

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
M.A. No 1935 OF 2022
IN
TRANSFER PETITION (Crl.) NO. 333-348 OF 2021**

IN THE MATTER OF:

KETAN KANTILAL SETH ...PETITIONER

VERSUS

THE STATE OF GUJARAT & ORS. ...RESPONDENTS

**APPLICATION ON BEHALF OF THE RESPONDENT NO.
12 / APPLICANT FOR MODIFICATION/RECALL OF
ORDER DATED 09.09.2022**

**[PAPER-BOOK]
(FOR INDEX, KINDLY SEE INSIDE)**

**ADVOCATE FOR RESPONDENT NO. 12 / APPLICANT:
AADITYA A. PANDE**

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ORDER DATED 09.09.2022**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
RESPONDENT NO. 12 ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Respondent No. 12 / Applicant, i.e., State of Maharashtra is constrained to file the instant application *inter alia* seeking modification/recall of Order dated 09.09.2022 passed by this Hon'ble Court in the Transfer Petition (Crl) 333-348 filed by the Petitioner seeking transfer of around 16 pending trial, against the Petitioner and his co-accused, in different states across the count to the Competent Court of Additional Chief Judicial Magistrate, Esplanade, Mumbai. A true copy of order dated 09.09.2022 passed by this Hon'ble Court in the present Petition i.e., Transfer Petition (Crl) 333-348 of 2021 is marked and annexed herewith as **Annexure-A (Page No. 11 – 26)**.

2. At the outset, the Applicant state most respectfully submits that the present matter was last listed on 22.07.2022 for arguments only on I.A. No. 134476 of 2021 (Application for intervention by one Sh. Omprakash Bhaurao Kamdi), however, the Petitioner, without giving an opportunity to the Respondent No. 12 / Applicant to be heard, proceeded with arguing the main Petition in the absence of the Applicant herein.

3. That, vide the Final Order dated 09.09.2022, this Hon'ble Court while dismissing the aforementioned applicant for Intervention being I.A. No. 134476 of 2021, granted relief to the Petitioner in the present Petition and allowed the transfer of all the pending trials against the Accused Persons/Petitioner to the court of the Principal Judge, Bombay City Civil and Sessions Court, Fort Mumbai, Maharashtra - 400 032.

4. It is pertinent to mention that the controversy in the present matter arose when the Nagpur District Central Cooperative Bank Ltd. ("**NDCCB**") lodged FIR No. 97 of 2002 against the Petitioner and other co-accused at Ganeshpeth Police Station, Nagpur, Maharashtra, under Section 406, 420 read with Section 34 of the Indian Penal Code, 1860.

5. The allegations raised in the aforementioned FIR were *inter alia* that NDCCB had purchased Government Securities worth Rs. 125 Crores, through the Petitioner herein and other co-accused as brokers, however, the Petitioner and his co-accused, never delivered the Government Securities nor refunded the money they had received from the NDCCB for purchase of government securities using the monies deposited by the public in the bank.

6. Further, when the Special Auditor inspected the NDCCB's books, another FIR being C.R. No. 101 of 2002, was registered at Nagpur's Ganeshpeth Police Station against the Petitioner and his

co-accused under Sections 406, 409, 468, 471, 120-B, and 34 of the Indian Penal Code, 1860. As a result, a chargesheet was filed in the Court of the Ld. Judicial Magistrate First Class, Court No.1, Nagpur, clubbing both C.R. No. 97 of 2002 and C.R. No. 101 of 2002 because the subject matter and documents relied upon in both the aforementioned FIRs were the same, and the case was registered and re-numbered as RCC No. 147 of 2002 by clubbing both the FIRs.

7. In the year 2014, a Public Interest Litigation bearing No. 25 of 2014 was filed by aforementioned intervenor naemes Sh. Omprakash Baldi making the NDCCB, Applicant herein, Petitioner and co-accused as a party before the Hon'ble High Court of Bombay, Nagpur Bench *inter alia* seeking for an expeditious disposal of RCC No. 147 of 2002.

8. The Hon'ble High Court of Bombay while allowing the aforementioned PIL No. 25 of 2014, on 23.12.2014, directed the learned Judicial Magistrate, First Class, Nagpur to expedite the trial in RCC No. 147 of 2002 and end it within one year from passing the order dated 23.12.2014. A true copy of the Order dated 23.12.2014 passed in PIL No. 25 of 2014 by the Hon'ble Bombay High Court, Nagpur Bench is annexed herewith and marked as **Annexure-B (Page No. 27 – 29)**.

9. Nonetheless, even after the Hon'ble High Court issued the aforementioned directives in an order dated 23.12.2014, the Ld. Trial Court failed to complete the trial in RCC No. 147 of 2002 within one year. As a result, the Hon'ble High Court, once again, in an order dated 06.03.2019, allowed the Chief Judicial Magistrate, Nagpur, an extra three (months) from 06.03.2019 to complete the trial. A true copy of the Order dated 06.03.2019

passed by the Hon'ble Bombay High Court, Nagpur Bench is annexed herewith and marked as **Annexure-C (Page No. 30 – 31)**.

10. The Applicant most respectfully submits that one of the Petitioner's Co-accused had previously attempted to derail and prolong the trial by filing a Transfer Petition and motions in the aforementioned PIL. The Hon'ble High Court of Bombay vide its order dated 24.06.2021, directed that the trial in RCC No. 147 of 2002 be concluded by passing the Final Judgment and Order within a maximum term of four (4) months. A true copy of the Order dated 24.06.2021 passed by the Hon'ble Bombay High Court, Nagpur Bench is annexed herewith and marked as **Annexure-D (Page No. 32 – 97)**.

11. After getting no favourable relief from the Hon'ble High Court of Bombay, the Petitioner with malafide intention to prolong the adjudication of pending trials, filed the present Transfer Petition being Transfer Petition (Crl) 333-348 of 2021 before this Hon'ble Court, seeking transfer of 16 cases pending before various trial courts in various states.

12. It is pertinent to note that the Petitioner, right after filing the present Transfer Petition before this Hon'ble Court, approached the Ld. Trial Court where the RCC No. 147 of 2002 is pending and filed an application before the Ld. 2nd Additional Chief Judicial Magistrate, Nagpur seeking a long adjournment or a stay of RCC No. 147 of 2002 until the disposal of the present Transfer Petition, but the Ld. Trial Court, despite the fact stating that is at the concluding stage of hearing and The Hon'ble High Court ordered that the trial be finished within four months, dismissed the Petitioner's application, and scheduled the issue for final hearing on 09.09.2021. A true copy of the Order dated 24.09.2021 passed by the Ld. 2nd Additional Chief Judicial Magistrate Nagpur is

annexed herewith and marked as **Annexure-E (Page No. 98 – 101).**

13. That the Petitioner while once again attempting to prolong the adjudication of Trial, filed an application before the Ld. Trial Court seeking exemption from appearing personally before the Ld. Trial Court. The Ld. Trial Court while allowing the said application vide order dated 04.10.2022 exempted the Petitioner and Co-Accused from personal attendance, and listed the matter for final arguments on behalf of the Accused on 05.10.2021. A true copy of order dated 04.10.2021 passed by Ld. 2nd Addl. Chief Magistrate, Nagpur in R.C.C. No. 147/2002 is marked and annexed herewith as **Annexure-F (Page No. 102 – 108).**

14. However, the Petitioner approached this Hon'ble Court using unlawful and malafide techniques and filed an Application for Directions being I.A 124997 of 2021, among alia seeking stay on the Trial being in R.C.C. No. 147/2002 pending before Ld. 2nd Addl. Chief Magistrate, Nagpur. In addition, the Petitioner had hidden certain facts that were necessary to the proper adjudication of the Application. A true copy of Application for directions being I.A 124997 of 2021 filed by the Petitioner is marked and annexed herewith as **Annexure-G (Page No. 109 – 122).**

15. Following that, this Hon'ble Court issued a stay on trial in R.C.C. No. 147/2002 which was listed for final arguments, before Ld. 2nd Addl. Chief Magistrate, Nagpur, by order dated 05.10.2021 in I.A 124997 of 2021 filed by the Petitioner till the next date of hearing. A true copy of Order dated 05.10.2021 passed by this Hon'ble Court in I.A 124997 of 2021 filed by the Petitioner is marked and annexed herein as **Annexure-H (Page No. 123).**

16. It is also pertinent to mention that this Hon'ble Court, on 13.05.2022, modified the order dated 05.10.2021 and directed the

Ld. Trial Court to complete hearing the arguments but not to deliver the judgement in R.C.C. No. 147/2002 pending before Ld. 2nd Addl. Chief Magistrate, Nagpur, based on an application filed by one intervenor.

17. Further, the matter was listed on 22.07.2022 before this Hon'ble Court for arguments on the Application for intervention filed by one Sh. Baldi. However, the Petitioner with clear intention to restrict the Respondent No. 12 / Applicant from being heard, started arguing the main matter, without disclosing that the matter is listed merely on application for intervention and not the transfer of pending trial. Accordingly, reserved the judgment in the present Transfer Petitioner and on 09.09.2022, this Hon'ble Court allowed the present Petition and directed that all pending trials against the Accused Persons/Petitioner be transferred to the court of the Principal Judge, Bombay City Civil and Sessions Court, Fort Mumbai, Maharashtra - 400 032. Furthermore, this Hon'ble Court ordered that the trial be charged within 2 months on the date of presence and concluded within 2 years of the framing of charges.

18. The Respondent No. 12 / Applicant respectfully submits that by order dated 09.09.2022 in the Transfer Petitioner under Section 406 of CrPC, this Hon'ble Court has effectively quashed the Order dated 24.06.2021 passed by the Hon'ble High Court of Bombay *inter alia* in Petition under Article 226 of the Constitution of India and other Criminal Application, by way of a Transfer Petition, and that the trial that was concluded pursuant to the directions given by the Hon'ble High Court of Bombay will be recommenced. The initiation of afresh trial against the Accused Persons, which has been pending for over 20 years, would have a direct influence on the Trial Court's and witnesses' efforts in the trial who are in want of justice for more than 20 years and all the

state's efforts will go in vein specially in the trials which are already at the advance stage of hearing.

19. The Applicant further most respectfully states that the right to be heard is a fundamental principle of justice that was not afforded to the Applicant at the hearing on 22.07.2022, the Applicant could not be heard in the main Petition since only the Application for Intervention and one Application for deletion were listed on the said day of hearing, but the Petitioner continued to argue the main Petition in the absence of the Applicant herein, in violation of natural justice.

20. That if the Applicant had been given the opportunity to be heard, the Applicant would have disclosed the Petitioner's wrongdoings and malafides in order to postpone the current trials in numerous states and hide critical facts in order to get favourable rulings from this Hon'ble Court and the Hon'ble High Court in order to prevent adjudication of the pending cases against the Petitioner.

21. It is also important to mention that except for Sh. Sanjay Hariram Agarwal, the trial in R.C.C. No. 147/2002 before Ld. 2nd Addl. Chief Magistrate, Nagpur has already completed against the Petitioner and other co-accused.

22. The perpetrators of the crime, who have utilised all of their methods and resources to derail and prolong the trial against them, cannot be granted relief by this Hon'ble Court, which directly leads to a delay in adjudication of the trial, which has already been ended by the Ld. Trial Court in R.C.C. No. 147/2002 pending before the Ld. 2nd Addl. Chief Magistrate, Nagpur.

23. The fact that the Petitioner purposefully did not disclose the orders passed by the Hon'ble High Court of Bombay directing the Trial Court in R.C.C. No. 147/2002 to adjudicate the matter within

a time limit framed by the Hon'ble High Court revealed the Petitioner's malafide intentions to delay the adjudication of the trial by hook or crook. Furthermore, the Petitioner's malice is obvious from the fact that, in order to deceive this Hon'ble Court, the Petitioner has neglected to indicate the present status of the trial in R.C.C. No. 147/2002, which is pending before the Ld. 2nd Addl. Chief Magistrate, Nagpur.

24. There are significant and serious charges against the Petitioner and his co-accused under Sections 406, 409, 468, 471, read with Sections 120-B and 34 of the Indian Penal Code, concerning a 150 crore rupee scheme conducted in 2002. The trial, which has already been concluded by the Ld. Trial Court after the framing of charges and recording of witness statements, may not be returned to the initial stage on the basis of the Petition filed by the Petitioner, by suppressing the actual stage of the Trial in R.C.C. No. 147/2002 pending before the Ld. 2nd Addl. Chief Magistrate, Nagpur.

25. The final Order dated 09.09.2022 passed by this Hon'ble Court is being used by the Petitioner to evade the trial before the Ld. 2nd Addl. Chief Magistrate, Nagpur, since the Petitioner is appealing the judgment/final order against himself.

26. That it will be in the best interests of justice to grant the current application and modify and recall the final order dated 09.09.2021.

27. That great prejudice will be caused if the present Application is not allowed by this Hon'ble Court.

PRAYER

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) Recall/modify the order dated 09.09.2022 passed by this Hon'ble Court in the present Transfer Petition, transferring all the pending Trials against the Petitioner most of which are already at final stage of hearing by the Ld. Trial Court;
- b) pass any additional order(s) and subsequent order /direction(s) considered reasonable and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT
AS IN DUTY BOUND SHALL PRAY.

Drawn & Filed By:-



Aaditya A. Pande
(Advocate for Respondent
No. 12 / Applicant)

PLACE: NEW DELHI
DATE: 26.10.2022

**IN THE SUPREME COURT OF INDIA
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M.A. No _____ OF 2022

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IN THE MATTER OF:

KETAN KANTILAL SETH

...PETITIONER

VERSUS

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...RESPONDENTS

AFFIDAVIT

I, Umesh M. Gade, Age: 34 years, Occ.: Service as I/c Office Superintendent, Office of the Government Advocate, New Maharashtra Sadan, New Delhi – 110001, do hereby solemnly affirm and say as under:-

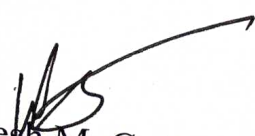
1. That, I am the authorised officer of the Respondent No. 12 / Applicant in the above mentioned Transfer Petition and I am fully conversant with the facts and circumstances of the case and I am competent to swear this Affidavit.
2. That, I have gone through the contents of the accompanying Application for Modification / Recall of the order dated 09.09.2022 as per the official record and understood the contents of the same and I say that the same are true and correct to the best of my knowledge.


Umesh M. Gade
DEPONENT

VERIFICATION

I, the abovenamed deponent, do hereby verify that the contents of the para 1 and 2 of the above Affidavit are true and correct to the best of my knowledge and belief and no material has been concealed therefrom.

Solemnly affirmed on this 26th day of October, 2022 at New Delhi.


Umesh M. Gade
DEPONENT

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION****TRANSFER PETITION (CRIMINAL) Nos. 333-348/2021**

Ketan Kantilal Seth

.....Petitioner

VERSUS

State of Gujarat & Ors.

..... Respondent(s)

With I.A. No. 134476 of 2021**ORDER**

1. With the consent of the parties, these transfer petitions have been taken up for final hearing. The present petitions have been filed by petitioner/accused for invoking the power under Section 406 of Code of Criminal Procedure, 1973 (hereinafter referred to as ‘CrPC’), seeking transfer of 16 criminal cases pending against him in four different States to one Court in Mumbai, where 3 cases are already pending. Following are the cases of which transfer are being sought –

- i. Criminal Case No. 101878/2003 arising out of FIR No. C.R. No. I-64/2002, dated 30.07.2002 registered at Police Station Udhana, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- ii. Criminal Case No. 9166/2002 arising out of FIR No. I.C.R. No. 274/2002, dated 02.07.2002 registered at Police Station Umra, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iii. Criminal Case No. 174/2003 arising out of FIR No. C. R. No. I-226/2002, dated 30.08.2002 registered at Police Station Rander, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iv. Criminal Case No. 100521/2003 arising out FIR No. 274/2002, dated 06.08.2002 registered at Police Station Varachha, Surat, Gujarat, pending before Additional Chief Judicial Magistrate/Judicial Magistrate First Class, Surat;
- v. Criminal Case No. 2778/2004 arising out of FIR/M. Case No. 3/2002, dated 16.07.2002 registered at Police

Station Gandevi, Navsari, Gujarat, pending before Additional Chief Judicial Magistrate, Gandevi;

- vi. Criminal Case No. 6840/2002 arising out of FIR No. I-93/2002, dated 18.08.2002 registered at Police Station Navsai Town, Navsari, Gujarat, pending before Chief Judicial Magistrate, Navsari;
- vii. Criminal Case No. 2121/2002 arising out of FIR No. I-119/2002, dated 10.06.2002 registered at Police Station Valsad City, Valsad, Gujarat, pending before Chief Judicial Magistrate, Valsad;
- viii. Criminal Case No. 1578/2006 arising out of FIR/M. Case No. 29/2002, dated 13.06.2002 registered at Police Station Vidya Nagar, Anand, Gujarat, pending before Additional Chief Judicial Magistrate, Anand;
- ix. Criminal Case No. 244/2002 arising out of FIR/M. Case No. 22/2002 (C.R. No. I-226/2002), dated 07.06.2002 registered at Police Station Morbi, Gujarat, pending before II Additional Chief Judicial Magistrate, Morbi;

- x. Criminal Case No. 40449/2016 arising out of FIR No. 280/2002, dated 04.05.2002 registered at Police Station Connaught Place, New Delhi, pending before Additional Chief Metropolitan Magistrate, Patiala House Court, New Delhi;
- xi. Criminal Case No. 2034203/2016 arising out of FIR No. 242/2002, dated 17.06.2002 registered at Police Station Sarojini Nagar, New Delhi, pending before Chief Metropolitan Magistrate, Saket Court, New Delhi;
- xii. Criminal Case No. ____/2002 arising out of FIR No. 298/2002, dated 22.08.2002 registered at Police Station Jagatdal, 24 North Paraganas, West Bengal, pending before Barrackpore Court, Kolkata;
- xiii. Criminal Case No. 147/2002 arising out of F.I.R. No. 97/2002, dated 25.04.2002 and C.R. No. 101/2002, dated 29.04.2002, both registered at Police Station Ganeshpeth, Nagpur, Maharashtra, pending before 155-II Additional Chief Judicial Magistrate First Class, Nagpur;

- xiv. Criminal Case No. 847/2002 arising out of F.I.R. at C.R. No. 75/2002, dated 15.05.2002 registered at Police Station City Kotwali, Amravati, Maharashtra, pending before Chief Judicial Magistrate, Amravati;
- xv. Criminal Case No. 498/2002 arising out of F.I.R. at C.R. No. 102/2002, dated 08.05.2002 registered at Police Station Pimpri, Pune, Maharashtra, pending before Chief Judicial Magistrate, Pimpri, Pune;
- xvi. Criminal Case No. 357/2002 arising out of F.I.R. at C.R. No. 65/2002, dated 15.05.2002 registered at Police Station Vishrambaug, Pune, Maharashtra, pending before III Judicial Magistrate First Class, Shivaji Nagar, Pune.

In fact, the basic object to file these transfer petitions is to get all cases transferred at one place and may be directed to try together.

2. In a nutshell, the prosecution story in majority of the cases revolves around one accused company namely M/s Home Trade Limited, which is alleged to have engaged in the business of

Stock, Securities, Brokering and Trading. The allegations against the petitioner herein and one Sanjay Hariram Agarwal are that they were the authorized signatories of the accused company and while acting in the capacity of Directors of the said accused company, they entered into several transactions dealing with government

securities and further sold the said securities without any authorization. Further, it has also been alleged that the government securities were not delivered within time and the money raised thereby has been misappropriated by the accused persons including the petitioner herein.

3. During the pendency of the instant petitions, application for intervention (bearing I.A. No. 134476 of 2021) has also been filed on behalf of one applicant namely; Omprakash Bhaurao Kamdi, seeking permission to intervene on the grounds of being a 'necessary' and 'proper' party as stated in the application.

4. Before advertng to merits of the transfer petitions, the application seeking intervention is being taken up for disposal. The intervenor claims to be an agriculturist who is dependent on

financial aid provided by Nagpur District Central Cooperative Bank Limited (hereinafter referred as NDCCB) for his day-to-day agricultural activities. It is said Chairman of NDCCB, who lodged an FIR in 2002 against the petitioner and other accused persons alleging non-delivery of the government securities worth Rs. 125 crores which NDCCB purchased through accused company in which petitioner and other accused persons were directors. The petitioner also sought transfer of concerned trial in the instant transfer petitions.

5. It is a settled principle of law in criminal jurisprudence that intervention application filed by a third party should not ordinarily be allowed in criminal cases unless the Court is satisfied that on the grounds on which the person seeking intervention is directly or substantially related to the case and question of law which may affect him adversely; or in the opinion of Court, joining the intervenor in the case is expedient in public interest. Having perused the contents of intervention application, nothing is averred in the application, how non-joining of applicant may cause prejudice or affect the public interest. The

applicant is neither a complainant in any of the cases of which transfer is being sought, nor he has any direct involvement or ground of his joining in public interest. The intervenor has no locus to intervene in the present petition, therefore, I am of the opinion that the grounds as mentioned by the intervenor are not proper to allow the application. It is to observe that prayer in the present petition

is confined to transfer the criminal trials pending before Trial Courts in different States for trial by one Court in one State and in such circumstances, the prayer for intervention cannot be allowed for reasons mentioned above. Consequently, I.A. No. 134476 of 2021 seeking intervention stands dismissed.

6. Reverting to the merits of the transfer petitions, learned counsel for petitioner has contended that multiple FIRs were registered against petitioner and other accused persons in different States having similar set of allegations, which has led into multiple trials being pending before various Trial Courts in different States for adjudication. Most of the accused persons in all FIRs and witnesses thereof are common. However, for the

purpose of trial, all the accused as well witnesses have to attend hearing dates before various Courts leading to delay and huge expenses. Moreover, most of the transactions pertaining to the alleged offence have taken place in Mumbai, Maharashtra and as per the chart supplied by the petitioner, majority of the witnesses relevant for the purpose of trial are also from Mumbai. However, the petitioner has prayed the transfer of all cases for trial by one

Court primarily on the grounds of convenience, expeditious disposal and no-prejudice may be caused to the defence of the accused for fair trial and to secure ends of justice.

7. Per contra, the learned counsel for respondent has opposed the transfer petitions primarily on the ground that the transfer petitions have been filed belatedly. It has been contended that, High Court of Bombay vide order dated 24.06.2021 passed in Criminal Application No. 628/2014, directed the concerned Trial Court to complete the trial in C.C. No. 147/2002 (i.e. one of the cases of which transfer is being sought in the instant petitions) by passing final judgment and order within a maximum period of

four months. The proceedings in the said case are already at the final stage. Hence, the prayer of the petitioner seeking transfer of cases as mentioned deserves to be dismissed.

8. After having heard both the sides, the primary issue for consideration before this Court is *'Whether the criminal cases pending before different Trial Courts in four States can be transferred to one Trial Court in one State?; Whether transfer of case of one of the criminal case which is at the final stage of trial before concerned Court in Nagpur, can be directed to be transferred at such belated stage?'*

9. To answer the aforesaid questions, first of all it is necessary to know the underlying intention of Section 406 of CrPC. Section 406 deals with the power of Supreme Court to transfer the cases. The Court can exercise such power for fair trial and to secure the ends of justice. The language impliedly left the transfer of the cases on the discretion of the Court. If the Court is satisfied that it is imperative to transfer the cases in the interest of justice or to secure ends of justice, then it may do so.

10. In the instant case, it is not in dispute that since 2002, multiple FIRs across four States namely; Gujarat, Maharashtra, New Delhi and West Bengal have been filed against petitioner and other accused persons containing broad and common allegations pertaining to act done in collusion by accused persons to defraud the complainants and misappropriate the money raised thereby while dealing/trading in government securities in the name of accused company M/s Home Trade Limited. The State in its counter affidavit has stated that during investigation, the accused

Company was found not to be eligible to deal in transactions relating to government securities, whereas, petitioner and other accused person namely Sanjay Hariram Agarwal were acting as Directors and authorized signatories of accused Company. From a bare perusal of the facts and FIRs, it is seen that there is commonality of facts in each FIR and that most of the transactions have taken place in Mumbai. Further, the FIRs mainly have petitioner and Sanjay Hariram Agarwal as common accused persons.

11. As per the details provided by petitioner in a chart annexed with petition, out of all the nineteen FIRs registered against petitioner and other accused persons, one FIR has been registered in Kolkata, West Bengal; two FIRs are registered in Delhi; nine FIRs are registered in different districts of Gujarat and seven FIRs are registered in different districts of Maharashtra. Furthermore, as stated by petitioner and unrefuted by respondent State, out of total 689 witnesses in all nineteen cases pending before respective Trial Courts, 236 witnesses are from Mumbai. It is further not disputed that in multiple cases, almost 20 years have lapsed and yet majority of the trials are pending at the initial stage. It wouldn't be out of place to mention that primary reason for such delay is the multiplicity of proceedings alongwith practical difficulties for the Trial Court to secure the presence of witnesses as well as accused for concluding the trial.

12. The contention of the State that prejudice will be caused if the transfer is allowed at such a belated stage when one of the criminal proceedings is at the final stage is bereft of merit. At

this juncture, it is apt to refer order dated 24.06.2021 passed by High Court of Judicature at Bombay in Criminal Application No. 628/2021 filed by accused Sanjay Hariram Agarwal seeking transfer of criminal cases pending against him. The same is reproduced for ready reference as thus:

“.....(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.....

(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.”

As is evident from the aforesaid order, the High Court directed completion of trial in C.C. No. 147/2002 in a time bound

manner against other accused persons except the applicant i.e., Sanjay Hariram Agarwal (accused no. 3 in C.C. No. 147/2002). The High Court further directed that once the trial against other accused persons is completed, then only trial against applicant therein shall commence. The High Court effectively split the trial of other accused persons from trial of Sanjay Hariram Agarwal and caused serious prejudice. As is gathered from the records and also stated above, accused Sanjay Hariram Agarwal alongwith petitioner herein were acting in the capacity of the Directors of accused company. The person who could have put the best defence (oral as well as documentary) before Trial Court where evidence led by prosecution was common and mostly related to same transaction, was effectively excluded by the order of High Court. In my considered view, such an approach taken by High Court is prima-facie amounts to differential treatment, causing serious prejudice to the right of fair trial of other accused persons including the petitioner herein.

13. In view of the foregoing discussion, considering the common nature of allegations raised against the petitioner in all

FIRs and criminal proceedings emanating therefrom which are yet pending before respective Trial Courts in four States, I am of the opinion that to meet the ends of justice and fair trial, the transfer petitions deserve to be allowed. Therefore, the instant transfer petitions are disposed-off with the following directions:-

- a) The criminal cases, as specified in para 1 (clause (i) to (xvi)) of this order shall be transferred from the courts, where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra;
- b) the Principal Judge is at liberty to assign the cases to any of the Court situated in his jurisdiction to try all those cases. He is also at liberty to assign some of the cases to any other courts also, if necessary;
- c) it is further directed that the transferor courts shall immediately transmit the record of concerned cases to the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, which should reach on or before 31.10.2022;

- d) all the accused in the concerned cases shall appear before the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai on 14.11.2022;
- e) on assignment of those cases to the concerned Court(s), as directed hereinabove, the said Court(s) shall frame the charges within a period of two months from the date of appearance, or on securing presence of the accused persons, if absent; and thereafter the trial be concluded as expeditiously as possible, not later than two years. It is needless to observe that the examination of the witnesses in all cases will be recorded by the Court(s) separately, thereby it should not cause any prejudice to any accused.

.....J.
(J.K. MAHESHWARI)

**New Delhi;
 September 9, 2022.**

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

P.I.L. No.25 of 2014

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

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

Court's or Judge's orders

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

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

DATE : 23.12.2014.

Heard.

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

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

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

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

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

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

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

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

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

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stage.

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

JUDGE

JUDGE

*jaiswal

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ANNEXURE A3

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

CIVIL APPLICATION (CAO) NO.519 OF 2017
IN PUBLIC INTEREST LITIGATION NO.25 OF 2014

(Omprakash Bhaurao Kamdi and others vs. State of Maharashtra and others)

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

Shri S.P. Bhandarkar, Advocate for applicants/
petitioners.

Shri M.K. Pathan, Assistant Government Pleader for
respondent nos.1 to 3.

Shri M.V. Samarth, Advocate for respondent no.4.

Shri A.A. Naik, Advocate for respondent no.5.

Shri D.V. Siras, Advocate for respondent no.6.

CORAM : P.N. DESHMUKH AND
 ROHIT B. DEO, JJ.

DATED : MARCH 6, 2019

In compliance to order dated 4/3/2019, we have received report dated 5/3/2019 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



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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 this order.

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

JUDGEJUDGE

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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**

Sanjay Hariram Agarwal ... Applicant

In the matter between

Sanjay Hariram Agarwal ... Applicant

Vs.

State of Maharashtra & Ors. ... Respondents

**WITH
CRIMINAL APPLN.889 OF 2019 IN CRI.APPLN. NO.332/2015
WITH
CRI.APPLN.NO.332 OF 2015
WITH
CRI.APPLN. NO.333 OF 2015
WITH
CRIMINAL APPLICATION NO. 624 OF 2014**

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

In the matter between

Sanjay Hariram Agarwal ... Applicant

Vs.

The State of Maharashtra & Ors. ... Respondents

**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 Agarwal

... 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 Agarwal

... 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 Agarwal

... 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
DATE OF PRONOUNCEMENT : 9TH JULY, 2021**

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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 2002 and No.124/2002	C.C.No.573/2002 Chief Judicial Magistrate, Wardha	406, 409, 420 r/w. 34 IPC	Accused No.1

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	Wardha Police Station			
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

2. We have heard Mr.Niteen Pradhan, learned Counsel appearing for the

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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 "said company"). The said company was engaged in business of Stock and

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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 i.e. C.R.No.97/2002 and C.R.No.101 of 2002 was conducted by CID,

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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 submitted that the said transactions are covered by the Regulations framed

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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 jurisdiction to continue with those trials. The learned Advocate General

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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, Jalgaon vs. State of Maharashtra and Others** more particularly on

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

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

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

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

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

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

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

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

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

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

We did not receive any certificates of the financial transactions since 25.01.2002 from all the Brokers. In this way, the amount of

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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.]

//True Copy//

1 R.C.C.No.147/2002
State vs. Sunil Kedar and ors

ORDER BELOW EXH.No.3339
(Dt. 24/09/2021)

1] This is an application on behalf of accused No.4 Ketan Seth praying therein to give long adjournment or to stay further proceeding till the decision of Transfer Petition pending before the Honourable Supreme Court. It is further contended that he has filed the Transfer Petition (Criminal) bearing No.333-348 of 2021. In support of his submission, reliance is placed upon the order dated 23.3.2021 passed by Honourable Apex Court in **Special Leave to Appeal [C] No.10937/2019, Justice for Right Foundation Vs. Union of India and Others.**

2] The prosecution has opposed the application on the ground that the proceedings of this case are not stayed by the Honourable Apex Court and the application deserves to be rejected.

3] Heard Adv. Mr. Girish Purohit for accused No.4 and ld. Special Public Prosecutor for State.

4] The copy (Annexure-A) annexed with the application would disclose that the Honourable Supreme Court has passed an order to issue notices, returnable within six weeks. There is no order as regards the stay of this proceeding.

5] The ld. Counsel for accused No.4 submit that issuance of notice by Honourable Apex Court amounts to the stay of proceeding before this Court. In support, he has relied upon the case of '**Justice for Right Foundation Vs. Union of India & Ors.**' (*cited supra*). He has

2 **R.C.C.No.147/2002**
State vs. Sunil Kedar and ors

also invited the attention of this Court to some pages which according to him are downloaded from the website of Live Law. According to him, as per said commentary on the website of Live Law, the Honourable Supreme Court has observed that, “Normally when notice issued in transfer, it is assumed that it is stayed.”

6] Carefully gone the order of Honourable Apex Court in the case of '**Justice for Right Foundation Vs. Union of India & Ors.**' (cited supra). In the said case, the Honourable Apex Court has stayed the matters pending before the Honourable High Court of Punjab and Haryana by passing the specific order to that effect. However, no such order is passed in the petition alleged to have filed by this accused No.4. Hence, ld. Counsel for accused No.4 can not take the aid of aforesaid citation to putforth his contention in the present set of facts.

7] It is pertinent to note that the Transfer Petition moved by accused No.3 Sanjay Agrawal is already dismissed by the Honourable High Court, Bench at Bombay, in Criminal Application No. 628/2014 with Interim Application No. 63/2020 vide order dated 24/06/2021. While dismissing the said petition, the Honourable High Court has directed this Court to complete the trial within four months of the date of said order. The relevant portion of the operative order is as under:

“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

Order contd....3/-

3

R.C.C.No.147/2002

State vs. Sunil Kedar and ors

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 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."

8] Prior to the above order, the Honourable High Court, Bench at Nagpur directed this Court to conduct the trial of this case on day to day basis vide this order dated 7.11.2019 passed in PIL No.58/2019 (Omprakash Bhaurao Kamdi & Ors Vs. State of Maharashtra & Ors.). Thus, as per the said order, this court is

Order contd....4/-

4 R.C.C.No.147/2002
State vs. Sunil Kedar and ors

functioning as a Dedicated Court for the trial of this case. Since then, no stay order has been passed by any of the Honourable Higher Courts.

9] Therefore, as directed by Honourable High Court vide order dated 24/06/2021 in Criminal Application No. 628/2014, Sanjay Agrawal Vs. Omprakash Bhaurao Kamdi & Ors and Civil Public Interest Litigation No. 15/2020 (Omprakash Bhaurao Kamdi & Ors Vs. The State of Maharashtra & Ors), this Court has to decide the case within four months w.e.f. 24/06/2021. It is needless to say that this order is binding not only on this Court but also on the parties concern. Out of this time limit of four months, three months have already been lapsed. The matter is now closed for final argument and fixed on 28/09/2021. Hence, keeping the trial in abeyance as prayed for, would amount to breach of directions of the Honourable High Court to conduct the trial on day to day basis and to dispose of the same within the prescribed time frame. Thus, the prayer to stay the matter is directly in breach of the directions of the Honourable High Court issued time to time for expediting the trial. In the result, following order is hereby passed.

ORDER

Application (Exh.3339) stands rejected.

Dt. 24.09.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

Order contd..../-

//True Copy//

R.C.C.No.147/2002

State vs. Sunil Kedar & Ors

ORDER BELOW EXH.3354**(Dt. 4/10/2021)**

This is an application on behalf of accused No.2 for grant of adjournment. It is contended that ld. Counsel for accused No.2 is busy before the Honourable High Court and therefore, he is unable to attend the Court.

Hence, the following order.

ORDER

- 1] Adjournment granted for today only as a last chance.
- 2] Ld. counsel for accused No.2 to argue the matter on 5.10.2021, without fail.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

ORDER BELOW EXH.No.3353
(Dt. 04/10/2021)

1] This is an application for adjournment on behalf of accused No.1. It is contended in the application that Adv. Mr. Chavan for accused No.1 had undergone a major surgery and admitted to the hospital at Indore. It is further contended that he is unable to attend the Court and the adjournment has been sought upto 11.10.2021.

2] It is the matter of record that this is the time-bound matter and the adjournments as such can not conclude the trial within a time frame as directed by the Honourable High Court. It is pertinent to note that Senior Counsel Mr. Subodh Dharmadhikari is also representing the accused. It is contended on behalf of accused that Adv. Mr. Chavan can only brief Adv. Mr. Dharmadhikari.

3] Be that as it may. The sufficient time has been already lapsed for preparing the arguments by the concerned parties. Therefore, such long adjournments can not be justified for the given reason. An adjournment for a day or two at the most can only be given for further preparation, if any, by ld. Counsel for accused No.1. Hence, the following order.

ORDER

Time granted to accused No.1 for argument till
7.10.2021, as a last chance.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

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

Certificate

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

78

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

ORDER BELOW EXH.No.3352.
(Dt. 04/10/2021)

P.E. granted for today only.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

ORDER BELOW EXH.No.3351.
(Dt. 04/10/2021)

P.E. granted for today only.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

ORDER BELOW EXH.No.3350.
(Dt. 04/10/2021)

P.E. granted for today only.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

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

ORDER BELOW EXH.No.1
(Dt. 4/10/2021)

Today the ld. Special Public Prosecutor has concluded his final argument on behalf of prosecution. Accused No.1 moved an application for adjournment and case is kept for his argument on 7.10.2021. Likewise, the matter is kept for argument of accused No.2 on 5.10.2021. It is orally submitted on behalf of accused No.4 to 7 that they will conclude their argument on 7.10.2021. Hence, in view of submissions on behalf of the ld. Counsels for respective accused persons, the matter is kept for final argument of defence since 5.10.2021, as above.

Dt. 04.10.2021

(S.R.Totla)
2nd Addl. Chief Judicial Magistrate,
Nagpur

Certificate

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

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

//True Copy//

SEC-XVIANot listed within next five days

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M. P. NO. OF 2021

IN

TRANSFER PETITION (CRL.) NO. 333-348 OF 2021IN THE MATTER OF:

Ketan Kantilal Sheth

....PETITIONERS

VERSUS

State of Gujarat & Ors.

....RESPONDENTS

INDEX

SL. PARTICULARS
NO.

1. Application for directions with affidavit along with annexures A-1 to A-4.

- Rs. 120/-

Filed by

Dated: 27.09.2021.

18872021

Advocate for the Petitioner

Code-1914

B-3, Sagar Apartments 6, Tilak Marg

NEW DELHI-110 001

Mob: 09873802102

Ex-Parte

GOVERNMENT OF NCT OF DELHI		0002915345
e-Court Fee		
DATE & TIME :	27-SEP-2021 15:14:48	
NAMES OF THE ACC/ REGISTERED USER :	SHCIL	
LOCATION :	PATIALA COURT	
e-COURT RECEIPT NO :	DLCT2740I2114P303	
e-COURT FEE AMOUNT :	₹ 120 (Rupees One Hundred Twenty Only)	
 DLCT2740I2114P303		
Statutory Alert : The authenticity of this e-Court fee receipt should be verified at www.shcilestamp.com . Any discrepancy in the details on this receipt and as available on the website renders it invalid. In case of any discrepancy please inform the Competent Authority. This receipt is valid only after verification & locking by the Court Official.		

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M. P. NO. OF 2021

IN

TRANSFER PETITION (CRL.) NO. 333-348 OF 2021

CRL. M. P. NO. OF 2021:
APPLICATION FOR DIRECTIONS

PAPER BOOK
(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: PAWANSHREE AGRAWAL

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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL.M. P. NO. OF 2021

IN

TRANSFER PETITION (CRL.) NO. 333-348 OF 2021

IN THE MATTER OF:

Ketan Kantilal Sheth

....PETITIONERS

VERSUS

State of Gujarat &Ors.

....RESPONDENTS

APPLICATION FOR DIRECTION

To,

The Hon'ble the Chief Justice of India and his
Companion Justices of the Hon'ble Supreme
Court of India.

The humble application of the Petitioners
abovenamed:

MOST RESPECTFULLY PRAYED:

1. That the petitioner has filed the aforesaid Transfer Petition under Section 406 of CRPC, 1973 seeking transfer of 1) Criminal Case No.101878/2003 arising out FIR No. C.R. No. I-64/2002 Dated 30.07.2002 registered at Police Station Udhana, Surat, Criminal Case

No.9166/2002 arising out of FIR No. ICR No. 274/2002 dated 02.07.2002 at Police Station Umra, Surat and Criminal Case No. 174/2003 arising out of FIR No. CR No. I-226/2002 dated 30.08.2002 registered at Police Station Rander, Surat pending before Additional Chief Judicial Magistrate Surat, Criminal Case No.100521/2003 arising out of FIR No.I- 274/2002 dated 06.08.2002 registered at Police Station Varaccha, Surat pending before Additional Chief Judicial Magistrate/ Judicial Magistrate First Class, Surat, Criminal Case No.2778/2004 arising out of FIR/Mcase No. 3 of 2002 dated 16.07.2002 registered at Police Station Gandevi, Navsari pending before Additional Chief Judicial Magistrate, Gandevi, Criminal Case No. 6840/2002 arising out of FIR No. I-93 of 2002 dated 18.08.2002 registered at Police Station, Navsai Town, Navsari pending before Chief Judicial Magistrate, Navsari, Criminal case No. 2121/2002 arising out of FIR No. I-119/2002 dated 10.06.2002 filed at Police station Valsad City, Valsad pending before Chief Judicial Magistrate, Valsad, Criminal Case No.1578/2006 arising out of FIR/M. Case no. 29/2002 dated 13.06.2002 registered at Police Station, Vidya Nagar, Anand pending before Additional Chief Judicial Magistrate, Anand, Criminal Case No.244/2002 arising out of FIR/M.case No. 22 of 2002 (C.R. No. I-226 of 2002) dated 7.6.2002

registered at Police Station Morbi pending before 2nd ACJM, Morbi **all in Gujarat** and 2) Criminal Case No.40449/2016 arising out of FIR No. 280 of 2002 dated 04.05.2002 registered at Police Station Connaught Place, New Delhi pending before Additional Chief Metropolitan Magistrate, Patiala House Court, New Delhi, Criminal Case No. 2034203/2016 arising out of FIR No. 242 of 2002 dated 17.06.2002 registered at Police Station Sarojni Nagar Delhi pending before Chief Metropolitan Magistrate, Saket Court, New Delhi both at **New Delhi** and 3) Criminal Case No. Nil/2002 arising out of FIR No. 298 of 2002 dated 22.08.2002 registered at Police Station Jagatdal, 24 North parganas, West Bengal pending before Barrackpore Court, Kolkata, **West Bengal** and 4) Criminal case No. 147/2002 arising out FIR at C.R. No. 97 of 2002 dated 25.04.2002 and C.R. No. 101 of 2002 dated 29.04.2002 both registered at Ganeeshpeth Police Station pending before 155-2nd Additional Judicial Magistrate First Class, Nagpur, Criminal Case No.847/2002 arising out of FIR at C.R. No. 75 of 2002 dated 15.05.2002 registered at City Kotwali Police Station, Amravati pending before Chief Judicial Magistrate, Amravati, Criminal case No.498/2002 arising out of FIR at C.R. No. 102 of 2002 dated 08.05.2002 registered at Pimpri Police Station, Pune pending before

Judicial Magistrate, First Class, Pimpri, Pune, Criminal Case No. 357/2002 arising out of FIR at C.R. No. 65 of 2002 dated 15.05.2002 registered at Police Station Vishrambaug, Pune pending before 3rd Judicial Magistrate First Class, Shivaji Nagar, Pune, to Competent Court of Additional Chief Judicial Magistrate, Esplanade, Mumbai where 3 cases involving same allegations are pending.

2. That for the sake of brevity the petitioner are not repeating the contents of the transfer petition and the same has be treated as part and parcel of the present application.

3. That the aforesaid transfer petition came up for consideration before this Hon'ble Court and this Hon'ble Court was pleased to issue notice in the matter. The order dated 09.09.2021 is reproduced hereinbelow:-

"Heard Learned Senior Counsel for the petitioner.

Issue Notice, returnable within six weeks.

The other co-accused also be served through the respective Trial Courts "

True copy of the order dated 09.9.2021 passed by Hon'ble Supreme Court in Transfer Petition (Criminal) No. 333-348 of 2021 is filed herewith and marked as **Annexure A-1** (Page No. 11).

4. That pursuant to the aforesaid order, the petitioner moved an application before the Trial Court bring the said order to the notice of the Ld. Trial Judge and prayed that the matter be suitable adjourned till the decision of this Hon'ble Court in the Transfer Petition. True Copy of the Application (EXH. No. 3339) filed by the petitioner before the Ld. Trial Court is filed herewith and marked as **Annexure A-2** (Page No. 12 to 13).

5. That the Ld. Trial Judge even after noticing the order passed by this Hon'ble Court has rejected the application by holding that since there is no specific stay order passed by this Hon'ble Court, the trial Cannot be adjourned. It was further stated that since there is an order passed by Hon'ble High Court in the case of Accused No. 3 Mr. Sanjay Agarwal to complete the trial in four months with respect to other accused (accused other than Sanjay Agarwal) therefore the trial cannot be kept in abeyance. True Copy of the order dated 24.09.2021

passed by Ld. Trial Court is filed herewith and marked as Annexure A-3 (Page Nos. 14 to 17).

6. That the Petitioner in the transfer petitioner has specifically explained that how every case is intertwined with each other as all cases raises same allegation of delay in delivery of Government of India Securities. This Hon'ble Court after considering all the facts has issued notice in the matter. There will be serious prejudice that will be caused to the petitioner as the trial is proceeding keeping at bay all the rules of fair trial with utmost haste only because of the order which has been passed by the High Court. The prejudices are narrated as under:-

a) That the Hon'ble High court has directed to complete the trial of all the accused except Sanjay Agarwal who as per the FIR is the main accused. Therefore, the person who can put up the best defense being the main accused as per the prosecution has been left out. Notable even the charge has not been framed against the said accused.

b) That in a haste to complete the trial more than 100 witnesses has been dropped when as per the list submitted by

the I.O. alongwith the chargesheet 153 witness were to be examined. In effect only 53 witnesses have been examined.

c) That despite the order passed by this Hon'ble Court, the Ld. Trial Court is continuing the trial which will frustrate the purpose of the Present transfer petition.

d) That the petitioner has never been heard in the PIL matter (reference of which has been made in the order dated 24.09.2021) as they were never made a party in the said case and adverse orders has been passed in the said petition against the petitioner.

e) That the conduct of the separate trial as indicated in the order of the Hon'ble High Court will cause serious prejudice as because the petitioner would not have the benefit of the witnesses which will be examined in the case of Sanjay Agarwal and the evidence that may lead which may point out to the innocence of the petitioner more specifically when the criminal case is one and the evidence will also be common.

7. That the Ld. Trial Court has now fixed the matter for final

arguments and there is all apprehension that arguments will be heard in a summary manner as the trial court is conducting the trial only to comply with the order of Hon'ble High Court.

8. That it is trite law that when this Hon'ble Court has issued notice in the transfer petition, all subordinate courts lay off their hands from the case till the same a decision is taken on the transfer petitioner and where the courts do not do so, the Hon'ble Court, when brought to its notice, has passed the order staying the proceedings. Reliance in this regard is placed on the order dated 22.03.2021 passed by this Hon'ble Court in the case of *Justice for Rights foundation v. Union of India in SLP(c) No. 10937 of 2019*. True copy of the order dated 22.03.2021 passed by this Hon'ble Court in SLP(c) No. 10937 of 2021 is filed herewith and marked as **Annexure A-4** (Page No. 18 to 20)

9. That if the proceedings in Criminal case No. 147 of 2002 arising out FIR at C.R. No. 97 of 2002 dated 25.04.2002 and C.R. No. 101 of 2002 dated 29.04.2002 both registered at Ganeeshpeth Police Station pending before 155-2nd Additional Judicial Magistrate

First Class, Nagpur, is not stayed the petitioner would suffer great hardship.

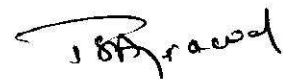
PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court in the interest of justice, may graciously be pleased to:

- [a] direct the Ld. Trial Court trying Criminal case No. 147 of 2002 arising out FIR at C.R. No. 97 of 2002 dated 25.04.2002 and C.R. No. 101 of 2002 dated 29.04.2002 both registered at Ganeeshpeth Police Station being 155-2nd Additional Judicial Magistrate First Class, Nagpur not to proceed with the trial till the disposal of the instant transfer petition; and
- [b] Pass such other and further order(s) as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER (S)
IS DUTY BOUND SHALL EVER PRAY

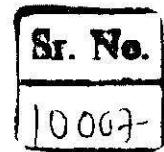
FILED BY:



Place: New Delhi
Date: 27.09.2021

PAWANSHREE AGRAWAL
Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CRLMP.No. _____ OF 2021



IN
TRANSFER PETITION (CRIMINAL) NO.333 - 348 OF 2021
IN THE MATTER OF:

Ketan Kantilal Sheth

...Petitioner(s)

VS

State of Gujarat

....Respondent(s)

AFFIDAVIT

I, Ketan Kantilal Sheth, S/o. Shri Kantilal Sheth, aged about 59 years, R/O 193, Lalit Kutir CHS, Gulmohar Cross Road NO. 9, JVPD Scheme, District: Andheri West, Mumbai, Maharashtra, do hereby solemnly affirm and state as under :-

1. That I am the Applicant in the above mentioned Transfer Petition and as such I am duly authorized to swear to present affidavit. Further, I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit.
2. That I have gone through copies of the Application for directions & Stay and state that the contents thereof are true and correct to my knowledge.
3. That the annexures attached to the present Applications are true and correct copies of their respective originals.

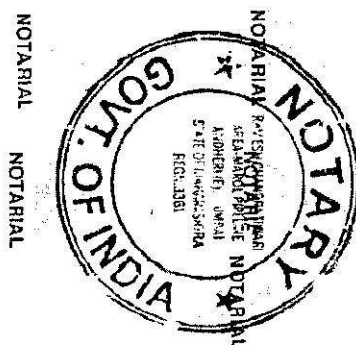
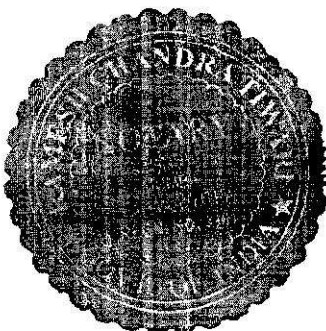
6th
DEPONENT

VERIFICATION

Verified at Mumbai on this 27th day of September 2021 that the contents of the above affidavit are correct and true to the best of my knowledge and belief nothing material has been concealed therefrom.

6th
DEPONENT

BEFORE ME



27/09/21
RAMESH CHANDRA TIWARI
ADVOCATE & NOTARY
GOVT. OF INDIA
Res. 129, A-Wing, Appa Ekta Hsg. Soc.
Nav Pada, Marol Naka, A. K. Road,
Andheri (E), Mumbai-400 059

//True Copy//

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

Transfer Petition(s)(Criminal) No(s). 333-348/2021

KETAN KANTILAL SETH

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

([I.A. No. 124997/2021 MENTIONED]
IA No. 124997/2021 - CLARIFICATION/DIRECTION)

Date : 05-10-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Siddharth Luthra, Sr. Adv.
Mr. Pawanshree Agrawal, AOR

For Respondent(s)

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

I.A. No. 124997 is an application filed by the petitioner seeking directions.

Considering the order passed by the Trial Court on 24.09.2021 in R.C.C. No. 147/2002, further proceedings in the said case shall remain stayed till the next date of hearing.

The I.A. stands disposed of accordingly.

(GULSHAN KUMAR ARORA
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)

//True Copy//

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M.P. NO. OF 202

IN

M.A. NO. OF 2022

IN

TRANSFER PETITION (Crl.) NO. 333-348 OF 2021

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

Versus

The State of Gujarat & Ors.

...Respondents

APPLICATION FOR EXEMPTION FROM FILING
NOTARISED AFFIDAVIT

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
RESPONDENT NO. 12 ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the Respondent No. 12 / Applicant – The State of Maharashtra is filing the present Application seeking exemption from filing notarised Affidavit filed in the Misc. Application in Transfer Petitioner (Crl.) No. 333-348 of 2021.
2. For the sake of brevity and to avoid repetition, the Respondent No. 12 / Applicant adopts the contents and averment of the Application for Modification / Recall of Order dated 09.09.2022 for the purpose of this application.
- 3 By way of present Application, the Respondent No. 12 / Applicant is seeking an exemption from filing the notarised Affidavit, in view of the paucity of time and non availability of the

notary due to the Diwali vacations, in view thereof, it is humbly prayed that the present Application may be allowed in the interest of justice.

PRAYER

In the circumstances, it is therefore most respectfully prayed that, this Hon'ble Court may graciously be pleased to:-

- a) Allow the Respondent No. 12 / Applicant from filing the present Application seeking exemption from filing notarised Affidavit.
- b) Pass any other order / orders as this Hon'ble Court may deem fit and necessary in the interest of justice and good faith.

AND FOR THIS ACT OF KINDNESS THE APPLICANT
AS IN DUTY BOUND SHALL PRAY.

Drawn & Filed By:-



Aaditya A. Pande
(Advocate for Respondent
No. 12 / Applicant)

PLACE: NEW DELHI
DATE: 26.10.2022