

ANNEXURE- 'Y'

**ADVOCATE'S CHECK LIST (TO BE CERTIFIED BY
ADVOCATE ON RECORD)**

Indicate Yes or NA

1.	SLP (Crl.) has been filed in Form No. 28 with certificate.	NA
2.	The petition is as per the provisions of Order XV Rule 1.	YES
3.	The papers of SLP have been arranged as per Order XXI, Rule (3) (1) (f).	YES
4.	Brief List of Dates / Events has been filed.	YES
5.	Paragraphs and pages of paper books have been numbered consecutively and correctly noted in Index.	YES
6.	Proper and required number of paper books (1+1) have been filed.	YES
7.	The contents of the petition, applications and accompanying documents are clear, legible and typed in double space on one side of the paper.	YES
8.	The particulars of the impugned judgment passed by the court(s) below are uniformly written in all the documents.	YES
9.	In case of appeal by certificate the appeal is accompanied by judgment and decree appealed from and order granting certificate.	YES
10.	If the petition is time barred, application for condonation of delay mentioning the no. of days of delay, with affidavit and court fee has been filed.	NA
11.	The Annexures referred to in the petition are true copies of the documents before the court(s) below and are filed in chronological order as per List of dates.	YES
12.	The Annexures referred to in the petition are filed and indexed separately and not marked collectively.	YES
13.	The relevant provisions of the Constitution, statutes, ordinances, rules, regulations, bye laws, orders etc. referred to in the impugned judgment / order has been filed as Appendix to the SLP.	YES
14.	In SLP against the order passed in Second Appeal, copies of the orders passed by the Trial Court and First Appellate Court have been filed.	YES
15.	The complete listing proforma has been filed in, signed and included in the paper book.	YES
16.	In a petition (PIL) filed under clause (d) of Rule 12(1) order XXXVIII, the petitioner has disclosed; a) his full name, complete postal address, e-mail address, phone number, proof regarding personal identification, occupation and	NA

	annual income, PAN number and National Unique Identity Card number, if any; b) the facts constituting the cause of action; c) the nature of injury caused or likely to be caused to the public; d) the nature and extent of personal interest, if an, of the petitioner(s) e) details regarding any civil, criminal or revenue litigation, involving the petitioner or any of the petitioners, which has or could have a legal nexus with the issue (s) involved in the Public Interest Litigation.	
17.	If any identical matter is pending/disposed of by the Hon'ble Supreme Court, the complete particulars of such matters have been given.	NA
18.	The statement in terms of the Order XIX Rule 3(1) of Supreme Court Rules 2013 has been given in the Petition of appeal.	YES
19.	Whether a Bank Draft of Rs. 50,000/- or 50% of the amount, whichever is less, has been deposit by the person intending to appeal, if required to be paid as per the order of the NCDRC, in terms of Section 23 of the Consumer Protection Act, 1986.	NA
20.	In case of appeals under Armed Forces Tribunal Act, 2007, the Petitioner / appellant has moved before the Armed Forces Tribunal for granting certificate for leave to appeal to the Supreme Court.	NA
21.	All the Paper-Books to be filed after curing the defects shall be in order.	YES

I have declare that I have personally verified the petition and its contents and it is in conformity with the Supreme Court Rules, 2013. I certify that the above requirements of this Check List have been complied with. I further certify that all the documents necessary for the purpose of hearing of the matter have been filed.

Filed by;

[AYUSH SHARMA]

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Filed on: 06.09.2023.

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. OF 2023

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

VERSUS

The State of Maharashtra and Anr.

...Respondents

WITH

I.A. NO. OF 2023:

**APPLICATION FOR GRANT OF AD-
INTERIM EX PARTE STAY OF
JUDGMENT AND ORDER DATED
04.08.2023**

PAPER BOOK
(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: AYUSH SHARMA

<u>INDEX</u> RECORD OF PROCEEDINGS

SL NO.	DATE OF PROCEEDINGS	PAGE NOS.
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[illegible]

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‘A’

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IN THE MATTER OF:

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The State of Maharashtra and Anr.

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OFFICE REPORT ON LIMITATION

- ✓ 1. The Petition is within time.
2. The Petition is barred by time and there is delay of days in filing the same against order dated and petition for condonation of days delay has been filed.
3. There is delay of ____ days in refilling the petition and petition for condonation of ____ days delay in refilling has been filed.

BRANCH OFFICER

New Delhi.

Dated: 06.09.2023.

PROFORMA FOR FIRST LISTING	
SECTION :	
THE CASE PERTAINS TO (Please tick/check the correct box):	
☐ Central Act: (Title)	Constitution of India
☐ Section:	Article 32
☐ Central Rule: (Title)	N.A.
☐ Rule No(s):	N.A.
☐ State Act: (Title)	N.A.
☐ Section:	N.A.
☐ State Rule: (Title)	N.A.
☐ Rule No(s):	N.A.
☐ Impugned Interim Order: (Date)	N.A.
☐ Impugned Final Order/Decree: (Date)	N.A.
☐ High Court: (Name)	N.A.
☐ Name of Judges:	N.A.
☐ Tribunal/Authority: (Name)	N.A.
1. Nature of matter:	☐ Civil ☒ Criminal
2. (a) Petitioner / appellant No.1:	Ketan Kantilal Seth
(b) e-mail ID:	N.A.
(c) Mobile Phone number:	N.A.
3. (a) Respondent No.1:	State of Maharashtra & Anr.
(b) e-mail ID:	N.A.
(c) Mobile phone number:	N.A.
4. (a) Main category classification	08 Letter Petition & PIL Matter
(b) Sub classification:	0817 Writ Petitions (Criminal) and Writ Petitions filed as PIL pertaining to criminal investigations/prosecution
5. Not to be listed before:	N.A.
6. (a) Similar disposed of matter with Citation, if any, & case details:	No similar matter disposed off.
(b) Similar pending matter with case details:	No similar matter pending.
7. Criminal Matters:	N.A.

(a) Whether accused/convict has surrendered: ☐ Yes ☒ No. N.A.	
(b) FIR No. N.A.	Date: N.A.
(c) Police Station:	N.A.
(d) Sentence Awarded:	N.A.
(e) Sentence Undergone:	N.A.
8. Land Acquisition Matters:	N.A.
(a) Date of Section 4 notification:	N.A.
(b) Date of Section 6 notification:	N.A.
(c) Date of Section 17 notification:	N.A.
9. Tax Matters: State the tax effect:	N.A.
10. Special Category (first petitioner/appellant only):	N.A.
☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child ☐ Disable ☐ Legal ☐ Aid case ☐ In custody N.A.	
11. Vehicle Number (in case of Motor Accident Claim matters): N.A.	
Date: 06.09.2023.	AOR for Petitioner(s) / Appellant(s)
	 AYUSH SHARMA
	Registration No. 2338 ayushmanchambers@gmail.com Mob. 9899096069

SYNOPSIS AND LIST OF DATES

1. The present Writ Petition raises a question of a seminal importance involving fair administration of justice. The present WP challenges order XII Rule 3 of the Supreme Court Rules to the extent it is to be applied in criminal cases.

RULE ULTRAVIRES SECTION 362 OF CODE OF CRIMINAL PROCEDURE READ WITH ARTICLE 145 OF THE CONSTITUTION OF INDIA

2. That the Supreme Court Rules have been framed under Article 145 of the Constitution of India. Article 145 of the Constitution of India reads as under:-

“145. Rules of Court, etc

*(1) **Subject to the provisions of any law made by Parliament**, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including*

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub clause (c) of clause (1) of Article 134;

(e) any judgment pronounced or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of Article 317”

3. That Sub-Article (1) of Article 145 of the Constitution of India very clearly states that any Rules framed in exercise of Powers under Article 145 has to be subject to the law made by the Parliament.
4. That Order XII Rule 3 of the Supreme Court Rules,2013, a Rule in question, reads as under: -

“Order XII Rule 3- *Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.”*

5. The primary premise of challenging the said Rule and more specifically the words **“or an error arising from any accidental slip or omission”** is that the said portion of the rule being applied in relation to a criminal case would be ultra vires section 362 of The Code of Criminal Procedure, 1973, a law made by the Parliament, and Supreme Court Rules being Sub-servient to the said law made by the Parliament is ultra-vires. Section 362 of CrPC reads as under: -

*“362. Court not to alter judgment - Save as otherwise provided by this Code or by any other law for the time being in force, **no Court**, when it has signed its judgment or final order disposing of a case, **shall alter or review the same** except to correct a clerical or arithmetical error.”*

6. From the reading of section 362 of Cr. P. C. it is abundantly clear that no court when it has signed its judgment or final order disposing of a case shall alter or review the same. The only exception given in the said section is to correct a clerical or arithmetical error. The said section does not provide that an error arising out of accidental slip or omission can also be corrected. The said section would apply in relation to any power which are being exercised by any court in India under CrPC, 1973.
7. That Order XII Rule 3 would therefore be ultravires section 362 Cr. P.C to the extent it offends Section 362 of the Constitution of India in relation to proceedings before the Court under Code of Criminal Procedure.

8. That the Constitution Bench of this Hon'ble Court in the case of ***Prem Chand Garg v. Excise Commissioner, Allahabad, U.P. 1963 SCR Supp(1) 885*** had upheld the challenge to the Supreme Court Rules in a Petition filed under Article 32 of the Constitution of India and had struck down Order XXXV Rule 12 of the Supreme Court Rules

RULES VIOLATE ARTICLE 14 AND ARTICLE 21 OF THE
CONSTITUTION OF INDIA

9. That not only that the said section would be ultravires Section 362 of the Code of Criminal Procedure read with Article 145 of the Constitution of India it also violates fundamental right of the petitioner under Article 14 and Article 21 of the Constitution of India. Petitioner humbly submits that 7 Judge bench judgement of this Hon'ble Court in the case of ***State of West Bengal v. Anwar Ali Sarkar 1952 SCR 284*** has held that the Rule of procedure laid down by the law comes as much within the purview of Article 14 of the Constitution as any Rule of substantive law and it is necessary that all litigants are able to avail themselves of the same procedural Right for relief. In the present case the safeguards of Section 362 which gives very limited power to alter or review the final judgement to all the litigants who invoke remedy or relief under Code of Criminal Procedure would be treated discriminately under the impugned Rule when the Supreme Court exercises power under Code of Criminal Procedure.
10. That to elaborate, the litigants will have right to avail the relief by virtue of limited power with the courts to alter the final judgement more specifically not on the grounds of "accidental Slip or omission", however the Supreme Court Rules seeks to set a

different procedure in relation to a litigant who invokes the power of Supreme Court under Code of Criminal Procedure which will be violative of Article 14 of the Constitution of India. For example a litigant invoking powers of High Court under Section 407 to seek transfer of case would be protected by Section 362 Cr. P. C. in case the case is decided in one's favour, however the litigant Before Supreme Court exercising powers under Section 406 Cr. P. C. for transfer of cases would be denuded of the similar protection because of Order XII Rule 3. This Hon'ble Court in the case of **Anwar Ali Sarkar (Supra)** Hon'ble Fazal Ali J. in its concurring opinion for majority has held:-

“It was suggested that the reply to this query is that the Act itself being general and applicable to all persons and to all offences, cannot be said to discriminate in favour of or against any particular case or classes of persons or cases, and if any charge of discrimination can be leveled at all, it can be leveled only against the act of the executive authority if the Act is misused. This kind of argument however does not appear to me to solve the difficulty. The result of accepting it would be that even where discrimination is quite evident one cannot challenge the At simply because it is couched in general terms; and one cannot also challenge the act of the executive authority whose duty it is to administer the Act, because that authority will say :- I am not to blame as I am acting under the Act. It is clear that if the argument were to be accepted, article 14 could be easily defeated. I think the fallacy of the argument lies in overlooking the fact that the "insidious discrimination complained of is

incorporated in the Act itself", it being so drafted that whenever any discrimination is made such discrimination would be ultimately traceable to it. The Act itself says down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root-cause of the discrimination which may result by the application of the Act.

The farmers of the Constitution have referred to equality in the Preamble, and have devoted as many as five articles, namely, articles 14, 15, 16, 17, and 18 in the Chapter on Fundamental Rights, to ensure equality in all its aspects. Some of these Articles are confined to citizens only and some can be availed of by non-citizens also; but on reading these provisions as a whole, one can see the great importance attached to the principle of equality in the Constitution. That being so, it will be wrong to whittle down the meaning of article 14, and however well-intentioned the impugned Act may be and however reluctant one may feel to hold it invalid, it seems to me that section 5 of the Act, or at least that part of it with which alone we are concerned in this appeal, does offend against article 14 of the Constitution and is therefore unconstitutional and void."

11. That the petitioner humbly submits that Order XII Rule 3 in so far as it sets out the different procedure to alter a final judgement than section 362 Cr. P. C. (protection available to a succeeding litigant) where the powers exercised by the Courts are under Code of

Criminal Procedure is discriminatory and violative of Article 14 of the Constitution of India.

12. The petitioner further submits that impugned Rule also offends Article 21 of the Constitution of India as seeks to set a different procedure which effects the life and liberty of the litigant (in the present case the petitioner) and violates the mandate of Article 145 of the Constitution of India and is therefore liable to be struck down to the extent it applies “or an error arising from an accidental slip or omission” to cases under Code of Criminal Procedure, 1973.

FAR REACHING IMPLICATIONS OF ORDER DATED 04.08.2023

13. The petitioner humbly submits that the effect of the order dated 04.08.2023 is far reaching and will also have an impact in several proceedings as section 152 of the Code of Civil Procedure uses the same expression as is there in the impugned Rule. Therefore, the order dated 04.08.2023 which now interprets the expression “error arising from accidental slip or omission” to mean that the court can even modify the final judgement will raise a serious concern which will impinge the fair administration of justice. Infact, the ratio of order dated 04.08.2023 is contrary to several decisions of this Court which has not been noticed in the order dated 04.08.2023 one of which being ***Dwarka Das v. State of M.P. & Anr. (1999) 3 SCC 500*** where this Hon’ble Court in relation to section 152 while interpreting the same expression has held as under:-

“6. Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission.

The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as

pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.”

14. That unless the error in the ratio laid down by the court by which the final judgment has been substantially modified by relying upon “*accidental slip or omission*” is not corrected for future the same will continue to govern the Courts below as the law laid down by Hon’ble Supreme Court is binding on all courts under Article 141 of the Constitution of India.

BRIEF FACTUAL SCENARIO

15. That only to better appreciate the controversy a brief factual context in which the present Writ Petition arose and relevant for the purposes of the present petition alone are stated as under: -

- i. That on 18.08.2021 the petitioner Ketan Kantilal Seth filed Transfer Petition (Criminal) Nos. 333-348/ 2021 before this Hon’ble Court to transfer different cases pending before different courts in different states to one Court in Mumbai. In the said petition, alongside State of Gujarat, State of West Bengal, Government of NCT of Delhi and State of Maharashtra, respective accused involved in the trials was also arrayed as Respondent.
- ii. That on 09.09.2021 this Hon’ble Court issued notice in the Transfer Petition and directed the other petitioners arrayed as respondents to be served.

- iii. That on 05.10.2021 this Hon'ble Court granted 'stay' on further proceedings in so far as trial in R.C.C. No. 147/2002 was concerned as despite the notice being issued in the Transfer Petition, the trial Court was hurriedly trying to complete the trial without calling more than 90 witness which were named in the Chargesheet.
- iv. That after the Stay has been granted on 18.10.2022, one Omprakash Bhauraoji Kamdi (the intervenor), filed I.A. No. 134476/2021 seeking intervention in the Transfer Petition on the ground that he was an agriculturist and was by and large dependent on the financial aid of Nagpur District Central Co-operative Bank Limited (hereinafter referred to as NDCCB Ltd.). It is relevant to state that a detailed reply has been filed by the Petitioner challenging the locus of the intervenor and also denying the averment made in the said Application.
- v. That on 13.05.2022 stay granted by this Court vide order dated 15.10.2021 was modified on the pretext that the proceedings in R.C.C. No. 147/2002 are at the stage of final arguments. Considering the same, this Court directed the Trial Court to complete the hearing of arguments, though, restrained it from delivering/ pronouncing the judgment in the said case. It is relevant to State that though the matter was listed for defects, the main matter was taken up and the order were passed.
- vi. That on 22.07.2022 with the consent of all the parties, the Transfer Petition was heard finally, and the orders was reversed. It is pertinent to mention that Counsel for the State of Maharashtra, Counsel for the intervenor and other counsels for the accused present were heard and the judgement was reserved.

Also, the Petitioner, State of Maharashtra and the intervenor filed their written submissions as directed by the Hon'ble Court.

- vii. That on 09.09.2022 the Transfer Petition of petitioner Ketan Kantilal Seth was allowed while dismissing the intervention application of intervenor and the cases were accordingly transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.
- viii. That on 29.09.2022 the intervenor, Omprakash Bhauraoji Kamdi filed I.A. No. 156023/2022 seeking 'modification/ recall' of the order dated 09.09.2022. The said 'modification/ recall' has been filed after the final judgement has been pronounced in open court and signed by the Hon'ble Court. Also, it is pertinent to mention that the said application was lodged initially by the registry purportedly for the reason that the Application essentially in the nature of review. Yet, the Application came to be listed before the Court.
- ix. That on 26.10.2022 the Respondent No. 12/ State of Maharashtra filed Miscellaneous Application No. 1935/2022 seeking 'modification/ recall' of the order dated 09.09.2022 with other prayers primarily on the ground that no opportunity of hearing was afforded to the State on the day of final hearing to oppose the Transfer Petition.
- x. That on 10.11.2022 the Review Petition bearing Diary No. 36121/2022 was filed on behalf of Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 titled as 'Ghanshyam Lahanuji Mudgal and others Vs. Ketan Kantilal Seth and others' seeking review of order dated 09.09.2022. The said review petition though filed was never listed by circulation before the Hon'ble

Judge(s) nor the same was listed in open Court when the aforesaid two applications were heard. Further the said accused/ respondent had not filed any Application similar to State of Maharashtra seeking 'modification/ recall' of order.

- xi. That on 04.08.2023 the modification/ recall application filed by the State of Maharashtra was allowed by modifying the order dated 09.09.2022 to the extent: -
- a) That the Criminal proceedings relating to Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and continue at the transferor Court from the stage as received;
 - b) The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.
- xii. The following chart will narrate the substantive modification done by the Hon'ble which has completely changed the final judgement.

Sl. No.	Order dated 09.09.2022 passed in T.P. (Crl.) No. 333-348 of 2021	Modification done by order dated 04.08.2023 in M.A. No. 1935 of 2022
1.	The application was allowed by transferring of all 16 cases as prayed to Mumbai by the reasons stated in	Transfer of 2 of 16 cases has been reversed. Now only 14 cases out of 16 will be transferred

	para 13 as “ <i>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.</i> ”	
2.	Out of the above 16 cases 1 case relate to trial at Nagpur being RCC No. 147/ 2002 which though was at the fag end (hearing concluded) was also transferred to Mumbai vide reasoning given in para 12 of the order. The relevant observations were “ <i>The contention of the state that prejudice will be caused if the transfer is allowed at such belated stage when one criminal proceedings is at the final stage is bereft of merit..... 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</i>	The Nagpur trial has now been restrained to be transferred to the transferee court (Mumbai) only on the ground that there has been a mistake in the order by “accidental slip or omission”. The reasoning in the first order has been completely changed to state that prejudice will now be caused to the complainant instead of the accused and that it would not be in fair administration of justice. It may be humbly noted that all the said aspect were noted and considered in the first order.

	<u>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.”</u>	
3	Out of the above 16 cases 1 case relating to trial at Amravati (Criminal Case 847 of 2002) has also been transferred on the reasoning that there is common nature of allegations in all the FIR's which need to be tried at one place.	The Amravati Trial has now been restrained/ directed to be sent back to the transferor court (Amravati Court) on a completely new reasons which were never raised or argued by the accused at whose instance this prayer has been granted. There was no application filed by the accused similar to the Application of State of Maharashtra. The review petition filed by these accused was not listed

		nor any notice has been issued by the Hon'ble Court. It may be noted that the prayer made in MA filed by the State of Maharashtra was limited to the Nagpur trial, accordingly no order could have been passed in the said MA for Amravati Trial.
4.	This Hon'ble Court in the order has clearly held that the operative part of the order dated 24.06.2021, in so far as it relate to Nagpur Trial and the split of the trial of one of the accused, was in the opinion of the Hon'ble Court <u>“amounts to differential treatment, causing serious prejudice to the right of fair trial of other accused persons including the petitioner herein.”</u>. Accordingly, the Nagpur Trial was transferred and direction was issued to conduct the trial de-novo by including the accused Sanjay Hariram Agarwal.	That in the 2nd order the said aspect has been completely overturned to state that the Hon'ble Court never intended or meant to set aside the order dated 24.06.2021 passed by the Bombay High Court. Further the direction in para 21(IV) vis-à-vis trial court to follow the timeline as given by Bombay High Court cannot be met as that timeline is long over
5.	The Hon'ble Court in the order while transferring all cases including Nagpur Trial directed <i>“on assignment of those cases to the concerned courts as directed</i>	In the 2nd order the said direction has been modified to state that the trial has to start from the stage of final arguments thereby giving a complete go by to the reasoning given in para

	<u>hereinabove, the said court(s) shall frame the charges within the period of two months from the date of appearance.....</u>”. Thus the trial was to start denovo in a Nagpur Trial given the reasoning in para 12 of the order.	12 of the 1st order which deals with the split of trial of accused Sanjay Hariram Agarwal and that the Nagpur trial is vitiated due to such split.
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16.The aforesaid facts would show that on 09.09.2022 a final judgment disposing of the Transfer Petition came to be passed by which 16 cases pending before different trial courts were directed to be transferred to Mumbai. The judgment date 09.09.2022 in detail records the reason for transferring the case. However, by the order dated 04.08.2023 on an application for recall or modification filed by the State of Maharashtra, 2 cases which were earlier directed to be transferred to Mumbai was (1) Criminal case relating to the trial at Amravati was returned/ restored back to Amravati and (2) The Nagpur trial in R.C.C. No. 147 of 2002 was restrained to be transferred by transferor court. The said modification that was done by the order dated 04.08.2023 was on the reasoning that there had been an **“accidental slip or omission which has resulted in an error”**. The reliance in that regard was placed on Order XII Rule 3 of the Supreme Court Rules, 2013.

17.Although, the reasoning given by the court even to say that there has been ‘accidental slip or omission’ is an error apparent of the face of the record as the same argument that was sought to be raised in the modification/ recall Application by the state of Maharashtra was canvassed earlier when the judgment dated 9.9.2022 was

passed. *The petitioner will invoke its independent remedy to question the order dated 04.08.2023 in accordance with law.*

18. The petitioner humbly submits that impugned Rule is liable to struck down being Ultravires and violative of fundamental right guaranteed under Article 14 and 21 of the Constitution of India. Further, the ratio of the order dated 04.08.2023 will have a serious impact in the administration of justice thereby the court below by applying the ratio in the said order will modify the final judgment by reasoning it to be an ‘accidental slip or omission’.

19. Hence the present Writ Petition.

18.08.2021	That on 18.08.2021 the petitioner Ketan Kantilal Seth filed Transfer Petition (Criminal) Nos. 333-348/ 2021 before this Hon’ble Court to transfer different cases pending before different courts in different states to one Court in Mumbai. In the said petition, alongside State of Gujarat, State of West Bengal, Government of NCT of Delhi and State of Maharashtra, respective accused involved in the trials was also arrayed as Respondent.
09.09.2021	That on 09.09.2021 this Hon’ble Court issued notice in the Transfer Petition and directed the other petitioners arrayed as respondents to be served.
05.10.2021	That on 05.10.2021 this Hon’ble Court granted ‘stay’ on further proceedings in so far as trial in R.C.C. No. 147/2002 was concerned as despite the notice being issued in the Transfer Petition, the trial Court was hurriedly trying to complete the trial without calling

	more than 90 witness which were named in the Chargesheet.
18.10.2022	That after the Stay has been granted on 18.10.2022, one Omprakash Bhauraoji Kamdi (the intervenor), filed I.A. No. 134476/2021 seeking intervention in the Transfer Petition on the ground that he was an agriculturist and was by and large dependent on the financial aid of Nagpur District Central Co-operative Bank Limited (hereinafter referred to as NDCCB Ltd.). It is relevant to state that a detailed reply has been filed by the Petitioner challenging the locus of the intervenor and also denying the averment made in the said Application.
13.05.2022	That on 13.05.2022 stay granted by this Court vide order dated 15.10.2021 was modified on the pretext that the proceedings in R.C.C. No. 147/2002 are at the stage of final arguments. Considering the same, this Court directed the Trial Court to complete the hearing of arguments, though, restrained it from delivering/ pronouncing the judgment in the said case. It is relevant to State that though the matter was listed for defects, the main matter was taken up and the order were passed.
22.07.2022	That on 22.07.2022 with the consent of all the parties, the Transfer Petition was heard finally, and the orders was reversed. It is pertinent to mention that Counsel for the State of Maharashtra, Counsel for the intervenor and other counsels for the accused present were heard

	and the judgement was reserved. Also, the Petitioner, State of Maharashtra and the intervenor filed their written submissions as directed by the Hon'ble Court.
09.09.2022	That on 09.09.2022 the Transfer Petition of petitioner Ketan Kantilal Seth was allowed while dismissing the intervention application of intervenor and the cases were accordingly transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.
29.09.2022	That on 29.09.2022 the intervenor, Omprakash Bhauraoji Kamdi filed I.A. No. 156023/2022 seeking 'modification/ recall' of the order dated 09.09.2022. The said 'modification/ recall' has been filed after the final judgement has been pronounced in open court and signed by the Hon'ble Court. Also, it is pertinent to mention that the said application was lodged initially by the registry purportedly for the reason that the Application essentially in the nature of review. Yet, the Application came to be listed before the Court.
26.10.2022	That on 26.10.2022 the Respondent No. 12/ State of Maharashtra filed Miscellaneous Application No. 1935/2022 seeking 'modification/ recall' of the order dated 09.09.2022 with other prayers <u>primarily on the ground that no opportunity of hearing was afforded to the State on the day of final hearing to oppose the Transfer Petition.</u>

10.11.2022	That on 10.11.2022 the Review Petition bearing Diary No. 36121/2022 was filed on behalf of Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 titled as 'Ghanshyam Lahanuji Mudgal and others Vs. Ketan Kantilal Seth and others' seeking review of order dated 09.09.2022. The said review petition though filed was never listed by circulation before the Hon'ble Judge(s) nor the same was listed in open Court when the aforesaid two applications were heard. Further the said accused/ respondent had not filed any Application similar to State of Maharashtra seeking 'modification/ recall' of order.
04.08.2023	That on 04.08.2023 the modification/ recall application filed by the State of Maharashtra was allowed by modifying the order dated 09.09.2022 to the extent: - a) That the Criminal proceedings relating to Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and continue at the transferor Court from the stage as received; b) The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments

	by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.
	The petitioner humbly submits that impugned Rule is liable to struck down being Ultravires and violative of fundamental right guaranteed under Article 14 and 21 of the Constitution of India. Further, the ratio of the order dated 04.08.2023 will have a serious impact in the administration of justice thereby the court below by applying the ratio in the said order will modify the final judgment by reasoning it to be an ‘accidental slip or omission’.
06.09.2023	Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2023

IN THE MATTER OF:-

**Ketan Kantilal Sheth
R/o. 193, Lalit Kutir CHS,
Gulmohar Cross Road No. 9,
JVPD Scheme, Andheri (West), Mumbai
Maharashtra.**

... PETITIONER

Versus

1. State of Maharashtra Through its Secretary Home Department, Mantralay, Mumbai – 400032, Maharashtra	...RESPONDENT NO.1
2. The Secretary General Supreme Court of India Tilak Marg, New Delhi 110001.	...RESPONDENT NO.2

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTIORARI AND MANDAMUS UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA.

**THE HON'BLE CHIEF JUSTICE OF INDIA AND OTHER
COMPANION JUDGES OF THIS HON'BLE COURT**

**THE HUMBLE PETITION OF THE PETITIONER ABOVE
NAMED**

MOST RESPECTFULLY SHOWETH AS UNDER:

- The present Writ petition has been filed challenging the Supreme Court Rules, 2013 as being Ultravires Section 362 read with Article 145 of the Constitution of India and violative**

of fundamental right guaranteed under Article 14 and 21 of the Constitution of India. Petitioner further states that the ratio of the order dated 04.08.2023 have a serious impact in the administration of justice thereby the court below by applying the ratio in the said order will modify the final judgment by reasoning it to be an ‘accidental slip or omission” more specifically in civil cases as section 152 of Code of Civil Procedure, 1908 uses the same expression. Copy of Order XII Rule 3 of Supreme Court Rules, 2013 is filed herewith and marked as **Annexure-P-1** (Page Nos. 23 to 24).

2. FACTS OF THE CASE:

- 2.1 That the petitioner is mentioning only those facts relevant for the purpose of adjudication of prayer made in the writ petition and the facts relating to the merits of the Transfer Petitioner and the orders passed is not being mentioned as the order dated 04.08.2023 is not in challenge in the present case. The petitioner craves liberty to file those documents in case the need so arises or the records of the case can be called, as the case may be as this Hon’ble Court deems fit to so direct.
- 2.2 That on 18.08.2021 the petitioner Ketan Kantilal Seth filed Transfer Petition (Criminal) Nos. 333-348/ 2021 before this Hon’ble Court to transfer different cases pending before different courts in different states to one Court in Mumbai. In the said petition, alongside State of Gujarat, State of West Bengal, Government of NCT of Delhi and State of Maharashtra, respective accused involved in the trials was also arrayed as Respondent.

- 2.3 That on 09.09.2021 this Hon'ble Court issued notice in the Transfer Petition and directed the other petitioners arrayed as respondents to be served.
- 2.4 That on 05.10.2021 this Hon'ble Court granted 'stay' on further proceedings in so far as trial in R.C.C. No. 147/2002 was concerned as despite the notice being issued in the Transfer Petition, the trial Court was hurriedly trying to complete the trial without calling more than 90 witness which were named in the Chargesheet.
- 2.5 That after the Stay has been granted on 18.10.2022, one Omprakash Bhauraoji Kamdi (the intervenor), filed I.A. No. 134476/2021 seeking intervention in the Transfer Petition on the ground that he was an agriculturist and was by and large dependent on the financial aid of Nagpur District Central Co-operative Bank Limited (hereinafter referred to as NDCCB Ltd.). It is relevant to state that a detailed reply has been filed by the Petitioner challenging the locus of the intervenor and also denying the averment made in the said Application.
- 2.6 That on 13.05.2022 stay granted by this Court vide order dated 15.10.2021 was modified on the pretext that the proceedings in R.C.C. No. 147/2002 are at the stage of final arguments. Considering the same, this Court directed the Trial Court to complete the hearing of arguments, though, restrained it from delivering/ pronouncing the judgment in the said case. It is relevant to State that though the matter was listed for defects, the main matter was taken up and the order were passed.
- 2.7 That on 22.07.2022 with the consent of all the parties, the Transfer Petition was heard finally, and the orders was reversed.

It is pertinent to mention that Counsel for the State of Maharashtra, Counsel for the intervenor and other counsels for the accused present were heard and the judgement was reserved. Also, the Petitioner, State of Maharashtra and the intervenor filed their written submissions as directed by the Hon'ble Court.

- 2.8 That on 09.09.2022 the Transfer Petition of petitioner Ketan Kantilal Seth was allowed while dismissing the intervention application of intervenor and the cases were accordingly transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra. True Copy of the Final judgement dated 09.09.2022 passed by this Court in Transfer Petitioner (Criminal) No. 333-348 of 2021 is filed herewith and marked as **Annexure-P-2** (Page Nos. 25 to 40).
- 2.9 That on 29.09.2022 the intervenor, Omprakash Bhauraoji Kamdi filed I.A. No. 156023/2022 seeking 'modification/ recall' of the order dated 09.09.2022. The said 'modification/ recall' has been filed after the final judgement has been pronounced in open court and signed by the Hon'ble Court. Also, it is pertinent to mention that the said application was lodged initially by the registry purportedly for the reason that the Application essentially in the nature of review. Yet, the Application came to be listed before the Court.
- 2.10 That on 26.10.2022 the Respondent No. 12/ State of Maharashtra filed Miscellaneous Application No. 1935/2022 seeking 'modification/ recall' of the order dated 09.09.2022 with other prayers primarily on the ground that no opportunity of hearing was afforded to the State on the day of final hearing to oppose the Transfer Petition.

- 2.11 That on 10.11.2022 the Review Petition bearing Diary No. 36121/2022 was filed on behalf of Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 titled as 'Ghanshyam Lahanuji Mudgal and others Vs. Ketan Kantilal Seth and others' seeking review of order dated 09.09.2022. The said review petition though filed was never listed by circulation before the Hon'ble Judge(s) nor the same was listed in open Court when the aforesaid two applications were heard. Further the said accused/ respondent had not filed any Application similar to State of Maharashtra seeking 'modification/ recall' of order.
- 2.12 That on 04.08.2023 the modification/ recall application filed by the State of Maharashtra was allowed by modifying the order dated 09.09.2022 to the extent: -
- (i) That the Criminal proceedings relating to Respondent/ Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and continue at the transferor Court from the stage as received;
 - (ii) The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.

True Copy of Order dated 04.08.2023 passed by this Hon'ble Court in M.A. No. 1935 of 2022 is filed herewith and marked as **Annexure-P-3** (Page Nos. 41 to 68).

2.13 The following chart will narrate the substantive modification done by the Hon'ble which has completely changed the final judgement.

Sl. No.	Order dated 09.09.2022 passed in T.P. (Crl.) No. 333-348 of 2021	Modification done by order dated 04.08.2023 in M.A. No. 1935 of 2022
1.	The application was allowed by transferring of all 16 cases as prayed to Mumbai by the reasons stated in para 13 as <i>“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.”</i>	Transfer of 2 of 16 cases has been reversed. Now only 14 cases out of 16 will be transferred
2.	Out of the above 16 cases 1 case relate to trial at Nagpur	The Nagpur trial has now been restrained to be transferred to

	being RCC No. 147/ 2002 which though was at the fag end (hearing concluded) was also transferred to Mumbai vide reasoning given in para 12 of the order. The relevant observations were “<i>The contention of the state that prejudice will be caused if the transfer is allowed at such belated stage when one criminal proceedings is at the final stage is bereft of merit..... 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</i>	the transferee court (Mumbai) only on the ground that there has been a mistake in the order by “accidental slip or omission”. The reasoning in the first order has been completely changed to state that prejudice will now be caused to the complainant instead of the accused and that it would not be in fair administration of justice. It may be humbly noted that all the said aspect were noted and considered in the first order.
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	<u>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.”</u>	
3	Out of the above 16 cases 1 case relating to trial at Amravati (Criminal Case 847 of 2002) has also been transferred on the reasoning that there is common nature of allegations in all the FIR's which need to be tried at one place.	The Amravati Trial has now been restrained/ directed to be sent back to the transferor court (Amravati Court) on a completely new reasons which were never raised or argued by the accused at whose instance this prayer has been granted. There was no application filed by the accused similar to the Application of State of Maharashtra. The review petition filed by these accused was not listed nor any notice has been issued by the Hon'ble Court.

		It may be noted that the prayer made in MA filed by the State of Maharashtra was limited to the Nagpur trial, accordingly no order could have been passed in the said MA for Amravati Trial.
4.	This Hon'ble Court in the order has clearly held that the operative part of the order dated 24.06.2021, in so far as it relate to Nagpur Trial and the split of the trial of one of the accused, was in the opinion of the Hon'ble Court <u>"amounts to differential treatment, causing serious prejudice to the right of fair trial of other accused persons including the petitioner herein."</u> Accordingly, the Nagpur Trial was transferred and direction was issued to conduct the trial de-novo by including the accused Sanjay Hariram Agarwal.	That in the 2 nd order the said aspect has been completely overturned to state that the Hon'ble Court never intended or meant to set aside the order dated 24.06.2021 passed by the Bombay High Court. Further the direction in para 21(IV) vis-à-vis trial court to follow the timeline as given by Bombay High Court cannot be met as that timeline is long over
5.	The Hon'ble Court in the order while transferring all cases including Nagpur Trial	In the 2 nd order the said direction has been modified to state that the trial has to start

	directed “on assignment of those cases to the concerned courts as directed hereinabove, <u>the said court(s) shall frame the charges within the period of two months from the date of appearance.....</u>”. Thus the trial was to start denovo in a Nagpur Trial given the reasoning in para 12 of the order.	from the stage of final arguments thereby giving a complete go by to the reasoning given in para 12 of the 1st order which deals with the split of trial of accused Sanjay Hariram Agarwal and that the Nagpur trial is vitiated due to such split.
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2.14 The aforesaid facts would show that on 09.09.2022 a final judgment disposing of the Transfer Petition came to be passed by which 16 cases pending before different trial courts were directed to be transferred to Mumbai. The judgment date 09.09.2022 in detail records the reason for transferring the case. However, by the order dated 04.08.2023 on an application for recall or modification filed by the State of Maharashtra, 2 cases which were earlier directed to be transferred to Mumbai was (1) Criminal case relating to the trial at Amravati was returned/ restored back to Amravati and (2) The Nagpur trial in R.C.C. No. 147 of 2002 was restrained to be transferred by transferor court. The said modification that was done by the order dated 04.08.2023 was on the reasoning that there had been an **“accidental slip or omission which has resulted in an error”**. The reliance in that regard was placed on Order XII Rule 3 of the Supreme Court Rules, 2013.

- 2.15 Although, the reasoning given by the court even to say that there has been ‘accidental slip or omission’ is an error apparent of the face of the record as the same argument that was sought to be raised in the modification/ recall Application by the state of Maharashtra was canvassed earlier when the judgment dated 9.9.2022 was passed. *The petitioner will invoke its independent remedy to question the order dated 04.08.2023 in accordance with law.*
- 2.16 That the petitioner in the aforesaid background is filing the present writ petition seeking quashing of Order XII Rule 3 of the Supreme Court Rules, 2013 as violative of Fundamental Rights under Article 14 and 21 of the Constitution of India and that impugned Rule is ultravires Section 362 of Code of Criminal Procedure read with Article 145 of the Constitution of India.
- 2.17 The implication of order dated 04.08.2023 is far reaching as the interpretation to words “accidental Slip or omission” is a binding precedent and is to be followed by all the courts below. Section 152 of the Code of Civil Procedure also uses the same expression and therefore the said order will have serious impact in administration of justice. Moreover, the ratio in the order dated 04.08.2023 is contrary to several judgements of this Hon’ble Court.

3. **GROUND OF WRIT PETITION**

RULE ULTRAVIRES SECTION 362 OF CODE OF CRIMINAL
PROCEDURE READ WITH ARTICLE 145 OF THE
CONSTITUTION OF INDIA

A. That the Supreme Court Rules have been framed under Article 145 of the Constitution of India. Article 145 of the Constitution of India reads as under:-

“145. Rules of Court, etc

*(1) **Subject to the provisions of any law made by Parliament**, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including*

(a) rules as to the persons practising before the Court,

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under Article 139A;

(d) rules as to the entertainment of appeals under sub clause (c) of clause (1) of Article 134;

(e) any judgment pronounced or order made by the Court may be received and rules as to the conditions the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of Article 317”

B. That Sub-Article (1) of Article 145 of the Constitution of India very clearly states that any Rules framed in exercise of Powers under Article 145 has to be subject to the law made by the Parliament.

C. That Order XII Rule 3 of the Supreme Court Rules,2013, a Rule in question, reads as under: -

*“**Order XII Rule 3-** Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.”*

D. The primary premise of challenging the said Rule and more specifically the words **“or an error arising from any accidental slip or omission”** is that the said portion of the rule being applied in relation to a criminal case would be ultra vires section 362 of The Code of Criminal Procedure, 1973, a law made by the Parliament, and Supreme Court Rules being Sub-servient to the said law made

by the Parliament is ultra-vires. Section 362 of CrPC reads as under:

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*“362. Court not to alter judgment - Save as otherwise provided by this Code or by any other law for the time being in force, **no Court**, when it has signed its judgment or final order disposing of a case, **shall alter or review the same** except to correct a clerical or arithmetical error.”*

- E. From the reading of section 362 of Cr. P. C. it is abundantly clear that no court when it has signed its judgment or final order disposing of a case shall alter or review the same. The only exception given in the said section is to correct a clerical or arithmetical error. The said section does not provide that an error arising out of accidental slip or omission can also be corrected. The said section would apply in relation to any power which are being exercised by any court in India under CrPC, 1973.
 - F. That Order XII Rule 3 would therefore be ultravires section 362 Cr. P.C to the extent it offends Section 362 of the Constitution of India in relation to proceedings before the Court under Code of Criminal Procedure.
 - G. That the Constitution Bench of this Hon’ble Court in the case of ***Prem Chand Garg v. Excise Commissioner, Allahabad, U.P. 1963 SCR Supp(1) 885*** had upheld the challenge to the Supreme Court Rules in a Petition filed under Article 32 of the Constitution of India and had struck down Order XXXV Rule 12 of the Supreme Court Rules
- RULES VIOLATE ARTICLE 14 AND ARTICLE 21 OF THE CONSTITUTION OF INDIA

- H. That not only that the said section would be ultravires Section 362 of the Code of Criminal Procedure read with Article 145 of the Constitution of India it also violates fundamental right of the petitioner under Article 14 and Article 21 of the Constitution of India. Petitioner humbly submits that 7 Judge bench judgement of this Hon'ble Court in the case of ***State of West Bengal v. Anwar Ali Sarkar 1952 SCR 284*** has held that the Rule of procedure laid down by the law comes as much within the purview of Article 14 of the Constitution as any Rule of substantive law and it is necessary that all litigants are able to avail themselves of the same procedural Right for relief. In the present case the safeguards of Section 362 which gives very limited power to alter or review the final judgement to all the litigants who invoke remedy or relief under Code of Criminal Procedure would be treated discriminately under the impugned Rule when the Supreme Court exercises power under Code of Criminal Procedure.
- I. That to elaborate, the litigants will have right to avail the relief by virtue of limited power with the courts to alter the final judgement more specifically not on the grounds of “accidental Slip or omission”, however the Supreme Court Rules seeks to set a different procedure in relation to a litigant who invokes the power of Supreme Court under Code of Criminal Procedure which will be violative of Article 14 of the Constitution of India. For example a litigant invoking powers of High Court under Section 407 to seek transfer of case would be protected by Section 362 Cr. P. C. in case the case is decided in one's favour, however the litigant Before Supreme Court exercising powers under Section 406 Cr. P. C. for transfer of cases would be denuded of the similar protection because

of Order XII Rule 3. This Hon'ble Court in the case of **Anwar Ali Sarkar (Supra)** Hon'ble Fazal Ali J. in its concurring opinion for majority has held:-

“It was suggested that the reply to this query is that the Act itself being general and applicable to all persons and to all offences, cannot be said to discriminate in favour of or against any particular case or classes of persons or cases, and if any charge of discrimination can be leveled at all, it can be leveled only against the act of the executive authority if the Act is misused. This kind of argument however does not appear to me to solve the difficulty. The result of accepting it would be that even where discrimination is quite evident one cannot challenge the Act simply because it is couched in general terms; and one cannot also challenge the act of the executive authority whose duty it is to administer the Act, because that authority will say :- I am not to blame as I am acting under the Act. It is clear that if the argument were to be accepted, article 14 could be easily defeated. I think the fallacy of the argument lies in overlooking the fact that the "insidious discrimination complained of is incorporated in the Act itself", it being so drafted that whenever any discrimination is made such discrimination would be ultimately traceable to it. The Act itself says down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root-cause of the discrimination which may result by the application of the Act.

The farmers of the Constitution have referred to equality in the Preamble, and have devoted as many as five articles, namely, articles 14, 15, 16, 17, and 18 in the Chapter on Fundamental Rights, to ensure equality in all its aspects. Some of these Articles are confined to citizens only and some can be availed of by non-citizens also; but on reading these provisions as a whole, one can see the great importance attached to the principle of equality in the Constitution. That being so, it will be wrong to whittle down the meaning of article 14, and however well-intentioned the impugned Act may be and however reluctant one may feel to hold it invalid, it seems to me that section 5 of the Act, or at least that part of it with which alone we are concerned in this appeal, does offend against article 14 of the Constitution and is therefore unconstitutional and void.”

- J. That the petitioner humbly submits that Order XII Rule 3 in so far as it sets out the different procedure to alter a final judgement than section 362 Cr. P. C. (protection available to a succeeding litigant) where the powers exercised by the Courts are under Code of Criminal Procedure is discriminatory and violative of Article 14 of the Constitution of India.
- K. The petitioner further submits that impugned Rule also offends Article 21 of the Constitution of India as seeks to set a different procedure which effects the life and liberty of the litigant (in the present case the petitioner) and violates the mandate of Article 145 of the Constitution of India and is therefore liable to struck down to

the extent it applies “or an error arising from an accidental slip or omission” to cases under Code of Criminal Procedure, 1973.

FAR REACHING IMPLICATIONS OF ORDER DATED
04.08.2023

- L. The petitioner humbly submits that the effect of the order dated 04.08.2023 is far reaching and will also have an impact in several proceedings as section 152 of the Code of Civil Procedure uses the same expression as is there in the impugned Rule. Therefore, the order dated 04.08.2023 which now interprets the expression “error arising from accidental slip or omission” to mean that the court can even modify the final judgement will raise a serious concerns which will impinge the fair administration of justice. Infact, the ratio of order dated 04.08.2023 is contrary to several decisions of this Court which has not been noticed in the order dated 04.08.2023 one of which being ***Dwarka Das v. State of M.P. & Anr. (1999) 3 SCC 500*** where this Hon’ble Court in relation to section 152 while interpreting the same expression has held as under:-

*“6. Section 152 C.P.C. provides for correction of clerical arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. **The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments,***

decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the Section cannot be pressed into service to correct an omission which is intentional, how erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective order in the Us pending before them. No Court can under the cover of the aforesaid sections modify, alter or add to the terms of its original judgment, decree or order. In the instant case, the trial court had specifically held the respondents-State liable to pay future interest only despite the prayer of the appellant for grant of interest with effect from the date of alleged breach which impliedly meant that the court had rejected the claim of the appellant in so far as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be accidental omission or mistake as was wrongly done by the trial court vide order dated 30th November, 1973. The High Court was, therefore, justified in setting aside the aforesaid order by accepting the revision petition filed by the State.”

M. That unless the error in the ratio laid down by the court by which the final judgment has been substantially modified by relying upon “*accidental slip or omission*” is not corrected for future the same will continue to govern the Courts below as the law laid down by Hon’ble Supreme Court is binding on all courts under Article 141 of the Constitution of India.

4. That the Petitioners have not filed any similar writ petition before Hon’ble Supreme Court or any other High Court.

PRAYER

In view of the above, the Petitioner most respectfully prays that this Hon’ble Court may be pleased to –

- i. Issue a writ in the nature of Certiorari by striking down “*or error arising from accidental slip or omission*” from Order XII Rule 3 of the Supreme Court Rules, 2013 in so far as it applies to criminal cases where the Court has exercised the power under Code of Criminal Procedure, 1973.
- ii. issue a writ, order or direction declaring that the expression “*or error arising from accidental slip or omission*” in Order XII Rule 3 is violative of Article 14 and 21 of the Constitution of India in so far it applies to criminal cases where the court has exercised the power under Code of Criminal Procedure, 1973;
- iii. issue a writ, order or direction declaring that the expression “*or error arising from accidental slip or omission*” in Order XII Rule 3 is

ultravires Section 362 read with Article 145 of the Constitution of India;

iv. Issue writ order or direction to declare that the ratio of the order dated 04.08.2023 regarding interpretation of expression “accidental slip or omission” is not a good law in view of the judgement of this Hon’ble Court in the case of Dwarka Das v. State of M.P. & Another (1999) 3 SCC 500;

v. pass such other order or orders as deemed fit and proper in the facts and circumstances of the case; and

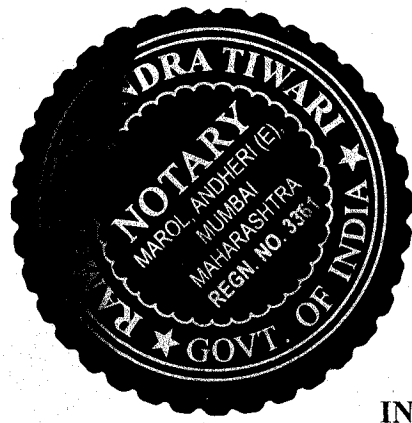
vi. award costs to the petitioner.

Filed by;



[AYUSH SHARMA]
Advocate for the Petitioner

Filed on: 06.09.2023.



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (CRL.) NO. _____ OF 2023**

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

Versus

The State of Maharashtra & ~~Amr~~

...Respondents

AFFIDAVIT

I, Ketan Kantilal Seth, S/o. Shri Kantilal Seth, Aged about 59 years, R/o. 702, B Wing, Sabnam Apartments, Barfiwala Lane, Juhu Gali, Andheri West, Mumbai 400049, do hereby solemnly affirm and state as under:

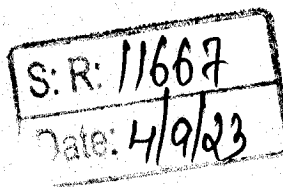
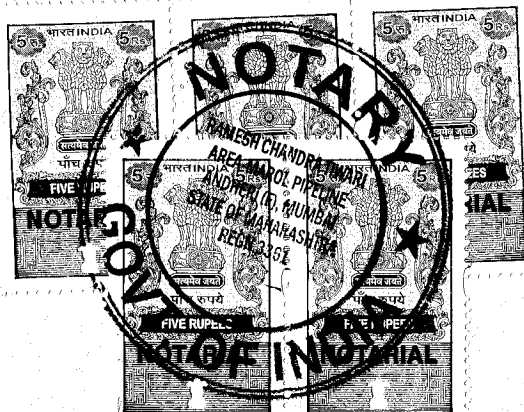
1. That I am the Petitioner Company and I am fully conversant with the facts and circumstances of the case and as such competent to swear this affidavit.
2. That the accompanying Writ Leave Petition (C) [Pages 1 to 22], Synopsis and List of Dates & Events [Pages B to V] and Interlocutory Application [s] have been drawn by my Advocate under my instructions. I have read and understood the contents of the above and I say that the same are true and correct to my knowledge and belief and I believe the same to be true.
3. That the Annexures filed herewith are true copies of their respective originals.

[Signature]
DEPONENT

VERIFICATION:

I, Ketan Kantilal Seth, the deponent, do hereby verify that the contents of para-1 to Para-3 of above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Solemnly affirmed on the _____ day of September, 2023, New Delhi.



[Signature]
DEPONENT
BEFORE ME
[Signature] 4/9/23
RAMESH CHANDRA TIWARI
ADVOCATE & NOTARY
GOVT. OF INDIA
Res. 129, A-Wing, Appli Ekta Hsg. Soc.
Nav Pada, Marol Naka, A. K. Road,
Andheri (E), Mumbai-400 059

The Supreme Court Rules, 2013**Order XII****Judgments, Decrees And Orders**

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their advocates on record, and the decree or order shall be drawn up in accordance therewith.
2. A member of the Court may read a judgment prepared by another member of the Court.
3. Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.
4. Certified copies of the judgment, decree or order shall be furnished to the parties on requisition made for the purpose, and at their expense.
5. Every decree passed or order made by the Court shall be drawn up in the Registry and be signed by the Registrar, the Additional Registrar or Deputy Registrar and sealed with the seal of the Court and shall bear the same date as the judgment in the suit or appeal.
6. The decree passed or order made by the Court in every appeal, and any order for costs in connection with the proceedings therein, shall be transmitted by the Registrar to the Court or Tribunal from which the

appeal was brought, and steps for the enforcement of such decree or order shall be taken in that Court or Tribunal in the way prescribed by law.

7. Orders made by the Court in other proceedings shall be transmitted by the Registrar to the judicial or other authority concerned to whom such orders are directed, and any party may apply to the Judge in Chambers that any such order, including an order for payment of costs, be transmitted to any other appropriate Court or other authority for enforcement.

8. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar, the Additional Registrar or the Deputy Registrar shall, before issuing the draft, submit the same to the Court.

9. Where the Registrar, the Additional Registrar or the Deputy Registrar considers it necessary that the draft of any decree or order should be settled in the presence of the parties or where the parties, require it to be settled, in their presence, the Registrar, the Additional Registrar or the Deputy Registrar shall, by notice in writing, appoint a time for settling the same and the parties shall attend the appointment and produce the briefs and such other documents as may be necessary to enable the draft to be settled.

10. Where any party is dissatisfied with the decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court, which shall not exceed 90 days from date of order of the Registrar failing which the Registrar will proceed to settle the decree.



True Copy

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

25

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.**


True Copy
16



2023 INSC 671

ANNEXURE-P-3

NON-REPORTABLE

41

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. OF 2023

[D.NO. 33197 OF 2022]

IN

TRANSFER PETITION (CRIMINAL) NOs. 333-348/2021

Ketan Kantilal Seth

.....Petitioner

VERSUS

The State of Gujarat and Ors.

.....Respondents

WITH

M.A. NO. 1935 OF 2022 IN T.P. (CRL.) NOs. 333-348 OF 2021

O R D E R

J. K. Maheshwari, J.

1. In the instant case, I.A. No. 156023/2022 and Miscellaneous Application No. 1935/2022 have been filed seeking modification/recall of order dated 09.09.2022 passed by this Court in Transfer Petition (Criminal) Nos. 333-348 (hereinafter referred to as 'Transfer Petition'), whereby, this

Court allowed the said petition filed by Petitioner/accused Ketan Kantilal Seth and directed the transfer of pending matters as prayed by him in the

Signature Not Verified
Digitally Signed by
Jayant Kumar Arora
Date: 2023.08.04
17:59:31
Reason:

petition to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.

2. For ready reference, reliefs as sought in the aforesaid two applications moved at the instance of intervenor namely ‘Omprakash Bhauraoji Kamdi’ and ‘Respondent No. 12/State of Maharashtra’ are reproduced as thus –

I. I.A. No. 156023/2022 – Application filed on 29.09.2022 by intervenor for ‘modification/recall’ of order dated 09.09.2022;

Prayer – **a.** Recall/modify the order dated 09.09.2022 passed by this Hon’ble Court in Transfer Petition (Crl.) Nos. 333-348 of 2021 and transferring all the Trials pending against the Petitioner including the trial in R.C.C. No. 147/2002 pending before Ld. 2nd Additional Chief Judicial Magistrate, Nagpur which is already concluded by the Ld. Trial Court;

b. pass such other order(s) and further order/direction(s) as is deemed just and proper in the facts and circumstances of the case.

II. Miscellaneous Application No. 1935/2022 – Application filed on 26.10.2022 by Respondent No.

12/State of Maharashtra seeking 'modification/recall' of order dated 09.09.2022.

Prayer – **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.

3. Before advertng to the contentions made in the case, it would be relevant to mention the brief backdrop of the proceedings/orders passed by this Court during the pendency of the Transfer Petition which ultimately led to the filing of the two applications by the intervenor and Respondent No. 12/State of Maharashtra respectively. The same is reproduced as thus –

- i. **18.08.2021** – Accused Ketan Kantilal Seth filed Transfer Petition (Criminal) Nos. 333-348/2021 before this Court. In the said petition, alongside State of Gujarat, State of West Bengal, Government of NCT of Delhi and respective co-accused persons involved in

the trials, State of Maharashtra was also arrayed as Respondent No. 12.

- ii. **09.09.2021** – This Court issued notice in the Transfer Petition and directed the other co-accused persons arrayed as respondents to be served.
- iii. **05.10.2021** – This Court granted ‘stay’ on further proceedings in R.C.C. No. 147/2002 (main matter in question).
- iv. **18.10.2021** – One Omprakash Bhauraoji Kamdi (the intervenor), filed I.A. No. 134476/2021 seeking intervention in the Transfer Petition primarily on the ground that he was an agriculturist and was by and large dependent on the financial aid of Nagpur District Central Co-operative Bank Limited (hereinafter referred to as NDCCB Ltd.), which was one of the banks allegedly defrauded by the accused.
- v. **13.05.2022** – Stay granted by this Court vide order dated 05.10.2021 was modified on the pretext that the proceedings in R.C.C. No. 147/2002 are at the stage of final arguments. Considering the same, this Court

directed the Trial Court to complete the hearing of arguments, though, restrained it from delivering/pronouncing the judgment in the said case.

vi. 22.07.2022 – With the consent of all the parties, the Transfer Petition was heard finally, and the order was reserved.

vii. 09.09.2022 – The Transfer Petition of accused Ketan Kantilal Seth was allowed while dismissing the intervention application of intervenor and the cases were accordingly transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.

viii. 29.09.2022 – Intervenor Omprakash Bhauraoji Kamdi filed I.A. No. 156023/2022 seeking ‘modification/recall’ of the order dated 09.09.2022 with other prayers as mentioned above.

ix. 26.10.2022 – Respondent No. 12/State of Maharashtra filed Miscellaneous Application No. 1935/2022 seeking ‘modification/recall’ of the order dated 09.09.2022 with other prayers primarily on the

ground that no opportunity of hearing was afforded to the State on the day of final hearing to oppose the Transfer Petition.

- x. 10.11.2022** – Review Petition bearing Diary No. 36121/2022 was filed on behalf of Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 titled as ‘Ghanshyam Lahanuji Mudgal and others. Vs. Ketan Kantilal Seth and others’ seeking review of order dated 09.09.2022, which is pending.

4. This Court as mentioned above, allowed the Transfer Petition (Criminal) Nos. 333-348 of 2021 vide final order dated 09.09.2022 and issued following directions in paragraph 13 –

“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 petitioners 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.”

5. We now proceed to refer the contentions as raised by intervenor and State of Maharashtra during hearing.

6. Mr. Mahesh Jethmalani, learned senior counsel appearing on behalf of intervenor in I.A. No. 156023/2022 primarily contested the application on the merits of the Transfer Petition and stated that the petition was filed by accused Ketan Kantilal Seth with an ulterior motive to de-rail and delay the trials which are pending against him since almost 20 years in different States. He further contended that, allowing of the Transfer Petition vide order dated 09.09.2022 has led to de-novo trial of R.C.C. No. 147/2002 and in fact, this Court has effectively set-aside the order dated 24.06.2021 passed by Bombay High Court in Criminal Application No. 628/2021 vide which the Trial Court was directed to conclude the trial in R.C.C. No. 147/2002 within specified time, wherein hearing stood concluded, though judgment was not pronounced by Trial Court in view of the order dated 13.05.2022 of this Court. While closing the arguments, the learned senior counsel submitted that such transfer of cases by this Court has effectually led to an adverse effect on the whole

efforts of all the stakeholders involved who have been in pursuit of justice since more than 20 years.

7. Mr. Tushar Mehta, learned senior counsel appearing on behalf of State of Maharashtra, contested M.A. No. 1935/2022 and sought recall/modification of the order dated 09.09.2022 predominantly on the ground that no opportunity of hearing was given to the State on the date when the matter was finally heard and same amounts to violation of principles of natural justice. It was further contended that, had there being any opportunity given to the State, all the development of the proceedings in respective Courts would have been brought to the notice of this Court. Learned senior counsel also laid emphasis on the fact that in view of the directions issued in paragraph 13(e), the trials are required to be started from the stage of framing of charge. It is said that, as per order dated 13.05.2022 of this Court, arguments were heard in R.C.C. No. 147/2002 by 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur and only the judgment is to be pronounced. Therefore, it was prayed that the order dated 09.09.2022 may be modified to the extent by which de-novo trial of that case may be avoided. To fortify his

prayer, emphasis was laid on the order of this Court dated 29.11.2022 in the instant applications, by which the transfer of the R.C.C. No. 147/2002 was kept in abeyance, and it was also directed that fresh trial shall not commence in the said case.

8. Per contra, Mr. Vikas Singh, learned senior counsel appearing on behalf of accused Ketan Kantilal Seth, vociferously opposed both the applications and submitted that the Transfer Petition was heard by consent of the parties and the submissions made before this Court are mere reiterations and purely an attempt to re-open the case for hearing on merits which is not permissible as per Order XII Rule 3 of Supreme Court Rules, 2013 (hereinafter referred to as "Supreme Court Rules"). Further, he contended that the submission of State of Maharashtra with respect to not granting opportunity of hearing at the time of final hearing of Transfer Petition is not correct because all the parties were represented, and appearance has been marked in the order dated 22.07.2022 of this Court while closing hearing and reserving the case for order. Learned senior counsel also disputed the locus of intervenor Omprakash Bhauraoji Kamdi and drew our attention to the application submitted by intervenor before

this Court in contrast to the affidavit filed by intervenor before Bombay High Court Criminal Application No. 628/2021 to demonstrate his contradictory stand. Our attention was specifically drawn to the fact that in affidavit filed by said intervenor before Bombay High Court, he has claimed to be a member of NDCCB Ltd. which is in complete contravention to his stand before this Court. In the order dated 09.09.2022, this Court made it clear that the applicant does not have any locus to contest the Transfer Petition and hence, the intervenor at the very outset has to prove his locus and his claim to be a poor agriculturist dependent on the NDCCB Ltd. for financial aid is misplaced. Lastly, it is urged that the Judge in Nagpur who was trying case R.C.C. No. 147/2002 before whom the arguments were advanced and hearing took place, has already been transferred to Pune and hence, the contention of Mr. Tushar Mehta, learned senior counsel that hearing is already concluded is of no relevance now.

9. Furthermore, in response to the reply to the stand taken by accused persons who were arrayed as Respondent Nos. 20, 23, 25, 26, 30, 31, 32 and 34 in the instant matter, it has been

submitted that they have already filed Review Petition [as stated in Para 3 (x) above] seeking review of order dated 09.09.2022. Therefore, they may take the recourse by pursuing pending review petition.

10. Heard learned counsels for the parties and perused the material available on record. At this juncture, it is apt to produce relevant provision of Order XII of the Supreme Court Rules, which reads as thus:

“3. Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.”

11. By the aforesaid, it is clear that any alternation or addition to a judgment pronounced by Court can be made only to correct a clerical or arithmetical mistake or an error arising out of an accidental slip or omission. It is well settled that any application filed on the pretext of ‘clarification/addition’ while evading the recourse of review, ought not to be entertained and should be

discouraged. The time and again, this Court has deprecated such practice and lately in **‘Supertech Limited Vs. Emerald Court Owner Resident Welfare Association & Ors., (Miscellaneous Application No. 1572 of 2021 in Civil Appeal No. 5041 of 2021)’** while answering the issue on similar Miscellaneous Application filed for ‘clarification/modification’, this Court observed as thus –

*“8. In successive decisions, this Court has held that the filing of applications styled as “miscellaneous applications: or “applications for clarification/modification” in the guise of a review cannot be countenanced. In **Gurdip Singh Uban (supra¹)**, Justice M Jagannadha Rao, speaking for a two-Judge Bench of this Court observed:*

“17. We next come to applications described as applications for “clarification”, “modification” or “recall” of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued. Order XL Rule 3 states as follows: “3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the

1 (2000) 7 SCC 296

*petition or direct notice to the opposite party....” In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of “no hearing”, we find that sometimes applications are filed for “clarification”, “modification” or “recall” etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for “clarification” or “modification”, — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in *Sone Lal v. State of U.P.* [(1982) 2 SCC 398] deprecating a similar practice.)*

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for “clarification”, “modification” or “recall” if the application is in substance one for review. In that event, the Court could either reject the application straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.”

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12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand

dunes which are subject to the vagaries of wind and weather². A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”*].*

12. As per the said legal position, it is clear that the power of this Court under the said Rule is limited and can only be exercised sparingly with due caution while confining itself within the parameters as described only to correct clerical/arithmetical mistakes or otherwise to rectify the accidental slip or omission.

² Meghmala Vs. G Narasimha Reddy, (2010) 8 SCC 383

13. On perusal of the order dated 09.09.2022, it is apparent that the application filed by the intervenor seeking intervention in the Transfer Petition was dismissed in absence of any grounds in the application to show that intervenor had any direct or substantial nexus in the matter or that he was adversely affected by any question of law. Accordingly, it was observed that the intervenor does not have any locus to intervene. Further, this Court was of the view that the cases which were referred to in clause (i) to (xvi) in paragraph 1 of the said order and were pending since more than 20 years with no substantial progress made in trial proceedings, and that allegations made in all the cases were similar and most of the witnesses were from Maharashtra. Hence, to avoid any prejudice in other pending trials and with an intent to consolidate all those cases, directions as referred above in paragraph 13 were issued to Principal Judge, Bombay City Civil & Sessions Court to conclude the trial in transferred cases within the time frame from the date of transfer.

14. During the course of hearing, Mr. Tushar Mehta, learned senior counsel has narrowed his arguments with particular reference to paragraph 13(e) of the order dated 09.09.2022, inter-

alia, contending that in view of the said direction, de-novo trial in the matters in which final hearing is concluded from the stage of framing of charge is not proper. He further urged that, in R.C.C. No. 147/2002 pending before 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur, arguments have been duly heard and the trial is on the verge of conclusion and only the judgment is left to be pronounced, therefore, to such extent, clarification of the order dated 09.09.2022 may be directed. On the other hand, supplementing the argument of State of Maharashtra, Shri Mahesh Jethmalani persuaded us to recall the order, however, Shri Vikas Singh contested the said arguments on the anvil of Order XII Rule 3 of Supreme Court Rules and submitted that such recall is not permissible under the said provision.

15. After hearing learned counsels for the parties, in our view the recall of the entire order as prayed for on the instance of the intervenor is not justified, in particular looking at the detailed discussion made in order dated 09.09.2022. Simultaneously, it cannot be ignored that State of Maharashtra has filed application asking modification of the order. Therefore, in view of the aforesaid, we refrain ourselves to recall the order on insistence of

the intervenor and deem it appropriate to consider the prayer of the State of Maharashtra taking note of the submissions made in this respect.

16. Now, so far as contention of Mr. Tushar Mehta, learned senior counsel is concerned, it is seen from paragraph 13(e) of order dated 09.09.2022, a direction was issued to the effect that on assignment of the transferred cases, the transferee Court(s) shall frame the charges within two months and thereafter conclude the trial not later than two years. Considering the fact that in R.C.C. No. 147/2002, arguments were finally heard, and hearing was concluded, therefore, clause (e) of paragraph 13 of order dated 09.09.2022 prima-facie may cause pre-judice to complainant if the trial is restarted from the stage of framing of charges. In our view, it appears to be a mistake in the order by accidental slip or omission. Although, in the order of the Transfer Petition, some observations with respect to hearing in the said trial is there, but it is due to omission and re-opening of the entire case R.C.C. No. 147/2002 would not be in fair administration of justice. We find force in the argument of Mr. Tushar Mehta, learned senior counsel to such extent. In our

view, due to omission, the said fact requires clarification and rectification, which took place due to accidental slip in the order. At this stage, the argument advanced by Shri Vikas Singh that the Judge who heard the arguments in R.C.C. No. 147/2002, has already been transferred, assumes not relevance for rectification of mistake and to issue conclusive directions in the matter.

17. As discussed above, the trial of R.C.C. No. 147/2002 pending in the Court of 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur was at the stage of final argument. The Presiding Officer who heard the arguments has already been transferred prior to pronouncing the judgment in pursuance of order of this Court. Therefore, now on joining of new incumbent, the final arguments in the said trial ought to be heard by the new presiding officer to pronounce the judgment. Therefore, on modification of order of transfer dated 09.09.2022 of said R.C.C. No. 147/2002 to such extent and giving liberty to the new incumbent Presiding Officer in the aforesaid Court at Nagpur to decide the case from the stage of final hearing itself, the same would not cause any prejudice to the stakeholders and it shall meet the ends of justice.

18. Further, so far as Review Petition preferred by Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 bearing Diary No. 36121/2022 and titled as 'Ghanshyam Lahaunji Mudgal and others Vs. Ketan Kantilal Seth and others' is concerned, essentially the grounds on which the prayer has been made therein by these accused persons is more or less similar to the submissions made by them in reply filed by them in support of the I.A. filed by State of Maharashtra. In a nutshell, the aforesaid accused persons in support of State of Maharashtra have submitted that all of them are senior citizens aged between 65 to 85 years and they are inter-alia suffering from various ailments including high blood pressure, sugar, heart issues etc. Further, they have submitted that vide order dated 09.09.2022, the cases pending against them in Amravati [as mentioned in para 1(xiv)] have also been transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, and in view of such transfer, they may suffer irreparable hardships since they are not in a stable physical condition to travel from Amravati to Mumbai which is approximately 600 kms far and takes 10 hours one way to cover the distance. It has been further stated that all the aforesaid accused persons have

delicate health conditions and therefore prayed that their cases may also be stayed from transfer and be continued before the transferor Court at Amravati itself.

19. We have duly considered the submissions made by the aforesaid respondents/accused persons and having perused their medical records, we find reasonable force in the contentions as raised above. Having said so, we are of the considered opinion that

in view of this peculiar circumstances of the instant case, it would be in the interest of justice and all stakeholders to modify the order dated 09.09.2022 to such extent as prayed herein above and transfer of the cases from Amravati concerning the aforesaid accused persons be refrained from being transferred to the transferee Court. In view of the foregoing discussion, we deem it appropriate to grant the relief as prayed by the respondent/accused nos. 20, 23, 25, 26, 30, 31, 32 and 34. Further, in view of the relief as granted and in order to circumvent the multiplicity of proceedings, we deem it fit to

observe that the aforesaid review petition be now treated as infructuous and disposed-off in terms of above observation.

20. In addition, some clarification to the directions contained in 13(e) which relates to processing the trial on transfer is also required to be issued. Thereby, the cases received to the transferee Court, shall be proceeded without any ambiguity and the trials of those cases may be concluded within time frame.

21. In view of the foregoing discussion, these applications be treated as disposed-off modifying the order dated 09.09.2022 to the extent indicated herein below –

I. The order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is hereby modified and maintained subject to –

I-A. Criminal proceedings relating to Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and

continue at the transferor Court from the stage as received;

I-B. The review petition filed by Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 bearing Diary No. 36121/2022 and titled as 'Ghanshyam Lahaunji Mudgal and others Vs. Ketan Kantilal Seth and others' is dismissed as infructuous in view of observations made in paragraph 19 herein.

- II. The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.
- III. Directions issued in para 13(e) in order dated 09.09.2022 be now read as under –

“On receiving the cases as mentioned in para 13(a), the transferee Court shall proceed in those cases from the stage of the case in which it had

received from the transferor Court(s). The cases in which charges have not been framed, it shall be framed within two months and the trial shall start immediately. In cases in which charges have already been framed and evidence has been started after submitting the trial program, those cases shall proceed from that stage of trial. Meaning thereby, de-novo trial in such cases from stage of framing of charge is not required. The transferee Court(s) shall conclude all the trials as expeditiously as possible within a period of two years.”

IV. Lastly, we make it clear that this Court vide order dated 09.09.2022 never intended or meant to set-aside the order dated 24.06.2021 passed by Bombay High Court. It is clarified that the concerned trial Court at Nagpur shall make all the endeavor to comply with the timeline as given by Bombay High Court and decide the case in accordance with law.

.....J.
(SURYA KANT)

**NEW DELHI;
AUGUST 4, 2023.**

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


True Copy

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

I.A. NO. OF 2023

IN

WRIT PETITION (CRIMINAL) NO. OF 2023

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

VERSUS

The State of Maharashtra and Anr.

...Respondents

**APPLICATION FOR GRANT OF AD-INTERIM EX PARTE
STAY OF JUDGMENT AND ORDER DATED 04.08.2023**

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

The Humble Petition of the Applicant above named:

MOST RESPECTFULLY SHOWETH:

1. That the present Writ petition has been filed challenging Order XII Rule 3 of the Supreme Court Rules, 2013 in so far as the same is applicable to criminal cases and the order passed in exercise of powers under Code of Criminal Procedure. That detailed facts are not narrated herein for the sake of brevity and the contents of the

writ petition shall be treated as part and parcel of the present application.

2. In brief the challenge is being made to Order XII Rule 3 of the Supreme Court Rules, 2013 on the following grounds: -
 - a) that it is ultravires Section 362 of the Code of Criminal Procedure read with Article 145 of the Constitution of India;
 - b) violative of fundamental right guaranteed under Article 14 and 21 of the Constitution of India;
3. The Petitioner humbly submits that the implication of order dated 04.08.2023 is far reaching as the interpretation to words “accidental Slip or omission” is a binding precedent and is to be followed by all the courts below. Section 152 of the Code of Civil Procedure also uses the same expression and therefore the said order will have serious impact in administration of justice. Moreover, the ratio in the order dated 04.08.2023 is contrary to several judgements of this Hon’ble Court.
4. Petitioner humbly submits that since the order of this Hon’ble Court dated 04.08.2023 has a far-reaching implication and will impinge on the fair administration of justice, the interim direction as prayed is necessary in the interest of justice.

5. That the present Petition is moved bonafide and in the interest of justice.

PRAYER

In the circumstances set out herein above, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) direct that the ratio of the order dated 04.08.2023 passed in M.A. No. 1935 of 2022 filed in T.P. (Crl) No. 333-348 of 2021 shall not be followed by the courts till the pendency of the present petition;
- b) In the alternative direct that any application filed for modifying the final judgment in any court below, shall be decided independent of the order dated 04.08.2023 passed in M.A. No. 1935 of 2022 in T.P. (Crl.) No. 333-348 of 2021
- c) Pass any other order or direction that this Hon'ble Court may deem fit be passed.

**AND FOR THE ABOVE ACT OF KINDNESS THE
PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

Filed by;



[AYUSH SHARMA]
Advocate for the Petitioner

Filed on: 06.09.2023.

Sec-

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. _____ OF 2023

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

VERSUS

The State of Maharashtra and Anr.

...Respondents

I N D E X

1. Writ Petition (Crl.) with Affidavit.
2. Application for Grant of Ad-interim Ex-Parte Stay.
3. Vakalatnama and Memo of Appearance.

Rs. 10/-

 Total Rs. 10/-

Filed by;



[AYUSH SHARMA]

Advocate for the Petitioner

A-148, First Floor, Defence Colony,

New Delhi – 110 024.

Code-2338

Mob. 9899096069

E-mail; ayushmanchambers@gmail.com

Filed on: 06.09.2023.

S: R: 118008
Date: 06/09/23

VAKALATNAMA
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (CRL.) NO. _____ OF _____ 2023

70

IN THE MATTER OF:

Ketan Kantilal Seth

...Petitioner

Versus

The State of Maharashtra & Ors.
Anr.

...Respondents

VAKALATNAMA

I/We _____ the Petitioner[s]/Appellant[s]/Respondent[s] in the above Petition/Undersigned appoint and retain **Mr. Ayush Sharma, Advocate**, Supreme Court, to act and appear for me/us in the above Petition/Appeal and on my/our behalf to conduct and prosecute the same and all the proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceeding in taxation and application for Review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the above Petition/Appeal and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid, Advocates in pursuance of this authority. I/We further authorize him to engage any other Advocate(s) on my/our behalf or to enter into agreement or to agree for arbitration.

Dated this the _____ day of _____ 2023

6th

September,

Accepted Identified & Certified

Advocate Supreme Court
A-148, First Floor,
Defence Colony,
New Delhi - 110024.

[Ketan Kantilal
Petitioner[s]/Appellant[s]
Respondent[s]]

BEFORE ME

MEMO OF APPEARANCE

The Registrar
Supreme Court of India
New Delhi

Sir,

Please enter my appearance for the above-mentioned Petitioner(s)/Appellant(s) Respondent(s)/ Intervener(s) in the case.

Thanking you,

NEW DELHI
DATED: _____

06.09.2023.

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

Yours faithfully

AYUSH SHARMA
ADVOCATE

