

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ Writ Petition (Crl.) No.2648/2006

Reserved on : 10.11.2008
Pronounced on : February 06, 2009

SHRI HOMI RAJVANSH PETITIONER

! Through : Mr. Aman Lekhi, Sr. Advocate
Mr. Jaspreet S. Rai, Adv.
Mr. Rakesh Kumar, Adv.

Versus

\$ DIRECTOR OF C.B.I. & ORS. RESPONDENTS

^ Through : Mr. Harish Gulati and Mr. Anindya
Malhotra, Advs. for CBI
Mr. G.B. Tulsiani, Adv. for R2 & R4

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. Petitioner has filed the present writ petition under Article 226 of the Constitution of India read with

Section 482 of the Code of Criminal Procedure (hereinafter referred as 'Cr.P.C.') seeking directions to be issued to the Central Bureau of Investigation (hereinafter referred to as 'CBI') not to continue with the investigation in RC No. 7/E/2006/CBI/EOW/MUM registered at Bombay on a complaint received by it from National Agricultural Coop. Marketing Federation of India (hereinafter referred to as 'NAFED') as it is incompetent to hold the investigation of the case as no part of offence to which the petitioner is accused, had taken place within the jurisdiction of Bombay.

2. Petitioner, an IRS officer, had joined NAFED as Additional Marketing Director. As part of diversification, NAFED entered into Public Private Partnership/Tie up business with private entrepreneurs in procuring domestic marketing and international trade of agricultural and non-agricultural items from 2003-2004 onwards. Under this programme, NAFED entered into a tie up business with accused M/s. Swarup Group of

Industries (hereinafter referred as 'SGI'), Crystal Plaza, New Link Road, Andheri (West), Mumbai – 400053. SGI was extended facility for carrying out export business of iron ore.

3. On 26.3.2004, NAFED received a proposal from SGI signed by its proprietor and authorised signatory, accused G.S. Srivastava and accordingly a Memorandum of Understanding (hereinafter referred as 'MOU'), containing the terms and conditions of the Agreement, was executed between the two. NAFED released substantial amount to SGI on four different dates for the purposes of export of iron ore. Another MOU dated 24.04.2004 was executed between NAFED and SGI by virtue of signatures made thereon by the petitioner as Divisional Head of Finance and Accounts, even before the letter dated 28.04.2004 was received from SGI informing NAFED therein that another contract with the same buyer for export of iron ore was entered into by them and sought extension of the earlier MOU on the existing terms and conditions. Thereafter NAFED released

funds on different dates in favour of the SGI. However, SGI failed to make payments against the invoices as detailed in the complaint. SGI is alleged to have misappropriated the funds released by NAFED for purposes other than that for which they were advanced. NAFED suffered a wrongful loss to the tune of Rs. 149.50 Crores approximately.

4. Consequently, NAFED sent a complaint dated 21.09.2006 through Shri M.V. Haridas, Manager (Personal & Vigilance) to Deputy Inspector General, CBI, Economic Offences Wing, Kitab Mahal, Mumbai. This complaint is the basis of the impugned FIR No. RCBE12006E0007 dated 21.09.2006. Petitioner has been named in the FIR for having conspired with SGI and its proprietor G.S. Srivastava, for having released substantial funds to SGI without ensuring the fulfillment of the terms and conditions of the MOU, which he signed without even having received any letter from SGI. The funds so released were purportedly utilized by SGI for other purposes other than export of iron

ore. Instead of transferring the LCs in favour of NAFED, SGI did not even remit the proceeds to NAFED who had rendered the financial assistance to them and this according to NAFED amounted to cheating.

5. In this writ petition, petitioner has made the following prayer:

- a. 'Declare that investigation by CBI into RC No. 7/E/2006/CBI/EOW/MUM is in complete abuse of the process of law and is wholly vitiated by malafides the dominant purpose behind its registration being harassment and humiliation of the Petitioner the said RC, on its very face, failing to disclose the ingredients of the offence of which the Petitioner is accused, being deliberately filed at the place incompetent to entertain it and being dealt with by the CBI in total disregard of its own manual as governs the exercise of its functions; and consequently.'

- b. 'Direct respondent No. 1 to ensure further abuse of the legal process is not continued and prohibit proceeding under RC No. 7/E/2006/CBI/EOW/MUM registered by Respondent No. 1.'
6. In short, petitioner has sought transfer of the investigation of the case to Delhi as according to him NAFED has its office at Delhi. Petitioner was employed in NAFED at Delhi and the money was released in favour of SGI at Delhi.
7. Mr. Aman Lekhi, learned senior counsel for the petitioner has submitted that CBI at Bombay had no jurisdiction to register an FIR on the complaint of the NAFED, nor had any power to investigate the case as no offence took place within the territorial jurisdiction of CBI, Bombay.
8. It is submitted by the learned senior counsel for the petitioner that filing of the complaint by NAFED at Bombay and consequent

registration of the case at Bombay has been done with malafide intentions, with a view to cause harassment to the petitioner.

9. It is further argued that the Economic Offences Wing is part of the Special Crime Division for the CBI and works under the overall direction and supervision of the Director. He has to be informed of all the matters and his advise and instructions have to be obtained for offences concerning business frauds, frauds of the like nature exceeding Rs. 1 Crore in particular have to be referred to him and this procedure has not been adopted by the CBI in this case and the FIR has been registered by the CBI contrary to the procedure prescribed in the CBI manual.

10. It is further argued that the release of funds by NAFED were between April 2004 and December 2005 i.e. on 50 different occasions indicating that NAFED was consciously acting upon the contract and no offence of cheating

is made out against the petitioner on the basis of the facts and accusations narrated in the FIR. It is urged that the complaint was originated from New Delhi but it was entertained by CBI at Mumbai where no part of the process originating with the application in culminating the sanction took place at Mumbai and in fact, the situs of the process was Delhi not Mumbai and therefore the choice of Mumbai indeed was mischievous and strange especially when the complainant has its registered office at Delhi. The transactions were carried out at Delhi and the office of CBI is also at Delhi which is competent to entertain the complaint.

11. It is emphasised that NAFED has its registered office at Delhi. The claim of SGI for funds was received and processed at Delhi and the funds as narrated in the FIR were also released in Delhi and the alleged deception mentioned in the FIR was practiced upon NAFED at Delhi and no part of the transaction

entered into with SGI took place at Mumbai.

12. It is also submitted that investigation of the case involved scrutiny of the process by which funds were released and the investigation would involve many senior officers of NAFED constituted at Delhi and all expenses, losses and damages allegedly suffered by NAFED as per the auditors were to be accounted at Delhi. Under the circumstances, the investigation of allegations in the complaint, therefore could appropriately and conveniently be conducted at Delhi.

13. It is argued that mere default in payment by SGI would not constitute the offence of cheating in the absence of dishonest intention of cheating causing wrongful loss to the NAFED at the inception of the contract.

14. To support his submissions, learned counsel for the petitioner has placed reliance on ***S.N. Sharma v. Bipen Kumar Tiwari and Ors.*** 1970 (1) SCC 653, ***Navinchandra N.***

Majithia v. State of Maharashtra & Ors.
(2000) 7 SCC 640, ***Niraj Trivedi v. State of Bihar and Ors.*** (Writ Petition (Crl.) No. 415/2004) and ***Ishar Das v. Emperor*** 8 Crl.L.J. 75 and ***State v. Chuni Lal Begani*** AIR 1965 Patna 103

15. Mr. Harish Gulati, learned counsel for CBI has submitted that CBI had jurisdiction to entertain the complaint received by it from NAFED at Bombay, register the FIR and investigate the matter in view of provisions contained in Section 179 of the Cr.P.C. as a part of offence was committed at Bombay. SGI, the principal accused and its proprietor G.S. Srivastava are carrying on their business through Andheri (West), Mumbai and the funds were released by NAFED in favour of SGI through Banks located at Noida and Delhi and transferred to other locations, majority of it to Mumbai, SGI and its proprietor G.S. Srivastava in conspiracy with the petitioner invested the amounts so released by NAFED

and received by SGI at Mumbai and therefore, registration of FIR at Bombay under Section 154 read with Section 179 Cr.P.C. cannot be labeled as violative of Article 21 of the Constitution.

16. It is further submitted that after registration of the case at Bombay, petitioner had filed anticipatory bail application before Hon'ble Special Judge, CBI on 14.11.2006 which was granted to him vide order dated 4.1.2007 on the basis of parity with the other accused G.S. Srivastava who was granted partial relief on 4.10.2006. It is also submitted that accused G.S. Srivastava had filed a writ petition before the Hon'ble High Court of Mumbai on 16.10.2006 for quashing of the FIR which was dismissed on 19.12.2006, against which G.S. Srivastava filed special leave petition before Hon'ble Supreme Court of India for quashing of the FIR which has since been dismissed on 26.11.2007. However, while issuing an ex-parte order dated 20.04.2007, the Supreme

Court had stayed the investigation and further proceedings of the case which now stands vacated.

17. Mr. G.B. Tulsiani, learned counsel for respondent No. 2, while adopting contentions of the learned counsel for CBI further argued that signing of MOU dated 24.03.2004 by the petitioner without obtaining approval of the competent authority in NAFED before receipt of letter dated 26.03.2004 from SGI clearly indicate the criminal intent of the principal accused SGI in conspiracy with the petitioner in facilitating the commission of an economic crime to the wrongful loss of NAFED to crores of rupees.

18. It is further argued that transactions worth crores of rupees finalized by the petitioner in undue haste for facilitating the crime, without even having received the necessary documents, on the basis of MOU dated 24.04.2004 reflect on the conduct of the

petitioner, clearly indicating his conspiring with the other accused persons in cheating with a view to cause wrongful gain to SGI and therefore, the complaint against the petitioner was made bona fide with no malice against him. It is prayed that under these circumstances, the petition deserves dismissal.

19. Chapter XIII of the Cr.P.C. speaks of jurisdiction of the criminal courts in inquiries and trials. By virtue of Section 177, every offence has to be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178 envisages a position where it is uncertain in which of several local areas an offence was committed or, where an offence is committed partly in one local area and partly in another or, where an offence is a continuing one, and continues to be committed in more local areas than one or, where it consists of several acts done in different local areas, it may be inquired into

or tried by a Court having jurisdiction over any of such local areas. Section 179 speaks of a situation where an act is done at one place and consequence ensues at the other place. In such eventuality, an offence can be inquired into or tried by the Court within whose local jurisdiction such thing has been done or such consequence has ensued.

20. There is no dispute that offence under Section 420 IPC in the present case would be governed by Section 179 Cr.P.C. Learned counsel for the petitioner has submitted that neither deception nor consequence thereof occurred in Mumbai and that creation of artificial jurisdiction at Mumbai would not justify the registration of RC by the CBI at Mumbai. Reference is made to 2008 (2) JCC 1344 titled ***Naresh Kavarchand Khatri v. State of Gujarat & Anr.***

21. Admittedly, the principal accused SGI and its proprietor G.S. Srivastava; accused No. 3 are

based at Mumbai and the said company is carrying on its business at Mumbai. Therefore the money which was disbursed to SGI in terms of MOU executed between the parties was, though released from Delhi and Noida was received by SGI and G.S. Srivastava at Bombay. There are allegations that SGI diverted and misappropriated the payment released by NAFED by investing in the business of export, purchase of movable assets and immovable properties and also in sponsoring and financing the events like Film Fare Awards and Femina Miss India contest at Mumbai.

22. M/s. P.S. Shetty & Co., Chartered Accounts, Mumbai were alleged to have prepared a balance sheet of SGI for the year ending 31.03.2001, 31.03.2002, 31.03.2003 and provisional balance sheet upto the year 31.12.2003 submitted by SGI to NAFED seeking disbursement of second instalment of Rs. 3.21.41,000/- as a soft loan for

procurement and other expenses of iron-ore to be exported on Tie-up basis. These audited reports are found to be forged and fabricated documents as M/s. P.S. Shetty & Co., Chartered Accounts, Mumbai, during the investigation has denied having audited the accounts of SGI and prepared the said balance sheet. Thus intention of cheating NAFED of a huge amount by SGI is apparent from the FIR and other documents and investigation so far conducted by the CBI. Allegations against the petitioner are that he conspired with SGI for causing wrongful loss to NAFED, in other words, wrongful gain to SGI.

23. This court in exercise of its power under Article 226 of the Constitution of India read with Section 482 Cr.P.C. though can issue an appropriate writ so as to restrain the police or any other investigating agency from exercising its authority in a manner unwarranted by law. However, the court has

to exercise this power sparingly and should not generally interfere in the investigation of the case unless it is of the view that interference is warranted because of police officer conducting investigation in a mala fide manner.

24. In ***S.N. Sharma's case (supra)***, the Supreme Court held:

“11. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal officer. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code.”

25. There is no dispute that this Court has the power to issue a writ of mandamus restraining the

police officer if it is convinced that the power of investigation has been exercised by the investigating agency in a malafide manner. However the issue before the Supreme Court in the said case was whether a Magistrate had the power to direct the police to stay the investigation and decide to hold an enquiry himself. Therefore, provisions of Section 156 and 159 of Cr.P.C. were discussed and interpreted with.

26. In ***Navin Chandra's case (supra)***, it was observed that High Court will have jurisdiction if any part of cause of action arises within its territorial jurisdiction even though the seat of Government or authority or residence of persona against whom direction order or writ is sought to be issued is not within the said territory. In the said case, the Bombay High Court had dismissed the writ petition filed by the petitioner before it seeking quashing of criminal complaint filed at Shillong on the ground that the complaint

was false and had been filed with the malafide intention of causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares, which had entirely taken place at Mumbai holding that the Bombay High Court had no jurisdiction to quash the complaint filed at Shillong. Under these circumstances, it was observed that since a part of cause of action arose in Bombay, Bombay High Court had the jurisdiction to pass appropriate orders including transfer of the complaint for investigation from Shillong to Bombay. In the present case, it is not disputed that a part of offence did take place at Delhi.

27. In ***Niraj Trivedi's case (supra)***, while ordering the transfer of investigation of FIR registered at Police Station Digha, Patna, Bihar, this Court had taken into consideration the fact that no part of cause of action arose at Patna and Patna Police had no jurisdiction to investigate the matter.

28. Learned counsel for the petitioner has emphasised that since the offence of cheating has been committed in Delhi, it can be enquired into and tried by a Court at Delhi only. However, I find no force in these submissions of the learned counsel for the petitioner. Since NAFED has its principal office at Delhi some part of offence did take place at Delhi, the jurisdiction of the courts at Delhi is not completely ruled out. At the same time, the jurisdiction of courts at Bombay cannot be ousted where the offence of cheating or misappropriation continued by the petitioner and other co-accused persons which of-course would come to light only after the investigation is complete. Under these circumstances, when the case is at its initial stage of investigation, it cannot be said that CBI has acted malafidely while registering the case at Bombay on the complaint of NAFED received by it at Bombay and also in holding investigation of the case at Bombay. May be,

for investigation of the case CBI has to interrogate some of the officials of NAFED placed at Delhi. But no investigation which might be conducted by CBI at Delhi would not rule out the jurisdiction by the court at Bombay to enquire and hold trial of the offence of cheating made out in the impugned FIR at Bombay.

29. Learned counsel for the petitioner has referred to ***Ishar Das case (supra)*** to emphasise that courts at Bombay have no jurisdiction to hold an enquiry or trial of this case. In the said case, some blank forms allegedly were stolen from the office of Punjab National Bank and the appellant had presented a forged draft and got the same encashed with the help of co-accused who also presented another draft at Bombay and got it encashed and there was no other branch of Punjab National Bank in Punjab except its headquarter at Lahore. It was held that it was the headquarter of Punjab National

Bank at Lahore which suffered losses in consequence of the said frauds and therefore the court at Lahore had jurisdiction to hold the trial of the case.

30. In the present case, the offence of cheating has been partly done and its consequences ensued at Bombay. The local jurisdiction of the Bombay Court cannot be questioned.

31. Since CBI has the jurisdiction to hold an enquiry of the FIR registered by it on the complaint of NAFED, now it is to be seen whether it is appropriate for this Court to invoke its power under Article 226 of the Constitution read with Section 482 Cr.P.C. and stay the investigation of the case by CBI at Bombay and transfer the same for investigation at Delhi.

32. As noted earlier, the power of the Court to interfere with an investigation is limited and it is only in appropriate circumstances, the power can be exercised. In ***Naresh***

Kavarchand Khatri's case (supra), it was

laid down as follows:

“.....The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section 156 of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal Procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the, event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigation Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.

6. The undue haste with which the High Court has exercised its jurisdiction, in our opinion, should not be encouraged. Whether an officer-in-charge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the concerned officer in-charge of the police station which has jurisdiction to investigate in relation thereto. Sub-section (4) of Section 181 of the Code of Criminal Procedure would also be relevant therefore.

We need not dilate more on analyses of the aforementioned provisions as the said question has been gone into by this Court on more than one occasion.

In ***Satvinder Kaur vs. State (Govt. of NCT of Delhi)*** : 1999 (8) SCC 728 this Court noticing various provisions of the Code of Criminal

Procedure opined:

“12. A reading of the aforesaid sections would make it clear that Section 177 provides for “ordinary” place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime”.

It was furthermore held:

“15. Hence in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigation officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction,

is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceedings of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.”

33. Thus it is clear that only in the event of investigating officer, having regard to the provisions contained in Sections 154, 162, 177 and 178 of Cr.P.C. arrives at a finding that the alleged crime is not committed within his territorial jurisdiction, can forward the first information report to the police station having jurisdiction in the matter. The High Court can interfere only if there are malafides shown in the investigation of the case in the manner that investigating officer was investigating the case without jurisdiction.

34. In the present case, I do not find any malafides in the investigation of the case by the CBI. On the face of the allegations contained in the FIR and the complaint of

NAFED, a major part of cause of action arose at Bombay. The CBI, therefore, was within its jurisdiction to register a case on the complaint received from NAFED and proceed with its investigation.

35. It is pertinent that the principal accused SGI and its proprietor G.S. Srivastava had filed a writ petition in the High Court of Bombay on 16.10.2006 seeking quashing of the FIR and the FIR was registered only on 21.09.2006. This writ petition was filed on 20.11.2006. When these two writ petitions were filed, the investigation was still at its initial stages. However, the writ petition filed by G.S. Srivastava was dismissed by the High Court on 19.12.2006. Against the said order of dismissal, G.S. Srivastava filed special leave petition (Crl.) No. 1822/2007 before the Supreme Court seeking quashing of FIR. Though, G.S. Srivastava, accused, succeeded in getting an ex-parte stay order on 20.04.2007 whereby the investigation of the

case was stayed, but failed to get the relief prayed as the said petition was dismissed by the Supreme Court on 26.11.2007. G.S. Srivastava had also moved an application seeking anticipatory bail, wherein he was granted interim bail and finally he was successful in getting a bail order in his favour subject to certain conditions from the CBI Court at Mumbai on 4.10.2006.

36. It is not out of place that the petitioner also filed an anticipatory bail application No. 1349/2006 before the Special Judge, Mumbai on 14.11.2006 i.e. six days before the filing of the present writ petition and succeeded in getting an anticipatory bail in his favour vide order dated 4.1.2007 on the basis of parity with G.S. Srivastava. Since the principal offender SGI and its proprietor G.S. Srivastava have submitted themselves to the jurisdiction of the Bombay High Court without any objection and do not dispute the territorial jurisdiction of the Bombay Courts

to take cognizance of the offence partly committed at Bombay, it would not be in the interest of justice to transfer the investigation of the case to Delhi on the request of the petitioner. In view of provisions contained in Section 179 Cr.P.C., it can be safely concluded that there are no malafides on the part of NAFED in filing its complaint with CBI at Bombay. No malafides can be imputed against the CBI for having proceeded with the registration of the case soon on receipt of the complaint on the same day and proceeding with the investigation of the case. At this stage of investigation, it cannot be said that CBI at Bombay has no territorial jurisdiction to investigate the crime alleged to have been committed by the accused persons named in the FIR and or by some other persons whose name might surface during the investigation of the case.

37. The offence of cheating has been committed partly in one local area and partly in other

and consists of several acts done in different local areas and therefore, the alleged offence under Sections 420/120B IPC can be enquired into and investigated by CBI at Bombay specially when no malafides are attributed to the CBI, and when it has exercised its jurisdiction and power to investigate the case within the ambit of law.

38. Under these circumstances I find no reason to transfer the investigation of the case from Mumbai to Delhi as prayed. Hence, petition being without any merits is hereby dismissed.

February 06, 2009
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(ARUNA SURESH)
JUDGE