

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL TRANSFER APPLICATION NO.1 OF 2019

UNION OF INDIA, MINISTRY OF HEALTH ... Applicant
AND FAMILY WELFARE, REP. BY DRUGS
INSPECTOR.,

V/s.

ZEE LABORATORIES LTD. AND 5 ORS. ...Respondents.

Ms. Linhares, Special Public Prosecutor for the applicant.

Mr. H.D. Naik, Advocate for the respondents.

CORAM: BHARAT P. DESHPANDE, J

DATED: 6th February, 2024

ORAL ORDER:

1. Heard Ms. Linhares, learned Special Public Prosecutor for the applicant and Mr. H.D. Naik, learned Counsel for the respondents.
2. Criminal Writ Petition is filed by the petitioner/accused challenging the issue of process order by the Magistrate.
3. However, the order which I proposed to pass in the present matter in a transfer application would dispose of the petition as the question of challenging the order of issuance of process will not be any more existed.
4. Ms. Linhares appearing for the complainant /applicant would submit that since the complainant is a Drugs Inspector, received the

report of the laboratory at Vasco, was under impression that the learned Magistrate at Vasco is having jurisdiction. She submits that the complaint was filed under Sections 18A, 27 and 31 of Drugs and Cosmetics Acts, 1940. She submits that the learned Magistrate after verification, issued the process. However, it was realized by the complainant that the samples were collected from District Hospital Asilo, Mapusa and therefore jurisdiction to entertain such a complaint is of the learned Magistrate at Mapusa.

5. Ms. Linhares would submit that the matter can be transferred to Mapusa JMFC by taking recourse to provisions of Section 407 of CrPC.

6. Mr. Naik appearing for the respondent first of all claims that the grounds for transfer of a matter under Section 407 of CrPC nowhere show that such transfer could be effected on the point of want of jurisdiction by one Court. He submits that in fact Section 201 of CrPC provides the remedy available to the complainant.

7. Rival contentions fall for determination.

8. The complainant filed a complaint being a Drugs Inspector for various contraventions of provisions of Drugs and Cosmetics Act, 1940 since the samples were collected from the District Hospital Asilo, Mapusa whereas examination/test reports were issued from the laboratory received at Vasco office though issued from a laboratory at Calcutta. The

complainant therefore was under the bonafide impression that the Court at Vasco is having jurisdiction to entertain the complaint.

9. Section 407 of CrPC deals with powers of High Court to transfer the cases and appeals and reads thus:

407. Power of High Court to transfer cases and appeals.—(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such an application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to

pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197.

10. Mr. Naik appearing for respondent is justified in pointing out that the grounds mentioned in Section 407(1) does not include the contentions raised by the applicant herein, which means exercise of jurisdiction in case the Magistrate is not having territorial jurisdiction.

11. Section 201 of CrPC deals with such contingencies and reads thus:

“201. Procedure by Magistrate not competent to take cognizance of the case-If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, -

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct complainant to the proper Court.”

12. The contention of the applicant that the learned Magistrate is not competent to take cognizance in view of territorial jurisdiction, squarely falls within the ambit of Section 201 of CrPC. Thus the remedy available to the applicant /complainant is to approach the concerned Magistrate at

Vasco with a request for return of the complaint for presentation of it with the jurisdictional Court. The complainant is entitled for return of such a complaint if the Magistrate is of the opinion that he is not competent to take cognizance as it is beyond his territorial jurisdiction.

13. Accordingly, this Court under the power of Section 407 of CrPC, cannot transfer such proceedings only on the ground that the Magistrate at Vasco is lacking territorial jurisdiction.

14. Accordingly, the present application could be disposed of by giving liberty to the complainant/applicant to approach the concerned Magistrate while exercising jurisdiction under Section 201 of CrPC.

15. If such an application is filed, the concerned Magistrate may consider it in accordance with law and pass necessary orders.

16. In view of the above findings, the transfer application stands disposed of.

BHARAT P. DESHPANDE, J