

CRIMINAL MISC. APPLICATION NO.699/2025
(CNR- MHPU01-018901-2025)

Anita Baban Rathod

...Applicant.

Vs.

Sani Hiraman Mahite
and Ors. 25

...Opponents.

ORDER BELOW EXH.01.

The present application is filed under Sec. 448 of the BNSS, 2023 by the applicant for transferring R.C.C.No.584/2022 pending in the Court of JMFC, Vadgaon Maval, Pune for trial together with Sessions Case No.496/2022 pending in the Court of Addl. Sessions Judge, Vadgaon Maval, Pune being counter cases.

2] It is submitted that applicant filed complaint against opponent Nos.1 to 14 in Talegaon MIDC Police Station on 28/02/2021. As police denied to take her complaint due to delay, she filed complaint in the Court and after police report U/S. 202 of Cr.PC. Court issued process against the opponent Nos.1 to 14 of offence punishable U/Ss. 324, 327, 354, 427, 452, 504, 506, 143, 147 r/w 149 of the IPC and thereafter, complaint is registered as R.C.C.No.584/2022.

3] It is further submitted that on 28/02/2021 about 2.30 p.m. opponent No.6 filed complaint against applicant and opponent Nos.15 to 25 and accordingly Crime No.25/2021 registered at Talegaon MIDC Police Station against them for

the offence punishable U/Ss. 307, 143, 147, 148, 149, 323, 504, 506 of the IPC and thereafter case is registered as Sessions Case No.496/2022. It is further stated that both the cases are filed due to same incident happened on 28/02/2021 about 2.00 pm to 2.30 pm. at the residential house of the applicant and opponent Nos.15 to 21 at village Jambwade, Tal. Maval, Dist. Pune. For the ends of justice and to remove chances of unfair trial, conflicting decisions both the cases to be tried by the same Court.

4] Ld. Advocate of opponent Nos.2, 4 to 6, 12 and 13 filed say (Exh.20) Ld. Advocate of opponent Nos.3, 8 to 11 filed pursis (Exh.21) and adopted the say of opponent Nos. 2, 4 to 6, 12 and 13. Matter proceeded against opponent Nos.7, 14 to 25. Opponent Nos. 2, 4 to 6, 12 and 13 contended that the present application is filed after 4 years only for the purpose to delay and prolong the trial. Both the incidents are occurred on different date and different time. Both the cases are not counter cases or cross cases.

5] The Learned A.P.P. filed say (Exh.16) and relying on the judgment of Hon'ble Supreme Court in Sudhir & Ors. etc. Vs. State of M.P., reported in AIR 2001 SC 826 requested to pass the appropriate order.

6] Heard Ld. Advocate Shri. Kalekar for the applicant, Ld. Advocate Shri. Pandit for the opponent Nos. 2, 4 to 6, 12 and 13.

7] It is the contention of the applicant that the R.C.C. No.584/2022 which is now pending in the Court of 2nd Jt. C.J.J.D. and J.M.F.C., Vadgaon Maval, is arising out of the same incident, upon which the Sessions Case No.496/2022 is instituted and pending in the Court of Addl. Sessions Judge, Vadgaon Maval. Certainly, as per Section 233(2) of BNSS, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

8] Now the question crop-up whether the present application under Sections 448 of BNSS, 2023, can be entertained by this Court. The Hon'ble Bombay High Court in the matter of **Amol Pralhad Bharati & Others Vs. The State of Maharashtra & Others**, dated 10 August, 2018 in Criminal Writ Petition No. 1069 of 2018, held that;

10. "Before parting with the order, it may be noted that certain instances have come across relating to counter cases where the parties applied before the Sessions Court for transfer of the case under Section 408 of the Code and the Sessions Court also passed the order transferring such cases from the Court of Judicial Magistrate, First Class to the Court of Session. As per Section 193 of the Code, except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. If the Sessions Court passed an order for transfer of a criminal case pending before the Judicial Magistrate, First Class, for being tried before the Court of Session, there would be a bar for

taking cognizance under Section 193 of the Code, since that case is not committed by the learned Magistrate. Such practice is highly deprecated and it should be stopped”.

9] In view of above pronouncement, the case pending before the Judicial Magistrate, First Class needs to be committed by the said Court to the Sessions Court. The remedy is available with the applicant to move an application under Section 323 of Cr.P.C. (now Section 362 of BNSS) to commit the case to the Court of Sessions for being tried along with the Sessions Case. Therefore, an appropriate remedy for the applicant is to file application under Section 323 of Cr.P.C. (now Section 362 of BNSS) before the learned Judicial Magistrate, First Class, Vadgaon Maval, Dist. Pune. Hence the order -

ORDER

01. Application Exh. 01 is rejected.
02. The applicant is at liberty to file application under Section 323 of Cr.P.C. (now Section 362 of BNSS) for committal before the Court of J.M.F.C., Vadgaon Maval, Dist. Pune.

Pune.
Date:-27/07/2026

(Arvind T. Wankhede)
Sessions Judge, Pune.

CERTIFICATE

“ I affirm that the contents of this PDF file are word to word as per the original order.”

Name of the Steno : Sau. G. M. Naik (Stenographer, Grade I)

Name of the Court : Arvind T. Wankhede
Principal District and Sessions Judge, Pune

Date of Order : 27/07/2026

Order signed by : 27/07/2026
PO on

Order uploaded on : 27/07/2026