

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

CRIMINAL APPLICATION NO. OF 2013.

APPLICANTS :- (1)

(ORIGINAL (2)

Versus –

- NON-APPLICANTS :- (1) The State of
Maharashtra, through Police
Station Officer, Police Station,
Wardha City, Wardha.
- (2) Sanjay s/o Hariram Agarwal,
aged about 47 years,
Occupation : business, R/o
Sector no. 17, Kusum
Apartment, Vashi, Navi
Mumbai.
- (3) Ketan Kantilal Seth, aged
about 51 years, Occupation :
business, R/o Vashi, Navi
Mumbai.
- (4) Rajan Chandrashekhar
Salpekar, aged about 62 years,
Occupation : retired, R/o
Anurag Apartment,
Laxminagar, Wardha.
- (5) Dilip Narayanrao Kale, aged
about 61 years, Occupation :
not known, R/o Civil Lines,
Arvi, Tahsil Arvi, District
Wardha.
- (6) Dnyaneshwar Ganpatrao
Zalke, aged about 68 years,
Occupation : not known, R/o
Bachelor Road, Dhantoli,
Wardha.
- (7) Madan Babulalji Shrivasa,
aged about 54 years,
Occupation : not known, R/o
Shivaji Ward, Hinganghat,
District Wardha.
- (8) Vasant Rao Janardanrao Karlekar,
aged about 77 years,
Occupation : not known, R/o
Mahadeopura, Wardha.

- (9) Bhaurao Laxmanrao Deshmukh,
aged about 80 years,
Occupation : not known, R/o
Jajuwadi, Arvi, Tahsil Arvi,
District Wardha.
- (10) Sou. Smita Vinayakrao
Bhise, aged major, Occupation :
not known, R/o Kelkarwadi,
Wardha.
- (11) Sharad Bapuraoji
Deshmukh, aged major,
Occupation : business, R/o
Mahsala, Sevagram Road,
Wardha.
- (12) Kashinath Daulatrao Parve,
aged about 64 years,
Occupation : not known, R/o
Talegaon, Talatule, District
Wardha.

APPLICATION UNDER SECTION 482 READ WITH SECTION
407 OF THE CODE OF CRIMINAL PROCEDURE FOR
TRANSFER OF THE CASE FROM THE COURT OF CHIEF
JUDICIAL MAGISTRATE, WARDHA, TO ANY METROPOLITAN
MAGISTRATE, MUMBAI.

The applicants, named above, most humbly and respectfully submit as under :-

1. That, one, Mr. Rajen Chandrashekhar Salpekar, the then Manager of the Wardha District Central Co-operative Bank, had lodged a report against the Directors and the Office Bearers of M/s. Home Trade Limited and accordingly, a crime no. 110/2002 under sections 406, 420 and 34 of I. P. C. came to be registered against the Directors and the office bearers of M/s. Home Trade Limited.

2. That, after the registration of the crime and the F. I. R. against the Directors and the office bearers of M/s. Home Trade Limited, the Co-operative Department of the Govt. of Maharashtra directed Shri Gangadhar M. Taywade, the Special Auditor to inspect the records of the Wardha District Central Co-operative Bank for the year 2001-2002 pertaining to the investments in the Govt. securities, who thereafter in turn submitted his interim report and came to the conclusion that the Wardha District Central Co-operative Bank has floated the investment guidelines prescribed by the Reserve Bank of India for making investments in the Govt. securities. Thus, on the basis of these findings in the report, another F. I. R./crime no. 124/2002 came to be registered under section 406, 409, 420 and 34 of I. P. C. against the Directors and the office bearers of the Wardha District Central Co-operative Bank, wherein, Mr. Rajen Salpekar, who had lodged earlier report i. e. F. I. R. No. 110/2002, came to be implicated as an accused and the office bearers of M/s. Home Trade Limited also came to be arrayed in the list of the accused persons.

3. The prosecution thereafter conducted an investigation

in both the crimes and the charge-sheet came to be filed on 15.11.2002 against the accused persons under sections 406, 409, 420 and 34 of I. P. C.

4. It has been alleged by the prosecution that Mr. Rajen Salpekar, the then General Manager and Shri Kashinath Parve of the Wardha District Central Co-operative Bank, prepared an office note with common intention on 20.2.2001 and recommended for investment in the Govt. securities. It is further alleged that although this particular subject was not on the agenda of the meeting of the Executive Committee held on 24.2.2001, the accused, Mr. Rajen Salpekar and Mr. Dilip Kale, the then Vice-Chairman, with common intention, conspired together to place the matter on the agenda before the committee and all the committee members, who were present in the meeting, jointly with common intention, passed the resolution allowing the investment in the Govt. securities. Thereafter, it is further alleged that on the basis of the resolution passed in the meeting, Mr. Rajen Salpekar and Mr. Parve, the then Assistant Manager, prepared the office note and got the same approved from the accused, Vice-Chairman, Mr. Dilip Kale and transferred Rs. 25,24,72,083.33 on 16.3.2001 to M/s. Home Trade Limited for the purpose of purchasing 10.47% Govt. of India 2015 (Govt. Securities). It is further alleged in the charge-sheet that in the above referred transaction, the accused persons had not followed the rules and the guidelines and illegally gave the permission to invest in the Govt. securities, which was against the guidelines of the Reserve Bank of India. It is further alleged that M/s. Home Trade Limited neither gave securities and interest due thereon nor returned the amount transferred to M/s. Home Trade Limited by the Wardha District Central Co-operative Bank and it is further alleged that the Wardha District Central Co-operative Bank did not take any concrete steps to recover the amount from M/s. Home Trade Limited.

5. It is further alleged by the prosecution that during the investigation of the said crime, it was transpired that the amount transferred into the bank account of M/s. Home Trade Limited held with the Maharashtra State Co-operative Bank, Mumbai and was further transferred to M/s. Home Trade Limited's account with Janta Sahakari Bank, Mumbai and from M/s. Home Trade Limited's account, it was transferred to Hoogly Trading, Poddar Trading, Maniram Consultants, Dalhousie Securities. It is further alleged that on 19.3.2001, through EDTV, the amount was deposited into the account of the Nagpur District Central Co-operative Bank Limited, for which, a notice was issued to Nagpur District Central Co-operative Bank Limited and the Recovery Proceedings have been initiated in the court.

6. Therefore, after the so-called investigation in the matter, it was recommended by the Investigation Officer by filing the charge-sheet that the present accused persons along with other accused persons be tried and punished for the offence punishable under sections 406, 409, 420 and 34 of I. P. C.

7. That, the Ld. Chief Judicial Magistrate, Wardha was pleased to frame the charges on 20.9.2012 on the same day immediately after giving a copy of the charge-sheet to the present applicants and in fact, there was no time given to go through the entire charge-sheet and the charges came to be framed. But, after going

through the charges framed against the present accused persons, it is pertinent to note here that the proceedings as initiated before the Hon'ble Chief Judicial Magistrate Court, Wardha are not at all maintainable, but the charges have been framed by the Learned Chief Judicial Magistrate, Wardha saying that the amount of Rs. 25,24,72,083.33 has been received, but not refunded and thereby, committed an offence punishable under section 420 read with section 34 of I. P. C. and secondly, the charges under section 409 read with section 34 of I. P. C. came to be framed against the accused no. 5, Rajen Salpekar, accused no. 6, Dilip, accused no. 7, Dnyaneshwar, accused no. 8, Madan, accused no. 9, Vasantrao, accused no. 11, Smt. Smitabai, accused no. 12, Sharad and the accused no. 13, Kashinath, who were the employees/office bearers of the Wardha District Central Co-operative Bank and thirdly, an offences punishable under sections 406 and 34 of I. P. C. came to be registered against the present accused persons alleging that the amount of Rs. 25,24,72,083.33 was entrusted with the company of the accused persons/present applicants by the Wardha District Central Co-operative Bank for the purpose of investing through M/s. Home Trade Limited to get the Govt. securities, but the company has failed to invest and return the said amount to the bank and therefore, committed an offence of breach of trust under section 406 read with section 34 of I. P. C. But, in fact, as the documents were not supplied earlier an application was prepared and filed before this Hon'ble Court saying that the complete set of documents has not been supplied, but the charges came to be framed and in fact, the present applicants could not file an application for transferring this matter under the provision of section 181(4) and 182(2) of Cr. P. C.

8. It is pertinent to note here that in the F. I. R. Nos. 110/2002 and 124/2002, there is absolutely no averment that the offence has been committed at Wardha and both the F. I. Rs. Are absolutely silent about the specific role played by the present accused persons. It is nowhere mentioned in the F. I. Rs, who personally persuaded the complainant to part with the amount. So also, it is nowhere mentioned in the charge-sheet that who is responsible for the affairs of the company, M/s. Home Trade Limited at the relevant time because the present accused persons were the paid employees of M/s. Home Trade Limited. The applicant no. 1/accused no. 2 was an employee working in the Capital Market Division and was receiving the salary regularly from M/s. Home Trade Limited and was not connected with the functioning of the Whole sale Debt Market Department and the applicant no. /accused no. was also an employee and was working in the legal and Secretarial Department of the Company and at no point in time was involved with the Company's Whole sale Debt Market Department which used to deal in Government Securities. The applicant no. /accused no. was receiving the salary regularly from M/s. Home Trade Limited and he was not the Managing Director of Home Trade Limited and never persuaded anybody to invest. In fact, absolutely, no evidence has been brought on record to hold that the Directors of M/s. Home Trade Limited intentionally persuaded the Directors of the Wardha District Central Co-operative Bank to invest in the Govt. securities through M/s. Home Trade Limited with an intention to make profit for themselves so that the offences under sections 420 and 406 are attracted and are triable at Wardha.

9. It is pertinent to note here that it is nowhere mentioned

in the entire charge-sheet or the statements recorded and in the complaint that the property was ever entrusted to any of the accused persons at all at Wardha or the accused persons had domain over any of the properties of the complainant, which has been converted dishonestly for their own use. But, this could not be pleaded or even gone through as no time was even granted after handing-over the copy of the charge-sheet to the present applicants and therefore, the applicants could not frame their defence since the necessary documents and the copies thereof were not supplied to the present applicants. Therefore, after thoroughly going through the copy of the charge-sheet and the statements of the witnesses, it can be easily said that the present accused persons have never represented the complainant or any person on behalf of the complainant at Wardha.

Therefore, with due respect, it is submitted that The Learned Chief Judicial Magistrate, Wardha does not get the jurisdiction to entertain and decide the present criminal case and therefore, the same deserves to be transferred.

10. It is pertinent to note here that the first alleged transaction between the Wardha District Central Co-operative Bank and M/s. Home Trade Limited took place on 23.2.2001 as per the contract notes no. LBL/NSE/2001-2000/000 6501 and 6503, of which, the trade date was 23.2.2001. Except these contract notes, there is nothing on record pertaining to the transactions. It is also pertinent to note here that both the complainants are silent about these transactions and therefore, it can be safely said and presumed that these transactions were settled by both the parties by discharging the obligations under the said contract.

11. It is pertinent to note here that the Wardha District Central Co-operative Bank gave a fax message to the Chief Officer of the Maharashtra State Co-operative Bank Limited, Fort, Mumbai, on 16.3.2001 and thereby instructed the Chief Officer of the Maharashtra State Co-operative Bank Limited to debit their current account (Wardha District Central Co-operative Bank) by Rs. 25,24,72,083.33 and transfer for credit to the current account no. 17031 of M/s. Home Trade Limited with the Maharashtra State Co-operative Bank Limited.

From this entry, it is crystal clear that the amount was paid by the Wardha District Central Co-operative Bank at Mumbai and it was received by M/s. Home Trade Limited at Mumbai and therefore, no offence is committed at Wardha including the offences charged against the present applicants. There is no representation at Wardha nor the entrustment of property at Wardha at any point of time by the present applicants and therefore it is submitted that the Learned Chief Judicial Magistrate, Wardha does not get any jurisdiction to entertain and decide the present criminal case and it requires to be transferred.

12. It is pertinent to note here that as per the case of the prosecution also, after receiving the amount, M/s. Home Trade Limited issued a contract note no. LBL/NSE/2001-2,000/000 6541 for purchasing 10.47% Govt. of India 2015 for Rs. 25 crores to the Wardha District Central Co-operative Bank. The said contract note was issued at Mumbai. So also, later on, for all the transactions between the Wardha District Central Co-operative Bank and M/s. Home Trade Limited, all the contract notes were issued at Mumbai and the monetary settlements were also made at Mumbai as per the instructions of the Wardha District Central Co-operative Bank by

depositing a cheque into the bank account with the Maharashtra State Co-operative Bank Limited, Fort, Mumbai and therefore also, it is submitted that the Learned Chief Judicial Magistrate, Wardha does not get any jurisdiction to entertain and decide the present criminal case and it requires to be transferred.

13. M/s. Home Trade Limited, Mumbai, issued a letter dated 21.3.2001 to the Wardha District Central Co-operative Bank and thereby confirmed that it is holding the securities on behalf of the Wardha District Central Co-operative Bank, which were purchased under the contract note no.6541 dated 15.3.2001 and it is also further confirmed in the said letter that the Wardha District Central Co-operative Bank is the principal owner of the said securities and the same will be delivered to the Wardha District Central Co-operative Bank as soon as they are received by M/s. Home Trade Limited in physical form from the Reserve Bank of India, which do definitely show that the present applicants have had no intention at all to commit any offence, otherwise, no such confirmation letters were ever issued, but it also does not give any jurisdiction to the Learned Chief Judicial Magistrate, Wardha to try and decide the present matter and therefore, it is submitted that the Learned Chief Judicial Magistrate, Wardha does not get any jurisdiction to entertain and decide the present criminal case and it requires to be transferred.

14. That, the present applicants, after going through the statements recorded and annexed with the charge-sheet, got the knowledge that the Special Auditor has categorically mentioned in his statement and the reports that (a) Home Trade Limited was supposed to deliver the said securities to the Wardha District Central Co-operative Bank within 30 days from the settlement date, (b) Home Trade Limited was the member of Bombay Stock Exchange and the National Stock Exchange, and (c) Home Trade Limited was registered with the Securities and Exchange Board of India as a broker and works from Mumbai having base at Mumbai and operates its entire business from Mumbai and therefore, with due respect, it is submitted that the Learned Chief Judicial Magistrate, Wardha does not get any jurisdiction as regards any transaction of purchasing or selling the securities and receiving the amount at Mumbai and therefore, the applicants were rather constrained to file the application under sections 181(4) and 182(1) of Cr. P. C., as the learned Chief Judicial Magistrate, Wardha, has got no jurisdiction to entertain and decide the above criminal case.

15. It is pertinent to note here that on 28.3.2001, the Wardha District Central Co-operative Bank sold its entire holdings in 10.47% Govt. of India 2015 to Home Trade Limited vide contract note no. 6569 for Rs. 25,38,17,291.67 and booked its profit of Rs. 13,45,208.34 and realized the aforesaid amount from M/s. Home Trade Limited. It is also pertinent to note here that in a contract note no.6571 for Rs. 25,33,99,305.56 i. e. 10.25% of Govt. of India (CG) 2012, the Wardha District Central Co-operative Bank realized the amount and the said contract notes were issued at Mumbai and therefore, the learned Chief Judicial Magistrate, Wardha, has got no jurisdiction to entertain and decide the present matter. It is pertinent to note here that the differential amount of Rs. 4,17,986.11 was due and payable to the Wardha District Central Co-operative Bank by M/s. Home Trade Limited and the same was paid by cheque no. 695110 dated 29.3.2001 issued to the Wardha District Central Co-operative Bank by M/s. Home Trade Limited from its account with the Maharashtra State Co-operative Bank Limited, Fort, Mumbai and

therefore also, the learned Chief Judicial Magistrate, Wardha, does not get any jurisdiction to try and entertain the present case.

16. It is pertinent to note here that the Wardha District Central Co-operative Bank issued a fax, of which, the outward number is 89/ACCTTS/2000-2001 addressed to the Chief Officer (Accounts) of the Maharashtra State Co-operative Bank Limited, Fort, Mumbai, on 30.3.2001 authorising him to collect the cheque no. 695110 dated 29.3.2001 for Rs. 4,17,986.11 from M/s. Home Trade Limited, Mumbai and credit the said sum to the Wardha District Central Co-operative Bank's current account no. 54/2351/1 with the Maharashtra State Co-operative Bank Limited, Fort, Mumbai, which means that both the parties accepted and acted upon the bills and transactions mentioned in contract note nos. 6569 and 6571 and the entire transaction was concluded in Mumbai and therefore also, the learned Chief Judicial Magistrate, Wardha, does not get any jurisdiction to entertain and decide the present matter against the present applicants.

17. It is pertinent to note here that on 17.8.2001, the Wardha District Central Co-operative Bank, vide their letter reference no. 20/Acctts/2001-2002 addressed to the office bearer of Home Trade Limited confirmed receipt of Rs. 3,08,25,708.33 plus Rs. 2,99,22,866.67 into its bank account with the Maharashtra State Co-operative Bank Limited, Mumbai, being sale proceeds of the government securities sold to Home Trade Limited and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above criminal case no. 573/2002.

18. That, in the meanwhile, Home Trade Limited from time to time made few payments of the interest due on Govt. securities to The Wardha District Central Co-operative Bank. The said payment cheques were deposited by The Wardha District Central Co-operative Bank into their bank account with the Maharashtra State Co-operative Bank Limited, Fort branch, Mumbai and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the criminal case no. 573/2002.

19. That, on 19.04.2002, Home Trade Limited, after having a discussion with The Wardha District Central Co-operative Bank, wrote a confirmation letter addressed to The Wardha District Central Co-operative Bank, that "as mentioned by you, we are in process of selling your securities and will remit the proceeds of the securities within 15 days". Pursuant to the understanding recorded in this letter, Home Trade Limited issued two cheques to The Wardha District Central Co-operative Bank. The cheque no. 695186 dated 20.04.2002 for Rs. 26,75,15,270/- and cheque no. 695187 dated 20.04.2002 for Rs. 1,28,12,500/- were issued from the current account of Home Trade Limited with the Maharashtra State Co-operative Bank, Fort, Mumbai, and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the criminal case no. 573/2002.

20. That, the said cheques were deposited into the current account no. 54/2351 of The Wardha District Central Co-operative Bank with Fort branch, Mumbai of the Maharashtra State Co-operative Bank. Hence, it is clear from the letter dated 19.04.2002 that the said transactions of government securities were converted into

payment of sale proceeds of the government securities. In nutshell, on 19.04.2002, as per the understanding between The Wardha District Central Co-operative Bank and Home Trade Limited, the transactions were to be settled in monetary terms after selling the securities, earlier purchased by the Wardha District Central Co-operative Bank. The terms of the said letter were acted upon by Home Trade Limited by issuing the two cheques and The Wardha District Central Co-operative Bank Limited acted upon the same by accepting the said cheques and depositing them into their bank account with The Maharashtra State Co-operative Bank Limited, Fort, Mumai and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above criminal case.

21. That, on 23.04.2002, both the above cheques were returned unpaid by The Maharashtra State Co-operative Bank Limited, Fort, Mumbai, with a remark “funds insufficient”.

22. Thus, the charges levelled against the present accused persons are incorrectly charged and tried by the Learned Chief Judicial Magistrate Court at Wardha and the same are required to be tried by the court at Mumbai and with respect, it is submitted that the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above referred to criminal case.

23. It is well settled law that the offence of criminal breach of trust can be tried in a court within whose local jurisdiction (a) offence was committed or (b) any part of the property which is subject of the offence was received or retained or (c) property was required to be returned or accounted for by the accused persons and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above referred to criminal case.

24. That, the offence of breach of trust consists always in an act and not in an omission. So, such offence cannot be tried at a place where neither the factum of entrustment nor the positive act of conversion had taken place. The Court would have no jurisdiction to try such cases where the complaint does not disclose when and where and how such an offence was committed and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above referred to criminal case.

25. That, the Government securities purchased on behalf of The Wardha District Central Co-operative Bank, as per the certificate issued by Home Trade Limited, were held at Mumbai and therefore also, the learned Chief Judicial Magistrate, Wardha has no jurisdiction to entertain and decide the above referred to criminal case.

26. That, the Books of Accounts and the Bank Accounts were maintained by Home Trade Limited at Mumbai. All throughout The Wardha District Central Co-operative Bank Limited routed all its monetary transactions with Home Trade Limited through its bank account with The Maharashtra State Co-operative Bank Limited, Fort, Mumbai and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above criminal case.

27. That, the alleged misappropriation was made at Mumbai by Home Trade Limited by transferring the amount to other companies' bank accounts with Janta Sahakari Bank Limited, Fort, Mumbai. As per letter dated 16.10.2002 written by the Dy. General Manager (Banking) of The Maharashtra State Co-operative Bank Limited, Fort, Mumbai, to the Inspector of Police, Crime Branch, Wardha and the letter dated 30.10.2002 of the Nagpur District Central Co-operative Bank, the cheque dated 19.3.2001 of Rs. 40 crores issued by the EDTV from its account with Janta Sahakari Bank Limited, Mumbai, to The Nagpur District Central Co-operative Bank was deposited into the current account no. 101/5751 of The Nagpur District Central Cooperative Bank with The Maharashtra State Cooperative Bank Limited, Mumbai. As per the allegation in the charge-sheet, EDTV received Rs. 25 crores from different companies, which amount was originally received from The Wardha District Central Cooperative Bank from its account with The Maharashtra State Co-operative Bank, Fort Branch, Mumbai by Home Trade Limited at Mumbai and was subsequently transferred to the different companies. Thus, as per the charge-sheet papers also, the alleged misappropriation and breach of trust took place at Mumbai and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above criminal case.

28. That, as per the letter dated 19.04.2002, The Wardha District Central Cooperative Bank agreed to sell its holding and the sale proceeds was to be paid by cheque. The said cheques were issued at Mumbai by Home Trade Limited and the same were deposited by The Wardha District Central Cooperative Bank into their Bank Account at Fort, Mumbai, with The Maharashtra State Cooperative Bank and therefore also, the learned Chief Judicial Magistrate, Wardha, has no jurisdiction to entertain and decide the above criminal case.

29. That, almost 17 out of 32 witnesses are from Mumbai, Pune and Kolkatta and hence, it would be in the interest of justice to transfer the above case at Mumbai, where, similar four cases pertaining to the same accused company, Home Trade Limited, are being tried.

30. That, this case needs reasonably good knowledge on the part of the prosecutions about National Stock Exchange's working, its bye-laws, rules and regulations. The knowledge about working and functions of Public Debt Office (PDO) of Reserve Bank of India, the SEBI Act and the Securities Contract Regulation Act will be very crucial for the above case, to take it to the logical conclusion.

31. That, the delay in filing the application before the learned Chief Judicial Magistrate, Wardha, is mainly attributed to the non-availability of the charge-sheet papers on which prosecution had relied upon. In fact, the applicants on number of occasions brought it to the notice of the prosecution and the Hon'ble Chief Judicial Magistrate Court, Wardha that many crucial papers in the charge-sheets were not supplied to the applicants. Finally, on 20.09.2012, just before the framing of the charges, one bunch of papers was given to the co-accused and the applicants were told to take photo copy of the same and the charges were framed against the applicants. The

applicants' advocate, after going through the papers, realized that the entire transaction took place at Mumbai and as per the settled law, the Hon'ble Court at Wardha has no jurisdiction to try this case. Hence, there is hardly one month's time gap between the date of receipt of the charge-sheet papers i. e. 20.09.2012 and the filing of the application before the learned Chief Judicial Magistrate, Wardha. Hence, the present applicants were rather constrained to file the application before the learned Chief Judicial Magistrate, Wardha. Thus, in view of the provision of section 181(4) and 182(1) of Cr. P. C., the offences charged against the present accused persons/applicants are required to be tried at Mumbai and therefore, a prayer was made to transfer the entire criminal case no. 573/2002 from the file of learned Chief Judicial Magistrate, Wardha, to any court having the jurisdiction to try, entertain and decide the said criminal case in view of the provisions of section 181(4) and 182(1) of Cr. P. C. to the court at Mumbai having jurisdiction to try the same.

32. That, this application was marked as Exh. 426/D and the say of the non-applicants was called by the learned Chief Judicial Magistrate, Wardha and after hearing both the parties, the learned Chief Judicial Magistrate, Wardha, has been pleased to reject the application filed by the applicants for transferring the matter by its order dated 9.1.2013. A copy of the application and the order passed thereon are annexed herewith and collectively marked as **Annexure-A**.

33. That, being aggrieved by the order dated 9.1.2013 passed by the learned Chief Judicial Magistrate, Wardha, in criminal case no. 573/2002, the applicants prefer the instant application by invoking the inherent jurisdiction of this Hon'ble Court under section 482 read with section 407 of Cr. P. C. for transferring the matter to any of the court of Metropolitan Magistrate, Mumbai, for further trial and decision on merit on the following grounds amongst others :-

GROUND S

(i) That, the learned Chief Judicial Magistrate, Wardha, has totally misread the provisions of sections 181(4) and 182(1) of Cr. P. C. Although the provision of section 182(1) of Cr. P. C. is reproduced in paragraph no. 5 of the order, but it has been totally misinterpreted in paragraph no. 6 of the order. In fact, the second part of section 182(1) of Cr. P. C. ought to have been read conjunctively and not in piece-meal and it ought to have been held by the learned Chief Judicial Magistrate that the property i. e. money amount of Rs. 25,24,72,083.33 came to be transferred by The Wardha District Central Cooperative Bank from its Bank account with The Maharashtra State Cooperative Bank Limited, Fort Branch at Mumbai to the Bank account of Home Trade Limited which was also with the Maharashtra State Co-operative Bank, Fort Branch, Mumbai and thus, the property is transferred from The Wardha District Central Cooperative Bank at Mumbai to the bank account of the Home Trade Limited in the same branch at Mumbai of The Maharashtra State Co-operative Bank Ltd. And therefore, looking to the rest of the correspondence, it was submitted that the court at Wardha does not get any jurisdiction. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(ii) That, the learned Chief Judicial Magistrate, Wardha, has introduced foreign presumption that the fountain source of the amount is The Wardha District Central Cooperative Bank, although the money was transferred and delivered at Mumbai, in a totally erroneous manner. But, the main aspect and spirit of section 182 (1) of Cr.P.C. has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(iii) That, the learned Chief Judicial Magistrate, Wardha, ought to have seen that the documents, which were referred to in the application filed under section 181(4) and 182(1) of Cr. P. C. by the present applicants, do definitely show that the court at Wardha has got no jurisdiction to try the said trial and it ought to have been transferred to any of the court having jurisdiction to try the matter at Mumbai. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(iv) That, the learned Chief Judicial Magistrate, Wardha, has also miserably failed to consider the fact that passing of the resolution by The Wardha District Central Cooperative Bank at Wardha for purchasing any securities of the Govt. of India does not grant any jurisdiction to any criminal court at Wardha. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(v) That, the learned Chief Judicial Magistrate, Wardha, has erred in holding that part of the offence has been taken place at Wardha, in a totally erroneous manner. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(vi) That, the learned Chief Judicial Magistrate, Wardha, has also erred in misreading the letter dated 21.3.2001, wherein, it was never agreed to hand-over the certificates or the securities of the Govt. of India, in a physical form at Wardha. So also, the learned Chief Judicial Magistrate, Wardha, has failed to consider the fact that after the issuance of the letter, the directions were issued by The Wardha District Central Cooperative Bank to sell the Government securities which were purchased by the bank on 15.03.2001 under the contract note no.6541 and accordingly, on 28.3.2001, the securities were sold and the profit of Rs. 13,45,208.34 was earned by The Wardha District Central Cooperative Bank and thereafter, the amount realized came to be reinvested as per the directions of The Wardha District Central Cooperative Bank and the differential amount of Rs. 4,17,986.11 was paid by cheque no. 695110 dated 29.3.2001 from the Bank account of Home Trade Limited held with The Maharashtra State co-operative Bank Ltd, Fort Branch, Mumbai and the said cheque was deposited by The Wardha District Central Cooperative Bank into its account with The Maharashtra State Cooperative Bank, Fort, Mumbai. Therefore, the letter dated 21.3.2001 has got no relevance with the jurisdiction of the court while deciding the application under section 181(4) and

182(1) of Cr. P. C. and therefore, the learned Chief Judicial Magistrate, Wardha, has erred in relying on the said letter to hold that it has got jurisdiction. And therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(vii) That, the learned Chief Judicial Magistrate, Wardha, has completely ignored the various contract notes and correspondences exchanged by and between the Wardha District Central co-operative Bank and Home Trade Limited subsequent to 16.3.2001, in a totally erroneous manner. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(viii) That, the learned Chief Judicial Magistrate, Wardha, completely misread the provision of section 182(1) of Cr. P. C. If the said provision is carefully considered, it says that any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be enquired into or tried by any court within whose local jurisdiction such letters or messages were sent or were received; **and** any offence of cheating and dishonestly inducing **delivery of property** may be enquired into or tried by court within whose local jurisdiction the property was **delivered** by the person deceived or was received by the accused person. Thus, the learned Chief Judicial Magistrate, Wardha, ought to have held that the amount came to be delivered at Mumbai only and therefore, it ought not to have held that it has got jurisdiction to try the said case. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(ix) That, the learned Chief Judicial Magistrate, Wardha, has also failed to consider the deposition of Mr. Salpekar- (the then General Manager of the Wardha District Central Co-operative Bank , who is also co-accused in the present criminal case) in a civil dispute filed by The Wardha District Central Cooperative Bank against Home Trade Limited and others, wherein, he has categorically admitted that all the transactions pertaining to dealing in the Government Securities took place at Mumbai and nobody from Home Trade Limited approached at Wardha and there is no inducement of any kind on behalf of the officers of the Home Trade Limited by visiting Wardha and the entire transaction was based upon the correspondence between the parties and therefore, the learned Chief Judicial Magistrate, Wardha, ought to have held that it has got no jurisdiction to try and decide the entire criminal case. A copy of the deposition of Mr. Salpekar is annexed herewith as **Annexure-B**. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(x) That, the learned Chief Judicial Magistrate, Wardha, has erred in not considering the fact that on the date of the framing of the charges, all the documents were never supplied to the present applicants and therefore, immediately after getting the copies of the documents, the application was filed, but the learned Chief Judicial Magistrate, Wardha, recorded that the application is filed in the mid of

the trial and after recording the evidence of some of the witnesses without considering the above referred fact. In fact, the documents ought to have been supplied before framing the charge to the present applicants and their presence before the learned Chief Judicial Magistrate, Wardha, for furnishing the bail ought to have been considered instead of computing the years from the date of the registration of the offence and the fact that the documents were not supplied by the prosecution agency to the present applicants, ought to have been considered in a proper perspective. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(xi) That, the learned Chief Judicial Magistrate, Wardha, has also failed to consider the settled principles of law while deciding the application. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(xii) That, the learned Chief Judicial Magistrate, Wardha, also erred in holding that the trial in respect of the accused nos. 1, 2 and 4 and the rest of the accused persons cannot be separated and they need not be tried with the other accused persons in view of section 223 of Cr.P. C., in a totally erroneous manner and also erred in not considering the provision of section 184(b) of Cr. P. C., in proper perspective. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

(xiii) That, the learned Chief Judicial Magistrate, Wardha, has also erred in misreading the contract note bearing no. LBL/NAC/2001-2000/0006541 dated 15.3.2001 in paragraph no. 10 of the order, the copy of which is annexed herewith as Annexure-C, wherein, it is nowhere disclosed that the amount would be paid at Wardha or the Securities will be delivered at Wardha and therefore, the basis of the order passed by the learned Chief Judicial Magistrate, Wardha, is totally erroneous. But, this aspect of the case has not been considered at all by the learned Chief Judicial Magistrate, Wardha and therefore, the impugned order is bad in law and deserves to be quashed and set aside.

34. That, the present applicants have not filed any revision or appeal against the impugned order passed by the learned Chief Judicial Magistrate, Wardha except the present one.

Hence, this application.

P R A Y E R :- It is, therefore, most humbly and respectfully prayed that this Hon'ble Court be pleased :-

(i) to call for the entire record and proceeding of the criminal case no. 573/2002 from the file of learned Chief

Judicial Magistrate, Wardha and after perusal thereof, be further pleased to quash and set aside the order dated 9.1.2013 passed by the learned Chief Judicial Magistrate, Wardha, in criminal case no. 573/2002 and further be pleased to hold that the learned Chief Judicial Magistrate, Wardha, has got no jurisdiction to try and decide the said case and transfer the said case to any of the court of the Metropolitan Magistrate at Mumbai.

- (ii) further be pleased to stay the further proceedings of the criminal case no. 573/2002 pending on the file of learned Chief Judicial Magistrate, Wardha, till the decision of this application.
- (iii) further be pleased to grant any other relief deemed fit and proper in the facts and circumstances of the case.

NAGPUR
DATED : 17.01.2013

- 1.
- 2.

APPLICANTS

COUNSEL FOR THE APPLICANTS

SOLEMN AFFIRMATION

DEPONENT

I know and identify the deponent.

Advocate

SOLEMN AFFIRMATION

DEPONENT

I know and identify the deponent.

Advocate

