

ORDER BELOW EXH. 11 IN RCC NO. 01/2018

CNR NO. MHRG-03000001-2018

Perused application and say. Heard APP Mahakal for State. By this application U/sec.323 of Cr.P.C, APP is praying that in view of the amendment in the Indian Penal Code and the Code of Criminal Procedure (Maharashtra Amendment) Act, 2017 the offences punishable U/sec.332 and 353 of IPC are exclusively triable by the Hon'ble Sessions Court. Accordingly, it is prayed that matter be committed to the Hon'ble Sessions Court for trial. Accused has no objection to commit the case to the Hon'ble Sessions Court.

02. APP Mahakal submitted that in view of the amendment to the Indian Penal Code and the Code of Criminal Procedure (Maharashtra Amendment) Act, 2017 the offences punishable U/sec.332 and 353 of I.P.C. are exclusively triable by the Hon'ble Sessions Court and the said amendment has retrospective effect. Thus, he prayed that as the present offence is U/sec. 353 and 332 of IPC, therefore, it is necessary to commit it to the Court of Hon'ble Sessions Court. To buttress his submissions the reliance is placed on the authority of *Mr. Shaymrao Vithoba Pillare Vs. State of Maharashtra, 2019 ALL MR (Cri.) 704*. Whereas, Adv. Shri. Darshan Baikar submitted that suitable order be passed.

03. Perusal of the complaint reveals that offence took place on 01/07/2017, wherein the complainant who was lady police constable was assaulted and was prevented from execution of her

duty as public servant. That means, complainant is a public servant. In the case of **Mr. Shaymrao (supra)** the informant was also public servant whose modesty was outraged and section 353 of the Indian Penal Code was later on added and charge came to be framed on 06/01/2017. After recording the evidence of the first witness, Chief Judicial Magistrate by order committed the case to the Sessions Court. Accused by application before the Sessions Court prayed for remanding the matter back which came to be rejected.

04. Aggrieved by the said order, accused moved the Hon'ble High Court. The Hon'ble High Court held :

“However, the submission on behalf of the applicant that change in forum by the Maharashtra Act No.40/2018 also cannot have retrospective effect, cannot be accepted. In the judgment delivered in the case of Ramesh Kumar Soni Vs. State of Madhya Pradesh reported in (2013) 14 S.C.C.at page 696, this issue is considered. In this judgment, it is laid down that any amendment shifting the forum of the trial, on principle, has to be retrospective in nature unless there is any indication in the amendment act to the contrary. The accused cannot claim a vested right in respect of forum for his trial, as such right is not recognized or conferred by law. Same view is reiterated in the judgment given in the case of Securities and Exchange Board of India vs. Classic Credit Ltd. reported in 2017(9) SCALE at page 458.

The submission on behalf of the applicant that the learned Chief Judicial Magistrate should not have committed the trial after recording of the evidence of the witness commenced also cannot be accepted considering the provisions of Section 323 of the Code of Criminal Procedure. These provisions enable the Magistrate to commit the trial to the Court of Sessions at any stage of the proceedings before signing the judgment. Even otherwise, in the facts of the present case, the accused has not been able to point out the prejudice that may be caused to him because the trial is committed by the learned Chief Judicial Magistrate to the Court of Sessions after recording of the evidence of the first witness on behalf of the prosecution has started.”

05. Considering the observations of the Hon'ble High Court,

the facts in the above cited case are squarely applicable to the present case in hand. Therefore, in view of the amendment, this Court cannot continue the trial as in view of the amendment, trial is to be conducted by the Hon'ble Sessions Court. Hence, the application deserves to be allowed and the matter is necessary to be committed. Accordingly, I pass the following order :

:: ORDER ::

- 1) Application stands allowed.
- 2) The case be committed to the Hon'ble Sessions Court, Raigad-Alibag and accused is hereby directed to appear before the Hon'ble Sessions Court, Raigad-Alibag on **14/01/2020**, positively on 11.00 a.m.

Alibag.
Date: **04/12/2019**

sd/-
(**Sau. S.S. Pingale**)
Chief Judicial Magistrate,
Raigad-Alibag