

MHCC050064582021



Presented on : 17/12/2021

Registered on : 17/12/2021

Decided on : 31/12/2021

Duration : 14 days

**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

CRIMINAL REVISION APPLICATION NO. 251 OF 2021

Exh. No. 4

Kangana Ranaut,
Age : 34 yrs.,
An adult Indian Inhabitant,
R/o : 5th Floor, DB Breeze, 9, 16th Road,
Khar (W), Mumbai : 400 052

..Applicant

Vs

1) Javed Akhtar,
An adult Indian Inhabitant,
R/o : 702, Sagar Samrat,
Green Fields Opposite Juhu Police Station,
Juhu, Mumbai - 400 049

2) The State of Maharashtra

..Respondents

Ld. Adv. Rizwan Siddhiqui, for the applicant.

Ld. Adv. Jaykumar Bharadwaj, for the respondent no.1.

**CORAM : SHRI S. U. BAGHELE,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.09.**

DATE : 31st December, 2021

ORAL JUDGEMENT

This revision application is directed against an order of rejection of an application for the transfer of a criminal complaint, dated 21/10/2021, passed by the Addl. Chief Metropolitan Magistrate, 19th Court, Esplande, Mumbai (I/C Chief Metropolitan Magistrate, Mumbai)

2 The factual matrix, relevant for the decision of this revision, is that the applicant herein preferred an application, for the transfer of a criminal case, from the court of a Metropolitan Magistrate to any other court. The said application came to be rejected, vide the impugned order. The said order is under challenge in this revision, inter alia on the grounds that the same is not correct and legal. The contention of the respondent is that there is no error in the impugned order.

3 I have heard both the sides. The following points cropped up for my determination, and I record my findings thereon, with the reasons to follow thereunder :

<u>Points</u>	<u>Findings</u>
1. Whether the revision is tenable ?	In the negative.
2. Whether the impugned order is correct and legal ?	Does not survive.
3. What order ?	As per the final order.

REASONS

As to point No. 1 :

4 It is submitted by the learned counsel for the applicant that revision is maintainable. Even otherwise, this court can transfer the case under section 408 of the Cr.P.C. In that regard, he placed his reliance upon the following authorities :

K. Mohammad Rizwan Vs M/s. Hamdaan Leathers in Crl.R.C. NO. 348 of 2014, decided by the Hon'ble High Court of Judicature at Madras on 25/10/2016.

Francis Selvin @ Selvakumar and anr. Vs Victoria Shanmugapriay in Crl.R.C.No. SR 13761 of 2018, decided by the Hon'ble High Court of Judicature at Madras on 14/02/2019.

Sri Moloy Pramanick Vs The State of West Bengal and Anr. In CRR 2206 of 2018, decided by the Hon'ble High Court at Calcutta on 04/09/2018.

Aditya Lal Mukherjee Vs State of West Bengal and anr. in CRR 1575 of 2013, decided by the Hon'ble High Court at Calcutta on 04/02/2015.

In all these four authorities, either revision application was preferred before the respective Hon'ble High Courts, or the orders passed by Sessions Courts in revision were challenged before the respective Hon'ble High Courts.

5 Per contra, it is submitted by the learned counsel for the respondent no.1 that the revision is not maintainable, as section 408 of the Cr.P.C. is applicable.

6 Sections 406, 407 and 408 of the Cr.P.C. deal with the powers to transfer cases. Sections 409 and 410 of the Cr.P.C. deal with the power of withdrawal of cases as well as recall of cases. Section 408 of the Cr.P.C. empowers the Sessions Judge to transfer cases, whereas sections 407 and 406 empower the Hon'ble High Courts and the Hon'ble Apex Court to transfer cases. Thus, the power under sections 406 and 407 rest with “ Courts ”, viz. Hon'ble Apex Court and Hon'ble High Courts, respectively, whereas the power under section 408 of the Cr.P.C. rests with “ Judge ” viz. the Sessions Judge. Thus, the Judge, with whom the power under section 408 rests, is the Sessions Judge, and not the Judges presiding over Sessions Courts, like, Additional Sessions Judges or Assistant Sessions Judges. Thus, though this court is a Sessions court, it cannot transfer cases, by virtue of section 408 of the Cr.P.C., as the Presiding Officer thereof, is not the Sessions Judge, but is an Additional Sessions Judge.

7 The authorities relied upon do not contain the ratio decedendi, that a revision petition can be preferred, as against the order of rejection of an application under section 410 of the Cr.P.C. The question of maintainability of revision had not cropped up, nor was adjudicated upon, in the said authorities. If the impugned order is allowed to be challenged in revision, and thereafter, to be taken under a writ petition and thereafter, by way of a special leave petition, it would virtually amount to taking a total departure from the provisions, relating to transfer of criminal cases, as embodied under sections 406, 407 and 408 of the Cr.P.C., respectively.

8 There is yet another angle, while looking at the present controversy. Section 397 of the Cr.P.C. enables any Sessions Judge to exercise the powers of revision, in relation to the finding, sentence or order recorded or passed by “ inferior court ”. Thus, to enable the party to challenge any order, the same must have been passed by “ court ”. Thus, an order passed by a “ Judge ” cannot be the subject matter of a revision, as the passing of the said order by a “ court ” is sine-qua-non, for preferring a revision. While passing the order, on the application for the transfer of case, the Chief Judicial Magistrate cannot be said to have acted as a court, sensu-stricto, but appears to have acted as a Judge, notwithstanding whether the transfer of case was sought for, on administrative grounds or on judicial grounds. Owing to the same, a revision would not lie, as against the said order.

9 In the light of the foregoing observations, the present revision is not tenable. Hence, I answered the point no.1 in the negative.

AS TO POINT NO.2 :

In view of the finding to the point no.1, the point no.2 does not survive, due to which, I answered it accordingly.

AS TO POINT NO. 3 :

In the light of the above observations, I proceed to pass the following order :

ORDER

- 1) Criminal Revision Application No. 251 of 2021 is hereby dismissed.
- 2) An authenticated copy of this Judgment and order be sent to the Court of the concerned Magistrate.
- 3) Criminal Revision Application No. 251 of 2021 is disposed of accordingly.

sd/-

(S. U. BAGHELE)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 31/12/2021

Dictated on : 31/12/2021
 Transcribed on : 31/12/2021
 Signed on : 31/12/2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

31/12/2021 at 4.22 p.m.
 UPLOAD DATE AND TIME

Mrs. S.B. Vichare
 NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ Shri S. U. Baghele, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 09)
Date of Pronouncement of JUDGEMENT/ORDER	31/12/2021
JUDGEMENT/ORDER signed by P.O. on	31/12/2021
JUDGEMENT/ORDER uploaded on	31/12/2021

