application which came to be rejected and No Cross Order came to be passed. Thereafter, further proceeding in the present matter came to be stayed by the order of Hon'ble High Court for a period of about 10 years, and thereafter, by the order of Hon'ble Supreme Court of India for about one year till 19.05.2025 and thus, the trial remained in abeyance during the above said period. After vacation of this stay order, prosecution examined it's remaining witnesses and thereafter statement of accused under Section 313 of Cr.P.C. came to be recorded and now the matter has been reached the stage of defence evidence.

3. It is further contended that, the earlier Advocate for the accused has, in the meantime, suffered serious medical issue and

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therefore, the accused constrained to change his advocate. New advocate is appointed by the accused No. 7 on 10.06.2026. When the new Advocate for the accused recently inspected the entire record, then it comes to his knowledge that, P.W. No.17 had not been cross-examined. The P.W. No. 17 is a material witness and effective cross-examination of the said witness is essential for enabling the accused to put forth his defence and to test the veracity of the said witness.

4. It is further contended that, failure to cross-examine P.W. No. 17 was not deliberate but it was the result of rejection of adjournment application, subsequent long drawn stay orders and serious medical condition of the earlier advocate. Further, recalling of the said witness for cross-examination will not cause prejudice to the prosecution, on the contrary, it will enable the Court to have full and fair adjudication of rival contentions and to reach a just decision in the matter. Hence, the accused has filed the present application to set aside No Cross Order, dtd. 17.11.2014 passed in respect of P.W. No.17 and further to recall him for the purpose of recording of his cross-examination on behalf of accused No.7. Hence, the present application.

5. Prosecution has filed it's say on the backside of the application and thereby taken strong objection on the present application. It is contended that, in the present matter, the accused No. 7 had moved an adjournment application on 25.11.2014, which came to be rejected on material ground i.e. the matter was time bond by the Hon'ble Supreme Court. Hence, considering the said fact, the present application is liable to be rejected. Hence,




prosecution has prayed to reject the application.

6. Heard both sides at length. Learned Advocate Shri. S.S. Tambe for accused No. 7 has argued that, cross-examination is a substantive right of the accused and it is an integral component of the right to fair trial guaranteed under Article 21 of the Constitution of India. Further denial of an effective opportunity of cross-examination of material prosecution witness would cause grave prejudice to the accused and it will seriously impact the fairness of the trial. He has further argued that, the Court is vested with very wide powers under Section 311 of Code of Criminal Procedure to summon any person as a witness, or to recall and re-examine any person already examined, at any stage of the any inquiry, trial or other proceeding, if such evidence appears to be essential for the just decision of the case. He has further argued that, the power under Section 311 of Cr.P.C. must be exercised to advance the cause of justice and to ensure a fair trial, and further, where denial of cross-examination would result in miscarriage of justice, recall of prosecution witness may be permitted, even at the later stage of the trial. Lastly, he has argued that, the failure to cross-examine P.W. No. 7 was not voluntary or deliberate but was the result of the circumstances set out in the application. Hence, he has argued to allow the application. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court of India in the following case:-

Sovaran Singh Prajapati Versus State of U.P.

reported in Law Finder Doc Id# 2695295.

Putre

I have gone through the above ruling minutely and carefully. In the above said judgment, Hon'ble Apex Court has laid down following guidelines:-

"30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.P.C. :

(a) The Section is divided into two parts, the first being directory with the use of the word 'may' and the latter being mandatory with the use of the word 'shall'.

(b) The power of the Court is couched in the widest terms possible with no express limitation thereon.

(c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.

(d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.

(e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.

(f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.

(g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to cross-examination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.



(h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution."

In the light of above said guidelines the available material is to be scrutinized.

7. Perused the application and say thereon. Perused the entire record of the case. Before going into the merits of the matter, first of all it is necessary to mention here that, the present matter is of the year 2002. Further, Hon'ble Supreme Court of India in Petition(s) for Special Leave to Appeal (Cri) (Nos.)10625-10626/2024, vide its order dated 09.01.2026 has specifically directed to this Court to make an endeavor to dispose of the matter within a period of six months after framing the charges. The charge has been re-framed on 15.01.2026 and therefore, as per the directions of Hon'ble Apex Court, the present matter is required to be disposed of **on or before 15.07.2026**.

8. Now, so far as, present application is concerned, it appears that, the accused No. 7 has filed present application under Section 311 of Cr.P.C. for recalling of P.W. No. 17 viz. Sunil Digambar Patil, who was examined on 17.11.2014 vide Exh.786. According to the accused failure to cross-examine P.W. No. 17 was not deliberate but it was the result of rejection of adjournment application, subsequent long drawn stay orders and serious medical condition of the earlier advocate. Hence, it appears that, accused is seeking permission to cross-examine P.W. No. 17 by setting aside No Cross Order, dtd. 17.11.2014 on the following three grounds:

There

i] **Rejection of adjournment application (Exh. 791).**

Perusal of record and roznama shows that, the original charge was framed against all the accused on 08.05.2014 vide Exh.641. Thereafter, prosecution examined in all 22 witnesses till 09.12.2014. P.W. No. 17 viz. Sunil Digambar Patil was examined on 17.11.2014 vide Exh.786. Further, it appears that, the accused No. 7 moved an application for adjournment vide Exh. 791 which came to be rejected by the Court and thereafter No Cross Order came to be passed against the present accused. The relevant portion of the order is reproduced as under.

Order below Exh.791.

XXX

XXX

Perused the application. Say filed by Special PP. It is material to note that, the witnesses are coming from Mumbai. They had repeatedly came to the Court in this case three times. In this case, Hon'ble Apex Court has directed to dispose of the matter on or before 31st October, 2014. It is material to note that, as per the request of Accused No. 7 documents were also called, which is required for cross-examination. Witness also produced the said document today. The reasons stated in the application does not appear to be convincing one. Considering the urgency in the matter, application ought to be rejected. Hence, I proceed to pass the following order.

Order

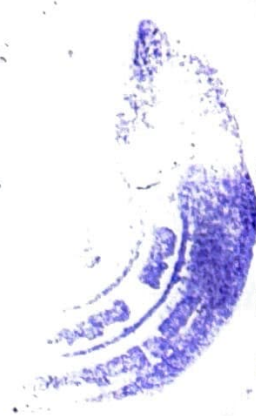
- 1) *The application is rejected.*
- 2) *No order as to costs.*

Dtd. 17.11.2014

(xxx)

*Chief Judicial Magistrate,
Osmanabad.*

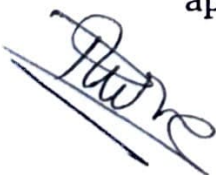
Three



Hence, it appears that, the adjournment application filed by accused No. 7 vide Exh.791 came to be rejected and No Cross Order came to be passed against accused No. 7. Further it appears that, before passing No Cross Order, the witness had come thrice in the Court from Mumbai, which shows that, sufficient opportunities were already granted to the accused which were not availed by him. Now, it appears that, after lapse of near about 11 years, the accused has filed present application for setting aside No Cross Order passed on 17.11.2014. There is gross delay in moving the application.

ii] Subsequent long drawn stay orders.

The accused has stated that, he could not move the present application earlier because after passing of the No Cross Order, dtd. 17.11.2014, further proceeding in the present matter came to be stayed by the order of Hon'ble High Court for a period of about 10 years, and thereafter, by the order of Hon'ble Supreme Court of India for about one year till 19.05.2025 and thus, the trial remained in abeyance during the above said period. However, the said contention cannot be accepted for the simple reason that, the prosecution has examined P.W. No. 17 on 17.11.2014 and thereafter prosecution has examined P.W. No. 18 to 20 on 01.12.2014, P.W. No. 21 and 22 on 09.12.2014 and the accused was present along with his advocate during the examination of above said witnesses. He either adopted the cross-examination of the said witnesses conducted by other advocates representing other accused or declined to conduct the cross-examination. Hence, it appears that, after examining P.W. No. 17, the matter was not



immediately stayed and the accused was having sufficient opportunity to make an application for setting aside the order dated 17.11.2014. Therefore, the contention of the accused that he could not file an application to set aside No Cross Order due to stay of the Higher Courts cannot be accepted. Admittedly, the matter was stayed by the Hon'ble Bombay High Court vide order dated 19.12.2014 in Criminal Application No. 1022/2014 and thereafter in view of the order of Hon'ble Apex Court dated 20.11.2023 the matter proceeded further. Thereafter, again the matter was stayed by the order of Hon'ble Supreme Court of India in Transfer Petition, dtd. 22.04.2024. The said stay order is vacated by the Hon'ble Supreme Court of India on 19.05.2025 by dismissing the Transfer Petition Cri. No. 426/2024 with T.P. (Cri.) No. 358/2024 vide its order dt. 19.05.2025. Hence, since 19.05.2025 till today, the matter is pending before this Court for trial. Thereafter, in view of the application filed by the present accused, the charge is re-framed on 15.01.2026. After re-framing of charge also, the accused No. 7 has not filed the present application. Thereafter, the matter posted for recording of his statement under Section 313 of Cr.P.C. The record also shows that, since, 17.11.2025 till 10.06.2026, the present case was pending only for recording of statement of this accused U/sec. 313 of Cr.P.C. The record also shows that the accused No. 7 was avoiding to record his statement on one or other pretext. Finally, his statement under Section 313 of Cr.P.C. came to be recorded on 10.06.2026 and matter posted for defence evidence. At this stage, the accused moved the present application. Hence, it appears that, there was gross delay in filing the present application on the part of the




present accused only. Hence, the ground mentioned by the accused that, he could not file the application within reasonable time due to the stay orders of the Higher Courts cannot be accepted.

iii] Serious medical condition of the earlier advocate.

The last ground mentioned by the accused for the delay is serious medical condition of the earlier advocate. The said ground is also not proper for the reason that, after the hospitalization of his earlier advocate, the other advocates from the office of his earlier advocate have conducted the matter before this Court. Further, on certain occasions the accused No. 7 had also engaged the counsels appearing before Hon'ble High Court and Hon'ble Apex Court for arguing the applications filed by him and lastly, he appointed the present advocate who has filed the present application. Hence, it cannot be said that, due to illness of his earlier advocate, the accused could not file the present application earlier. The other advocates were continuously representing him in the present matter. Hence, the above said ground is also not proper.

9. In view of above discussion, it becomes clear that, inspite of having knowledge of the fact that, the present matter is time bound and as per the directions of Hon'ble Apex Court, present case is required to be disposed of on or before 15.07.2026, the accused is using delayed tactics only to prolong the matter. Further, the accused was having sufficient opportunity to move the application earlier, he failed to do so. There is gross delay in filing the present application. The application appears to be filed intentionally in order to cause delay in the matter. Hence, in view

of this, the application filed by accused No. 7 is liable to be rejected. In view of above discussion, I passed the following order.

ORDER

The application at Exh.1202 is rejected.

Date :- 04/07/2026.


(Smt. Pradnya V. Medhe)

Chief Judicial Magistrate,
Osmanabad.

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सिवालय जलियाँ
मुख्य न्यायाधीशजी जंमो न्यायालय
उस्मानाबाद
15/7/2026



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N.S.Jaju Adv