



LACK OF **TERRITORIAL JURISDICTION -
GROUND** FOR SEEKING **TRANSFER** OF
PROCEEDINGS

THE NEGOTIABLE
INSTRUMENTS ACT, 1881

INTRODUCTION

Section 406 of the Code of Criminal Procedure, 1973 (hereinafter “**CrPC**”) confers upon the Hon’ble Supreme Court the power to transfer cases or appeals from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court.

While deciding a batch of Transfer Petitions filed under Section 406 of the CrPC in **M/s Shri Sendhur Agro & Oil Industries v. Kotak Mahindra Bank Ltd.**,^[i] the Hon’ble Supreme Court had the occasion to test the merit of “want of territorial jurisdiction” as a basis to seek transfer of proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “**NI Act**”) by invoking Section 406 of the CrPC.

[i] 2025 SCC
OnLine SC 508
(hereinafter
“Shri Sendhur”)

In deciding the said question, the Hon’ble Court essentially had to answer whether lack of territorial jurisdiction would make it “expedient for the ends for justice” that the proceedings under Section 138 of the NI Act be transferred to the Court having the territorial jurisdiction. Relevant in this regard is Section 406(1) of the CrPC which reads as follows:

*“406. Power of Supreme Court to transfer cases and appeals.— (1) Whenever it is made to appear to the Supreme Court that an order under this section is **expedient for the ends of justice**, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court.”*

(Emphasis added)

Section 142 - NI Act does not override Section 406 of the CrPC

The Hon'ble Court discussed the evolution of law on the territorial jurisdiction for institution of proceedings under Section 138, NI Act^[ii] and clarified that Section 142(2) of the NI Act provided that the offence under Section 138 of the NI Act shall be inquired into and tried only by a Court within whose local jurisdiction - (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Further, by drawing reference to *Yogesh Upadhaya and Anr. v. Atlanta Ltd.*^[iii] and *A.E. Premanand v. Escorts Finance Ltd.*,^[iv] it was clarified that that the non-obstante clause in Section 142(1) of the NI Act was only to give primacy to the special procedure of taking cognisance of the proceedings under Section 138 of the NI Act and that notwithstanding the non-obstante clause in Section 142(1) of the NI Act, the power with the Hon'ble Supreme Court to transfer criminal cases under Section 406 of the CrPC remained intact in relation to an offence under Section 138 of the NI Act, if it is found expedient for the ends of justice to order such transfer.

[ii] See Sections 142(2) and 142-A, the Negotiable Instruments Act, 1881; Statement of Object and Reasons, the Negotiable Instruments (Amendment) Act, 2015; and *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129.

[iii] 2023 SCC OnLine SC 170.

[iv] (2004) 13 SCC 52.

“Expedient for the ends of justice” being the only test

As Section 406 of the CrPC uses the expression “expedient for the ends of justice” while conferring the power upon the Hon’ble Supreme Court to transfer a criminal case, the Hon’ble Court discussed in detail the import of the said expression by referring to a catena of decisions,^[v] to state that the phrase referred to the best interest of the public within the four corners of the statute and that it meant preservation of proper balance between the constitutional/statutory rights of an individual and rights of the people at large to have the law enforced. Further, it was held that the “ends of justice” does not mean vague and indeterminate notions of justice, but justice according to the law of the land.

In order to determine whether the lack of territorial jurisdiction by itself can lead to miscarriage of justice, the Hon’ble Court made reference to **Kaushik Chatterjee v. State of Haryana and Ors.**,^[vi] wherein a comparison was made amongst the provisions of Sections 460, 461 and 462 of the CrPC. Section 460 lists down the irregularities which do not vitiate the proceedings. Section 461 lists down the irregularities which vitiate proceedings. Specifically, Section 461(l) provides that if any Magistrate, not being empowered in this behalf, **tries an offender**, the proceedings shall be void.

[v] Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1; Mahadev Govind Gharge v. LAO, (2011) 6 SCC 321.

[vi] (2020) 10 SCC 92.

To the contrary, Section 462 provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, **unless it appears that such error has in fact occasioned a failure of justice.**

The Hon'ble Court held that that the focus of Section 461(l) was on the "offender" and not on the "offence". Whereas lack of territorial jurisdiction to try an **offence** cannot be cured by Section 462 and hence, Section 461, logically, could have included the **trial of an offence** (instead of "**tries an offender**") by a Magistrate, not empowered by law to do so, as one of the several items that would make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of Section 462, provided there is no other bar for the court to try the said offender. However, Section 461(l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do. Therefore, the phrase "**tries an offence**" are more appropriate than the phrase "**tries an offender**" in Section 461(l).^[vii] Therefore, the lack of territorial jurisdiction may not always lead to miscarriage of justice and thus, cannot be the sole basis to seek transfer under Section 406 of the CrPC. Further, the ultimate and sole test for allowing transfer under Section 406 of the CrPC remains the "expediency for the ends of justice".

It was further held that transfer of cases under Section 406 of the CrPC may be allowed when there is a reasonable apprehension backed by evidence that justice may not be done and mere convenience or inconvenience of the parties may not by itself be sufficient enough to pray for transfer and that the court has to appropriately balance the grounds raised in the facts and circumstances of each case and exercise its discretion in a circumspect manner.^[viii]

The Hon'ble Court laid the following non-exhaustive broad factors which may make the transfer of criminal cases "expedient for the ends of justice" under Section 406 of the CrPC^[ix]:

- a. when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;
- b. when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;
- c. comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;
- d. a communally surcharged atmosphere, indicating some proof of inability in holding a fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

[vii] See Shri Sendhur, Paras 36-42.

[viii] See Shri Sendhur, Para 47.

[ix] See Shri Sendhur, Para 49.

e. existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere, either directly or indirectly, with the course of justice.

On territorial jurisdiction – significance of “for collection through an account”

The Hon’ble Court further held that a conjoint reading of Section 142(2)(a) along with the explanation thereof made it clear that when a cheque is delivered or issued to a person with liberty to present the cheque for collection at any branch of the bank where the payee or holder in due course, as the case may be, maintains the account then, the cheque shall be deemed to have been delivered or issued to the branch of the bank, in which, the payee or holder in due course, as the case may be, maintains the account, and the court of the place where such cheque was presented for collection, will have the jurisdiction to entertain the complaint alleging the commission of offence punishable under Section 138 of the NI Act. In that view of the position of law, the word ‘delivered’ used in Section 142(2)(a) of the NI Act has no significance. What is of significance is the expression ‘for collection through an account’. In other words, delivery of the cheque takes place where the cheque was issued and presentation of the cheque will be through the account of the payee or holder in due course, and the said place is decisive to determine the question of jurisdiction.^[x]

[x] See Shri
Sendhur, Para
65.

Conclusion

The Hon’ble Supreme Court has clarified that “lack of territorial jurisdiction” is not a sufficient ground to seek transfer of a criminal proceedings under Section 406 of the CrPC and that what is paramount is the real possibility of injustice being suffered by the party if the proceedings are not transferred. The Hon’ble Supreme Court has also laid down a non-exhaustive list of broad factors which may make the transfer of criminal cases “expedient for the ends of justice” under Section 406 of the CrPC.

A perusal of the same makes it abundantly clear that the threshold of seeking transfer has to be a real possibility of injustice and not mere inconvenience caused to the parties.

THANKYOU!

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