2023 INSC 671

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. OF 2023

[D.NO. 33197 OF 2022]

IN

TRANSFER PETITION (CRIMINAL) NOs. 333-348/2021

Ketan Kantilal Seth .....Petitioner

VERSUS

The State of Gujarat and Ors. .....Respondents

WITH

M.A. NO. 1935 OF 2022 IN T.P. (CRL.) NOs. 333-348 OF 2021

O R D E R

J. K. Maheshwari, J.

1. In the instant case, I.A. No. 156023/2022 and Miscellaneous Application No. 1935/2022 have been filed seeking modification/recall of order dated 09.09.2022 passed by this Court in Transfer Petition (Criminal) Nos. 333-348 (hereinafter referred to as 'Transfer Petition'), whereby, this Court allowed the said petition filed by Petitioner/accused Ketan Kantilal Seth and directed the transfer of pending matters as prayed by him in the

petition to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.

2. For ready reference, reliefs as sought in the aforesaid two applications moved at the instance of intervenor namely 'Omprakash Bhauraoji Kamdi' and 'Respondent No. 12/State of Maharashtra' are reproduced as thus –

I. ***<u>I.A. No. 156023/2022</u>*** *– Application filed on 29.09.2022 by intervenor for 'modification/recall' of order dated 09.09.2022;*

<u>Prayer</u> *–* ***a.*** *Recall/modify the order dated 09.09.2022 passed by this Hon'ble Court in Transfer Petition (Crl.) Nos. 333-348 of 2021 and transferring all the Trials pending against the Petitioner including the trial in R.C.C. No. 147/2002 pending before Ld. 2nd Additional Chief Judicial Magistrate, Nagpur which is already concluded by the Ld. Trial Court;*

b. *pass such other order(s) and further order/direction(s) as is deemed just and proper in the facts and circumstances of the case.*

II. ***<u>Miscellaneous Application No. 1935/2022</u>*** *– Application filed on 26.10.2022 by <u>Respondent No.</u>*

12/State of Maharashtra seeking 'modification/recall' of order dated 09.09.2022.

Prayer *– **a.** Recall/modify the order dated 09.09.2022 passed by this Hon'ble Court in the present Transfer Petition, transferring all the pending trials against the Petitioner most of which are already at final stage of hearing by the Ld. Trial Court;*
b. *pass any additional order(s) and subsequent order/direction(s) considered reasonable and proper in the facts and circumstances of the case.*

3. Before adverting to the contentions made in the case, it would be relevant to mention the brief backdrop of the proceedings/orders passed by this Court during the pendency of the Transfer Petition which ultimately led to the filing of the two applications by the intervenor and Respondent No. 12/State of Maharashtra respectively. The same is reproduced as thus –

i. **18.08.2021** – Accused Ketan Kantilal Seth filed Transfer Petition (Criminal) Nos. 333-348/2021 before this Court. In the said petition, alongside State of Gujarat, State of West Bengal, Government of NCT of Delhi and respective co-accused persons involved in

the trials, State of Maharashtra was also arrayed as Respondent No. 12.

ii. **09.09.2021** – This Court issued notice in the Transfer Petition and directed the other co-accused persons arrayed as respondents to be served.

iii. **05.10.2021** – This Court granted 'stay' on further proceedings in R.C.C. No. 147/2002 (main matter in question).

iv. **18.10.2021** – One Omprakash Bhauraoji Kamdi (the intervenor), filed I.A. No. 134476/2021 seeking intervention in the Transfer Petition primarily on the ground that he was an agriculturist and was by and large dependent on the financial aid of Nagpur District Central Co-operative Bank Limited (hereinafter referred to as NDCCB Ltd.), which was one of the banks allegedly defrauded by the accused.

v. **13.05.2022** – Stay granted by this Court vide order dated 05.10.2021 was modified on the pretext that the proceedings in R.C.C. No. 147/2002 are at the stage of final arguments. Considering the same, this Court

directed the Trial Court to complete the hearing of arguments, though, restrained it from delivering/pronouncing the judgment in the said case.

vi. **22.07.2022** – With the consent of all the parties, the Transfer Petition was heard finally, and the order was reserved.

vii. **09.09.2022** – The Transfer Petition of accused Ketan Kantilal Seth was allowed while dismissing the intervention application of intervenor and the cases were accordingly transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra.

viii. **29.09.2022** – Intervenor Omprakash Bhauraoji Kamdi filed I.A. No. 156023/2022 seeking 'modification/recall' of the order dated 09.09.2022 with other prayers as mentioned above.

ix. **26.10.2022** – Respondent No. 12/State of Maharashtra filed Miscellaneous Application No. 1935/2022 seeking 'modification/recall' of the order dated 09.09.2022 with other prayers primarily on the

ground that no opportunity of hearing was afforded to the State on the day of final hearing to oppose the Transfer Petition.

x. **<u>10.11.2022</u>** – Review Petition bearing Diary No. 36121/2022 was filed on behalf of Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 titled as 'Ghanshyam Lahanuji Mudgal and others. Vs. Ketan Kantilal Seth and others' seeking review of order dated 09.09.2022, which is pending.

4. This Court as mentioned above, allowed the Transfer Petition (Criminal) Nos. 333-348 of 2021 vide final order dated 09.09.2022 and issued following directions in paragraph 13 –

> *"13. In view of the foregoing discussion, considering the common nature of allegations raised against the petitioner in all FIRs and criminal proceedings emanating therefrom which are yet pending before respective Trial Courts in four States, I am of the opinion that to meet the ends of justice and fair trial, the transfer petitions deserve to be allowed. Therefore, the instant transfer petitioners are disposed-off with the following directions –*
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> *a. The criminal cases, as specified in para 1 [clause (i) to (xvi)] of this order shall be transferred from the Courts,*

where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra;

b. the Principal Judge is at liberty to assign the cases to any of the Court situated in his jurisdiction to try all those cases. He is also at liberty to assign some of the cases to any other courts also, if necessary;

c. it is further directed that the transferor Courts shall immediately transmit the record of concerned cases to the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, which should reach on or before 31.10.2022;

d. all the accused in the concerned cases shall appear before the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai on 14.11.2022;

e. on assignment of those cases to the concerned Court(s), as directed hereinabove, the said Court(s) shall frame the charges within a period of two months from the date of appearance, or on securing presence of the accused persons, if absent; and thereafter the trial be concluded as expeditiously as possible, not later than two years. It is needless to observe that the examination of the witnesses in all cases will be recorded by the Court(s) separately, thereby it should not cause any prejudice to any accused."

5. We now proceed to refer the contentions as raised by intervenor and State of Maharashtra during hearing.

6. Mr. Mahesh Jethmalani, learned senior counsel appearing on behalf of intervenor in I.A. No. 156023/2022 primarily contested the application on the merits of the Transfer Petition and stated that the petition was filed by accused Ketan Kantilal Seth with an ulterior motive to de-rail and delay the trials which are pending against him since almost 20 years in different States. He further contended that, allowing of the Transfer Petition vide order dated 09.09.2022 has led to de-novo trial of R.C.C. No. 147/2002 and in fact, this Court has effectively set-aside the order dated 24.06.2021 passed by Bombay High Court in Criminal Application No. 628/2021 vide which the Trial Court was directed to conclude the trial in R.C.C. No. 147/2002 within specified time, wherein hearing stood concluded, though judgment was not pronounced by Trial Court in view of the order dated 13.05.2022 of this Court. While closing the arguments, the learned senior counsel submitted that such transfer of cases by this Court has effectually led to an adverse effect on the whole

efforts of all the stakeholders involved who have been in pursuit of justice since more than 20 years.

7. Mr. Tushar Mehta, learned senior counsel appearing on behalf of State of Maharashtra, contested M.A. No. 1935/2022 and sought recall/modification of the order dated 09.09.2022 predominantly on the ground that no opportunity of hearing was given to the State on the date when the matter was finally heard and same amounts to violation of principles of natural justice. It was further contended that, had there being any opportunity given to the State, all the development of the proceedings in respective Courts would have been brought to the notice of this Court. Learned senior counsel also laid emphasis on the fact that in view of the directions issued in paragraph 13(e), the trials are required to be started from the stage of framing of charge. It is said that, as per order dated 13.05.2022 of this Court, arguments were heard in R.C.C. No. 147/2002 by 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur and only the judgment is to be pronounced. Therefore, it was prayed that the order dated 09.09.2022 may be modified to the extent by which de-novo trial of that case may be avoided. To fortify his

prayer, emphasis was laid on the order of this Court dated 29.11.2022 in the instant applications, by which the transfer of the R.C.C. No. 147/2002 was kept in abeyance, and it was also directed that fresh trial shall not commence in the said case.

8. Per contra, Mr. Vikas Singh, learned senior counsel appearing on behalf of accused Ketan Kantilal Seth, vociferously opposed both the applications and submitted that the Transfer Petition was heard by consent of the parties and the submissions made before this Court are mere reiterations and purely an attempt to re-open the case for hearing on merits which is not permissible as per Order XII Rule 3 of Supreme Court Rules, 2013 (hereinafter referred to as "Supreme Court Rules"). Further, he contended that the submission of State of Maharashtra with respect to not granting opportunity of hearing at the time of final hearing of Transfer Petition is not correct because all the parties were represented, and appearance has been marked in the order dated 22.07.2022 of this Court while closing hearing and reserving the case for order. Learned senior counsel also disputed the locus of intervenor Omprakash Bhauraoji Kamdi and drew our attention to the application submitted by intervenor before

this Court in contrast to the affidavit filed by intervenor before Bombay High Court Criminal Application No. 628/2021 to demonstrate his contradictory stand. Our attention was specifically drawn to the fact that in affidavit filed by said intervenor before Bombay High Court, he has claimed to be a member of NDCCB Ltd. which is in complete contravention to his stand before this Court. In the order dated 09.09.2022, this Court made it clear that the applicant does not have any locus to contest the Transfer Petition and hence, the intervenor at the very outset has to prove his locus and his claim to be a poor agriculturist dependent on the NDCCB Ltd. for financial aid is misplaced. Lastly, it is urged that the Judge in Nagpur who was trying case R.C.C. No. 147/2002 before whom the arguments were advanced and hearing took place, has already been transferred to Pune and hence, the contention of Mr. Tushar Mehta, learned senior counsel that hearing is already concluded is of no relevance now.

9. Furthermore, in response to the reply to the stand taken by accused persons who were arrayed as Respondent Nos. 20, 23, 25, 26, 30, 31, 32 and 34 in the instant matter, it has been

submitted that they have already filed Review Petition [as stated in Para 3 (x) above] seeking review of order dated 09.09.2022. Therefore, they may take the recourse by pursuing pending review petition.

10. Heard learned counsels for the parties and perused the material available on record. At this juncture, it is apt to produce relevant provision of Order XII of the Supreme Court Rules, which reads as thus:

> *"3. Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission."*

11. By the aforesaid, it is clear that any alternation or addition to a judgment pronounced by Court can be made only to correct a clerical or arithmetical mistake or an error arising out of an accidental slip or omission. It is well settled that any application filed on the pretext of 'clarification/addition' while evading the recourse of review, ought not to be entertained and should be

discouraged. The time and again, this Court has deprecated such practice and lately in ***'Supertech Limited Vs. Emerald Court Owner Resident Welfare Association & Ors., (Miscellaneous Application No. 1572 of 2021 in Civil Appeal No. 5041 of 2021)'*** while answering the issue on similar Miscellaneous Application filed for 'clarification/modification', this Court observed as thus –

> ***"****8. In successive decisions, this Court has held that the filing of applications styled as "miscellaneous applications: or "applications for clarification/modification" in the guise of a review cannot be countenanced. In* ***Gurdip Singh Uban (supra[1])****, Justice M Jagannadha Rao, speaking for a two-Judge Bench of this Court observed:*
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> > *"17. We next come to applications described as applications for "clarification", "modification" or "recall" of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued. Order XL Rule 3 states as follows: "3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the*

1 (2000) 7 SCC 296

petition or direct notice to the opposite party....” In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of “no hearing”, we find that sometimes applications are filed for “clarification”, “modification” or “recall” etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for “clarification” or “modification”, — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in Sone Lal v. State of U.P. [(1982) 2 SCC 398] deprecating a similar practice.)

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for “clarification”, “modification” or “recall” if the application is in substance one for review. In that event, the Court could either reject the application straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.”

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12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand

dunes which are subject to the vagaries of wind and weather[2]. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"].

12. As per the said legal position, it is clear that the power of this Court under the said Rule is limited and can only be exercised sparingly with due caution while confining itself within the parameters as described only to correct clerical/arithmetical mistakes or otherwise to rectify the accidental slip or omission.

2 Meghmala Vs. G Narasimha Reddy, (2010) 8 SCC 383

13. On perusal of the order dated 09.09.2022, it is apparent that the application filed by the intervenor seeking intervention in the Transfer Petition was dismissed in absence of any grounds in the application to show that intervenor had any direct or substantial nexus in the matter or that he was adversely affected by any question of law. Accordingly, it was observed that the intervenor does not have any locus to intervene. Further, this Court was of the view that the cases which were referred to in clause (i) to (xvi) in paragraph 1 of the said order and were pending since more than 20 years with no substantial progress made in trial proceedings, and that allegations made in all the cases were similar and most of the witnesses were from Maharashtra. Hence, to avoid any prejudice in other pending trials and with an intent to consolidate all those cases, directions as referred above in paragraph 13 were issued to Principal Judge, Bombay City Civil & Sessions Court to conclude the trial in transferred cases within the time frame from the date of transfer.

14. During the course of hearing, Mr. Tushar Mehta, learned senior counsel has narrowed his arguments with particular reference to paragraph 13(e) of the order dated 09.09.2022, inter-

alia, contending that in view of the said direction, de-novo trial in the matters in which final hearing is concluded from the stage of framing of charge is not proper. He further urged that, in R.C.C. No. 147/2002 pending before 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur, arguments have been duly heard and the trial is on the verge of conclusion and only the judgment is left to be pronounced, therefore, to such extent, clarification of the order dated 09.09.2022 may be directed. On the other hand, supplementing the argument of State of Maharashtra, Shri Mahesh Jethmalani persuaded us to recall the order, however, Shri Vikas Singh contested the said arguments on the anvil of Order XII Rule 3 of Supreme Court Rules and submitted that such recall is not permissible under the said provision.

15. After hearing learned counsels for the parties, in our view the recall of the entire order as prayed for on the instance of the intervenor is not justified, in particular looking at the detailed discussion made in order dated 09.09.2022. Simultaneously, it cannot be ignored that State of Maharashtra has filed application asking modification of the order. Therefore, in view of the aforesaid, we refrain ourselves to recall the order on insistence of

the intervenor and deem it appropriate to consider the prayer of the State of Maharashtra taking note of the submissions made in this respect.

16. Now, so far as contention of Mr. Tushar Mehta, learned senior counsel is concerned, it is seen from paragraph 13(e) of order dated 09.09.2022, a direction was issued to the effect that on assignment of the transferred cases, the transferee Court(s) shall frame the charges within two months and thereafter conclude the trial not later than two years. Considering the fact that in R.C.C. No. 147/2002, arguments were finally heard, and hearing was concluded, therefore, clause (e) of paragraph 13 of order dated 09.09.2022 prima-facie may cause pre-judice to complainant if the trial is restarted from the stage of framing of charges. In our view, it appears to be a mistake in the order by accidental slip or omission. Although, in the order of the Transfer Petition, some observations with respect to hearing in the said trial is there, but it is due to omission and re-opening of the entire case R.C.C. No. 147/2002 would not be in fair administration of justice. We find force in the argument of Mr. Tushar Mehta, learned senior counsel to such extent. In our

view, due to omission, the said fact requires clarification and rectification, which took place due to accidental slip in the order. At this stage, the argument advanced by Shri Vikas Singh that the Judge who heard the arguments in R.C.C. No. 147/2002, has already been transferred, assumes not relevance for rectification of mistake and to issue conclusive directions in the matter.

17. As discussed above, the trial of R.C.C. No. 147/2002 pending in the Court of 155-II, Additional Chief Judicial Magistrate, First Class, Nagpur was at the stage of final argument. The Presiding Officer who heard the arguments has already been transferred prior to pronouncing the judgment in pursuance of order of this Court. Therefore, now on joining of new incumbent, the final arguments in the said trial ought to be heard by the new presiding officer to pronounce the judgment. Therefore, on modification of order of transfer dated 09.09.2022 of said R.C.C. No. 147/2002 to such extent and giving liberty to the new incumbent Presiding Officer in the aforesaid Court at Nagpur to decide the case from the stage of final hearing itself, the same would not cause any prejudice to the stakeholders and it shall meet the ends of justice.

18. Further, so far as Review Petition preferred by Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 bearing Diary No. 36121/2022 and titled as 'Ghanshyam Lahaunji Mudgal and others Vs. Ketan Kantilal Seth and others' is concerned, essentially the grounds on which the prayer has been made therein by these accused persons is more or less similar to the submissions made by them in reply filed by them in support of the I.A. filed by State of Maharashtra. In a nutshell, the aforesaid accused persons in support of State of Maharashtra have submitted that all of them are senior citizens aged between 65 to 85 years and they are inter-alia suffering from various ailments including high blood pressure, sugar, heart issues etc. Further, they have submitted that vide order dated 09.09.2022, the cases pending against them in Amravati [as mentioned in para 1(xiv)] have also been transferred to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, and in view of such transfer, they may suffer irreparable hardships since they are not in a stable physical condition to travel from Amravati to Mumbai which is approximately 600 kms far and takes 10 hours one way to cover the distance. It has been further stated that all the aforesaid accused persons have

delicate health conditions and therefore prayed that their cases may also be stayed from transfer and be continued before the transferor Court at Amravati itself.

19. We have duly considered the submissions made by the aforesaid respondents/accused persons and having perused their medical records, we find reasonable force in the contentions as raised above. Having said so, we are of the considered opinion that

in view of this peculiar circumstances of the instant case, it would be in the interest of justice and all stakeholders to modify the order dated 09.09.2022 to such extent as prayed herein above and transfer of the cases from Amravati concerning the aforesaid accused persons be refrained from being transferred to the transferee Court. In view of the foregoing discussion, we deem it appropriate to grant the relief as prayed by the respondent/accused nos. 20, 23, 25, 26, 30, 31, 32 and 34. Further, in view of the relief as granted and in order to circumvent the multiplicity of proceedings, we deem it fit to

observe that the aforesaid review petition be now treated as infructuous and disposed-off in terms of above observation.

20. In addition, some clarification to the directions contained in 13(e) which relates to processing the trial on transfer is also required to be issued. Thereby, the cases received to the transferee Court, shall be proceeded without any ambiguity and the trials of those cases may be concluded within time frame.

21. In view of the foregoing discussion, these applications be treated as disposed-off modifying the order dated 09.09.2022 to the extent indicated herein below –

I. The order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is hereby modified and maintained subject to –

I-A. Criminal proceedings relating to Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and

continue at the transferor Court from the stage as received;

I-B. The review petition filed by Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 bearing Diary No. 36121/2022 and titled as 'Ghanshyam Lahaunji Mudgal and others Vs. Ketan Kantilal Seth and others' is dismissed as infructuous in view of observations made in paragraph 19 herein.

II. The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.

III. Directions issued in para 13(e) in order dated 09.09.2022 be now read as under –

"On receiving the cases as mentioned in para 13(a), the transferee Court shall proceed in those cases from the stage of the case in which it had

received from the transferor Court(s). The cases in which charges have not been framed, it shall be framed within two months and the trial shall start immediately. In cases in which charges have already been framed and evidence has been started after submitting the trial program, those cases shall proceed from that stage of trial. Meaning thereby, de-novo trial in such cases from stage of framing of charge is not required. The transferee Court(s) shall conclude all the trials as expeditiously as possible within a period of two years."

IV. Lastly, we make it clear that this Court vide order dated 09.09.2022 never intended or meant to set-aside the order dated 24.06.2021 passed by Bombay High Court. It is clarified that the concerned trial Court at Nagpur shall make all the endeavor to comply with the timeline as given by Bombay High Court and decide the case in accordance with law.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
AUGUST 4, 2023.