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

SURYA KANT; J., JOYMALYA BAGCHI; J.

TRANSFER PETITION (CRL.) Nos. 204-205 of 2025; NOVEMBER 13, 2025

Golla Naraesh Kumar Yadav etc. *versus* Kotak Mahindra Bank

Transfer of Section 138 - Negotiable Instruments Act, 1881 (NI Act) Cases – "David versus Goliath" Battle – Comparative Inconvenience vs. Statutory Jurisdiction — The Supreme Court observed that the power to transfer criminal cases under Section 406 CrPC (now Section 446 BNSS) remains intact notwithstanding the non-obstante clause in Section 142 of the N.I. Act - While Section 142(2) facilitates the payee's convenience by locating jurisdiction at their bank, this statutory inclination does not override the Court's duty to ensure a "level-playing field" and prevent an "unfair battle" between unequal parties - Spatial distance is not merely about physical exertion; it involves the potential "eclipse of fair trial rights," including the right to legal representation and the preparation of a defense - noted that for a small borrower to traverse over 1,000 km to defend a case instituted by a large corporation with nationwide branches impacts the fundamental right to adequate legal assistance - Supreme Court differed from the view in *Shri Sendhur Agro & Oil Industries vs. Kotak Mahindra Bank Ltd.*, which held that "mere inconvenience" is insufficient for transfer - Considering the "comparative inconvenience" and the "relative status and wherewithal of parties," the matter is referred to a Larger Bench for a definitive opinion - held that notwithstanding the specific jurisdictional mandates of Section 142(2) N.I. Act, the Supreme Court's power to transfer cases under Section 406 CrPC remains intact if expedient for the ends of justice - Shifting the situs of a trial in a quasi-criminal case (Section 138) may be judged primarily on the relative convenience of the parties - When a large bank sues a small-time borrower, a transfer to secure adequate legal representation for the accused hardly impacts the corporation's right to access justice - Noted that Section 139 N.I. Act creates a statutory presumption against the accused, while Sections 145 and 146 give an "evidentiary head start" to the complainant - Held that this makes the task of an accused defending themselves in a far-off court even more "herculean".
[Relied on *Yogesh Upadhyay v. Atlanta Ltd.* (2023) 19 SCC 404; *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014) 9 SCC 129; *Nahar Singh Yadav v. Union of India* (2011) 1 SCC 307; Paras 16-19, 22-24]

For Petitioner(s): Mr. P. Mohith Rao, AOR Ms. J. Akshitha, Adv. Mr. Eugene S Philomene, Adv.

For Respondent(s): Mr. Palash Singhai, AOR

ORDER

1. The transfer petition depicts a David versus Goliath battle between a gargantuan bank having its branches spread throughout the country and a small-time borrower carrying on business in Adoni, District Kurnool, Andhra Pradesh.

FACTUAL MATRIX

2. Petitioner No. 1, Golla Naraesh Kr. Yadav, is proprietor of M/s Hari Cotton Traders and its sister concern, M/s Hari Cotton Ginning Pressing Factory. In 2021-2022, both firms obtained overdraft and loan facilities to the tune of Rs. 3 crores and Rs. 7 crores, respectively, from the respondent Bank through its branch at Adoni. Petitioners stood as guarantors and issued cheques in favour of the respondent Bank. In the course of

business, it is alleged the overdraft facility was not serviced, and in April 2023, the Bank declared the account as a Non-Performing Asset (NPA).

3. Respondent Bank initiated proceedings under the SARFAESI Act, 2002¹, which were challenged by the petitioners before the Debt Recovery Tribunal at Hyderabad² (DRT). Respondent Bank also instituted OA No. 787 of 2023 under Section 19(4) of Recovery of Debts and Bankruptcy Act, 1993³ before the DRT. Proceedings were also instituted before the High Court of Andhra Pradesh challenging the respondent Bank's decision to declare the firm's account as NPA⁴.

4. In the meanwhile, cheques issued by Petitioner No.(s) 1 and 2, amounting to Rs.3 crores and Rs.6 crores respectively, drawn on their accounts maintained at Adoni branch of HDFC Bank and respondent Bank, were presented by respondent Bank at Chandigarh. Upon dishonour of the said cheques, subject criminal proceedings⁵ under Section 138 of the Negotiable Instruments Act, 1881⁶ were instituted before Court of Chief Judicial Magistrate, Chandigarh.

5. This has prompted the petitioners to approach this Court praying for transfer of the said cases from Chief Judicial Magistrate, Chandigarh to the Court of Metropolitan Magistrate, Adoni, Kurnool, Andhra Pradesh.

ARGUMENTS AT THE BAR

6. In support of such prayer, petitioners contend the entire transaction between the parties took place at Andhra Pradesh and a number of proceedings arising out of the same transaction are pending *inter se* at DRT, Hyderabad and in the High Court of Andhra Pradesh. Petitioners further contend continuation of the said proceedings in Chandigarh would cause irreparable injury to them, as they would have to travel a distance of over 2000 km and would find it difficult to secure legal assistance and defend themselves at a far-off place where the proceedings are conducted in a different language.

7. In rebuttal, the respondent Bank referring to Section 142 (2) of N.I. Act contends the prosecutions were instituted in the court within whose territorial jurisdiction the dishonoured cheques were presented for collection and mere inconvenience of distance or language cannot be a ground for transfer. In support of their plea, they rely on *Shri Sendhur Agro & Oil Industries vs. Kotak Mahindra Bank Ltd.*⁷

PRINCIPLES GOVERNING TRANSFER OF CASES UNDER SECTION 138 OF N.I. ACT

8. Section 142 of the N.I. Act provides for cognizance of any offence under Section 138 of the Act. Prior to its amendment in 2015,⁸ the said provision did not deal with the territorial jurisdiction of the court entitled to try such offence. Such territorial jurisdiction was to be determined under the general law i.e., Chapter XIII of the Criminal Procedure Code, 1973. Section 177 of the Code⁹ provides that an offence shall be enquired into and

¹ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Hereinafter, 'SARFAESI Act'.

² S.A. No. 397 of 2023.

³ Hereinafter, 'RDB Act'.

⁴ W.P. No. 16295 of 2024.

⁵ Complaint No. 23195 of 2023 and Complaint No. 23197 of 2023.

⁶ Hereinafter, 'N.I. Act'.

⁷ (2025) SCC OnLine SC 508.

⁸ Post the 2015 amendment, Section 142 was re-numbered as sub-section (1), and sub-section (2) was inserted thereafter.

⁹ Corresponding to Section 197 BNSS.

tried by a court within whose local jurisdiction it is committed. Section 178(d)¹⁰ provides when the offence consists of several acts done in different local areas it shall be tried by a court within whose jurisdiction any of such act is committed. In *K. Bhaskaran v. Sankaran Vaidhyan Balan*,¹¹ this Court interpreted the import of these provisions in relation to offence under Section 138 of N.I. Act, and held as follows:

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

“178. (a)-(c)***

(d) where the offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any of such local areas.”

By such interpretation, a complaint under Section 138 could be instituted before a court within whose territorial jurisdiction any one of the aforesaid acts occurred, namely, drawing of cheque, presentation of cheque to bank, returning the cheque unpaid by drawee bank, giving notice in writing to drawer of cheque demanding payment of the cheque amount and failure of drawer to make payment within 15 days from receipt of notice.

9. Subsequently in *Dashrath Rupsingh Rathod v. State of Maharashtra*,¹² a 3-judge Bench of this Court held that the cause of action arose only at the place where the drawee bank returns the cheque unpaid, that is, the situs of the drawee bank, thereby restricting jurisdiction to that location.

10. In response to such judicial interpretation, Parliament amended the law by incorporating Section 142(2) and Section 142A of the N.I. Act.

“142. Cognizance of offences. — *****

(2) The offence under section 138 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.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account

142A. Validation for transfer of pending cases.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of any court, all cases transferred to the court having

¹⁰ Corresponding to Section 198 BNSS.

¹¹ (1999) 7 SCC 510.

¹² (2014) 9 SCC 129.

jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under subsection (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015 (26 of 2015), more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

11. A plain reading of Section 142(2) shows when the cheque is delivered for collection through an account, the offence under Section 138 shall be tried by a court within whose local jurisdiction the branch of the Bank where the payee or holder in due course maintains the account is situated. However, if the payee or holder in due course presents a bearer cheque for encashment otherwise through an account, the court within whose local jurisdiction the branch of the Bank where the drawer maintains the account shall have jurisdiction to try the offence. Section 142A prefaced with a non-obstante clause precludes the operation of any judgement, decree, order or direction of court to permit institution or continuation of prosecution under Section 138 in any other court other than one prescribed in Section 142(2). By locating jurisdiction at the payee’s bank where the cheque is deposited for clearance through the latter’s account, the amended provision reflects a statutory inclination to facilitate the payee’s convenience in prosecuting the complaint.

12. The legislative intent of these amendments however was not to take away the jurisdiction of the High Court or Supreme Court to transfer a complaint under Section 138 of N.I. Act in the event such transfer was expedient to meet the ends of justice. In *Yogesh Upadhyay v. Atlanta Ltd.*¹³, the Bench has succinctly enunciated the law as follows:

“15. We, therefore, hold that, notwithstanding the non obstante clause in Section 142(1) of the 1881 Act, the power of this Court to transfer criminal cases under Section 406 CrPC remains intact in relation to offences under Section 138 of the 1881 Act, if it is found expedient for the ends of justice.”

13. The moot issue, therefore, is what situations may prompt this Court to transfer a proceeding under Section 446 BNSS¹⁴ (and High Courts under Section 447 BNSS¹⁵) to meet the ends of justice?

14. In *Nahar Singh Yadav v. Union of India*¹⁶ the broad factors to be kept in mind while considering an application for transfer of trial were enumerated as follows:

(i) 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;

¹³ (2023) 19 SCC 404.

¹⁴ Corresponding to Section 406 CrPC.

¹⁵ Corresponding to Section 407 CrPC. ¹⁶ (2011) 1 SCC 307.

- (ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;
- (iii) 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;
- (iv) 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
- (v) 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.
(emphasis supplied)

15. In the present case, though the complaints have been filed before the appropriate jurisdictional court at Chandigarh upon the cheques being presented for clearance thereat, petitioners have founded their prayer for transfer on a premise of relative convenience and inconvenience of the parties. Apart from saying that its collection centre is situated at Chandigarh, no other plausible reason is cited by the bank as to why it presented the subject cheques at Chandigarh. Petitioners vehemently argue such stratagem has been taken solely to harass and cause inconvenience by requiring them to defend themselves at a far-off place where proceedings are conducted in a different language.

16. A two-judge Bench in *Shri Sendhur Agro & Oil Industries* (supra) Coordinate Bench of this Court while dealing with a similar issue declined the prayer for transfer by the accused-drawer holding as follows:

“47. It follows from the above-mentioned exposition of law that transfer of cases under Section 406 Cr.P.C. 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. 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 while ordering a transfer under Section 406.

65. For the purpose of transfer of any case or proceedings under Section 406 of the Cr.P.C., the case must fall within the ambit of the expression “expedient for the ends of justice”. Mere inconvenience or hardship that the accused may have to face in travelling from Coimbatore to Chandigarh would not fall within the expression “expedient for the ends of justice”. The case must fall within any of the five situations as narrated in para 49 of this judgment. It is always open for the petitioner accused to pray for exemption from personal appearance or request the Court that he may be permitted to join the proceedings online.”

(emphasis supplied)

While holding “mere inconvenience or hardship” may not fall within the expression “expedient for the ends of justice”, the Bench opined: “*The case must fall within any of the five situations narrated in paragraph 49 of this judgment.*” Perusal of paragraph 49 shows the Bench had reiterated with approval the afore-stated five parameters propounded in *Nahar Singh Yadav* (supra) as benchmarks to test a prayer for transfer.

17. It may not be out of place to note parameter (iii) in *Nahar Singh Yadav* (supra) enumerates “*a comparative inconvenience and hardship likely to be caused to the accused, complainant and witnesses*” including financial burden caused to the State exchequer for travel of official & non-official witnesses as a relevant ground for transfer. Prayers for transfer are, therefore, not agnostic to inconvenience/hardship and ought to be tested on the scale of relative convenience/inconvenience of all stakeholders including witnesses.

18. We have tested the prayer for transfer in light of the afore-stated legal proposition.

ANALYSIS

19. Petitioners are facing prosecution under Section 138 of the N.I. Act. Section 138 of the N.I. Act was incorporated in order to promote financial discipline and credibility of banking systems. Penal liability was introduced to ensure confidence in transactions through negotiable instruments. It is essentially an offence against an individual, compoundable at his option, and not against the State. The nature of the offence is quasi-criminal and does not fall within the species of grave crimes like murder, rape and corruption etc. which may be termed as crimes against the society. Given this situation, shifting of situs of trial in such a case may not impact the State or societal interests and may be judged primarily on the relative convenience and inconvenience of the parties *inter se* and their witnesses.

20. Relative convenience/inconvenience needs to be viewed from myriad angles. The Court needs to address the following questions: -

- a. Does the continuation of proceedings in a far-off court adversely affect the accused's fair trial rights and render an unjust advantage to the complainant?
- b. Does a shift of venue cause undue hardship to the complainant, denying him the right to prosecute the offender at a place which the law of the land prescribes?
- c. Does such transfer cause convenience/inconvenience to witnesses who may be called upon to depose in the case?

Upon taking a holistic view of all these aspects, the Court would come to a conclusion whether the healing balm of transfer is necessary to ensure a level-playing field and eschew an unfair battle between the parties expedient for the ends of justice.

21. Spatial distance between the accused and the situs of trial does not merely mean the physical exertion taken by him to travel to a far-off place to defend himself. It also involves diminution, if not eclipse of his fair trial rights which *inter alia* include his right to legal representation, preparation of defence and examination of witnesses in support of such defence.

22. The situation is further accentuated when an accused (as in the present case) is called upon to face a prosecution which requires rebuttal of a statutory presumption namely Section 139 of the N.I. Act. It is also to be borne in mind that Sections 145 and 146 of the N.I. Act give an evidentiary head start to the complainant who may lead evidence through affidavit and presume dishonour by production of bank's slip or memo, whereas the accused is required to bring his witnesses to rebut the complainant's case reinforced by statutory presumption.

23. Judged in the backdrop of such statutory slant, it is a herculean task for a petty borrower, such as the petitioner in this case, to traverse over a thousand kilometres and access adequate legal representation in a far-off Court. Such a situation adversely impacts his fundamental right to adequate legal assistance of his own choice and shakes the foundation of constitutional guarantees to fair trial.

24. But such inconvenience/hardship in securing legal representation and effective defence cannot be seen in isolation. They must be weighed on a balancing scale against the complainant's right to access justice in a court prescribed by law. The convenience/inconvenience paradigm essentially rests on the relative status and wherewithal of parties to the *lis*. In the event the parties are co-equal in status and socio-

economic standing, the court may be shy to transfer a case solely for the convenience of legal representation and defence of the accused, since such a shift, though welcome from the end of the accused, would cause undue hardship to the complainant. On the other hand, if the battle is between two unequal parties i.e., the complainant, a large corporation and the accused, a puny individual with limited means, a transfer of the proceedings to secure adequate legal representation to such an accused would hardly impact the giant corporation's right to access justice. It is little solace for the accused to be told that he may be represented under Section 228 BNSS (corresponding to Section 205 CrPC) through a lawyer when he is required to travel over a thousand kilometres to engage a lawyer ordinarily practicing in such court and have regular consultations with him for preparation of his defence. The balance of relative convenience in such cases would surely tilt in favour of the accused justifying transfer.

25. It was argued by the respondent Bank that their collection centre is at Chandigarh and all prosecutions arising out of dishonoured cheques presented through such collection centre are pending before the Chandigarh court, hence transfer of one such proceeding would cause inconvenience.¹⁶ We find little force in such submission. While the Bank may consider it convenient to present all cheques for collection at Chandigarh Branch, its stratagem to create jurisdiction in Chandigarh must be seen in light of the relative inconvenience caused to the accused to defend himself at such a far-off place. As the accused's inconvenience by itself may not be a good ground for transfer, similarly, the bank's convenience to present the cheques only at Chandigarh and institute proceeding there cannot be viewed in exclusion of inconvenience and hardship to the accused to defend himself at such distant place.

26. The Bank has its branches throughout the country, including Adoni, Andhra Pradesh. Its resources are overwhelmingly more than the petitioner. The petitioners' case is further bolstered by other relevant considerations, namely, overdraft facility was extended from the branch office at Adoni, availability of documents and witnesses (particularly of the accused) at Adoni and pendency of related proceedings at DRT, Hyderabad and High Court of Andhra Pradesh. Such a factual situation persuades us to hold that shift of the cases from Chandigarh would not seriously skew the scales and cause undue hardship to the Bank. However, instead of allowing the transfer to Adoni, we are inclined to transfer the proceedings to the court of Chief Metropolitan Magistrate, Hyderabad, where the DRT proceedings arising out of the self-same transaction are also pending *inter parties* as it would be to the convenience of both of them.

DIRECTION

27. As we are differing from the view expressed in *Shri Sendhur Agro & Oil Industries* (supra), in consonance with the principles of judicial discipline and decorum, we consider it prudent to place the matters before the Hon'ble Chief Justice for constituting a Larger Bench to give a definitive opinion on the issue at hand. In the interregnum, the proceedings shall be transferred to the Court of Chief Metropolitan Magistrate, Hyderabad.

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¹⁶ Petitioner has brought on record a note disclosing 476 cases filed by respondent Bank before Court of Judicial Magistrate First Class, Chandigarh u/s. 138 N.I. Act in which the accused is located outside the jurisdiction of the court.