

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(CRL) No.50/2010

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Date of decision:18th January, 2010

K.S. FOOD PRODUCTS & ORS.

..... Petitioners

Through: Mr. R.N. Mittal, Sr. Advocate with Mr. Vijay Aggarwal & Mr. Gurpreet Singh, Advocates.

Versus

STATE & ANR

..... Respondents

Through: Mr. Chetan Sharma, Sr. Advocate with Mrs. Ranjana Roy, Mr. Pramod Kr. Dubey, Mr. Sajal Dhamija & Mr. Shailiasuman, Advocates for complainant.
Mr. Vikas Pahwa, ACC with Mr. Piyush Singh, Advocate & Inpr. Jagbir Singh PS New Friends Colony for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petition has been preferred for quashing and/or for setting aside the order dated 28th August, 2009 of the ACMM (SE), New Delhi in complaint case No.432/1 of 2009, whereby the SHO Police Station, New Friends Colony was directed to register the FIR and for quashing of FIR No.428 of 2009 dated 7th September, 2009 registered

pursuant thereto. The said reliefs are claimed objecting to the territorial jurisdiction.

2. The complaint was made against the petitioners of offence under Section 416, 464, 465, 467, 468 & 471 r/w Section 120B of the IPC in or about the year 2004 of having opened a fictitious bank account with the Morena (Madhya Pradesh) branch of the State Bank of India in the name of the complainant and having availed loan facilities from the said bank. In para 5 of the complaint it is stated that the complainant in or about 2009 visited Friends Colony, New Delhi Branch of the State Bank of India, where he has an account w.e.f. 15th December, 2006 when he was informed of accounts in his name at Morena; the complainant as such pleaded that cause of action accrued to him at Friends Colony, New Delhi and the courts at Delhi have territorial jurisdiction to entertain the complaint. The complaint was also accompanied with an application under Section 156(3) Cr.PC.

3. Upon the complaint being presented, the learned ACMM called for the Action Taken report of the SHO. The SHO reported that though *prima facie* a case of cheating and forgery is made out from the complaint but the matter comes within the jurisdiction of Morena; however if a detailed enquiry is done some link at Delhi may come up.

4. The Learned ACMM vide order dated 28th August, 2009 disposing of the application under Section 156(3) Cr.PC has held the Delhi courts to be having territorial jurisdiction to entertain the complaint. On an interpretation of Section 179 Cr.PC it has *inter alia* been held that the complainant being resident of Delhi, the consequence of the offence committed by the accused of opening fictitious bank accounts in the name of the complainant even at a place outside Delhi are at Delhi and the Delhi courts have territorial jurisdiction. Yet another reason given is of the accused i.e. the petitioner No.1 herein having been shown to be having an address at Barakhamba Road, New Delhi. The Magistrate also noticed that the money has been normally transferred to Delhi.

5. The senior counsel for the petitioners urged that the complainant mischievously in the complaint as originally filed showed the address of the petitioner No.1 of

Barakhamba Road, New Delhi; after cognizance had been taken by the court the complainant changed the memo of parties and showed the address of the petitioner No.1 also at Morena only. He further relies upon *Y. Abraham Ajith Vs. Inspector of Police* 2004 CRI. L.J.4180 and *Rajendra Ramchandra Kavalekar Vs. State of Maharashtra* 2009 (1) JCC 617 in this regard.

6. The case is at the stage of investigation. Section 156 (2) of the Cr.P.C. provides that no proceeding by a police officer in any case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under the said provision to investigate. Allowing the petition at this stage would be in violation of the said express provision. Moreover, the facts of the present case are near identical to those in the recent judgment of the Supreme Court in *Rasiklal Dalpatram Thakkar Vs. State of Gujarat* MANU/SC/1803/2009. In that case, on the Chief Metropolitan Magistrate directing investigation under Section 156(3), the investigating agency submitted a report stating that the allegations complained of had been committed within the territorial limits of outside Ahmedabad and that the investigation should therefore be transferred to the investigating agency of the place of the commission of the offence. The said report was rejected by the CMM, Ahmedabad on the ground that it was not for the investigating agency to decide or not to decide a complaint forwarded to it under Section 156(3) on the ground that the offence complained of was allegedly committed outside the territorial jurisdiction of the investigating agency. The CMM directed the investigating agency to carry out further investigation and report whether the alleged offence had been committed or not. The said order of the CMM was challenged before the Sessions Court in revision which was dismissed. The matter was taken to the High Court which also dismissed the writ petition. Ultimately, the Supreme Court was approached and which held that a police officer can, even without the order of the Magistrate, investigate any cognizable offences which a court having jurisdiction over such police station can enquire into or try under the provisions of the Act; once an investigation is commenced, the same is not to be interrupted on the ground that the police officer was not empowered under Section 156(1) to investigate; Section 156 (2)

was held to be in the nature of a savings clause in respect of investigations undertaken in respect of cognizable offences. It was further held that Section 190 also empowers a magistrate to order an investigation under Section 202 (1) and Section 156(3) also empowers the Magistrate to order an investigation of a complaint filed before him. It was yet further held that the provisions of Section 181 as to place of trial do not account for a stage contemplated on account of order made under Section 156(3) Cr.P.C. The Supreme Court affirmed the order of the CMM and of the High Court and reiterated that it is not within the jurisdiction of the investigation agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offence had been committed beyond its territorial jurisdiction and that it was open to the Magistrate to direct investigation under Section 156 (3) of the Cr.P.C. without taking cognizance on the complaint and where an investigation is undertaken at the instance of the magistrate, a police officer is bound, except in specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter. It was further held that only after report of the investigation is received; it is for the Magistrate to decide his next course of action. The appeal was, therefore, dismissed. To the same effect is another recent judgment of the Supreme Court in **Kishan Lal Vs. Dharmendra Bafna** AIR 2009 SC 2932.

7. The same objection to this petition was also raised by the counsel for the State relying on **Satvinder Kaur Vs. State** 1999 8 SCC 728, which was also noticed in **Rasiklal Dalpatram Thakkar** (supra); in this case, it was further held that if after investigation, it is found that the charge-sheet is to be filed in some other court for the reason of the offence made out having not been committed within the jurisdiction of the Court, it will be filed in that other court; but the supreme Court in **Rasiklal Dalpatram Thakkar** (supra) held that it was not concerned with that question and was only concerned with the power of the investigating officer to file a report that he had no jurisdiction to investigate into the complaint.

8. The senior counsel for the complainant has also referred to the judgment of the Supreme Court in **Trisuns Chemical Industry Vs. Rajesh Agarwal** (1999) 8 SCC 686

which has been relied upon by the ACMM in the impugned order. It has been held therein that it is a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence; the power of the Magistrate to take cognizance of the offence is not impaired by the territorial restrictions; after taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

9. In view of the aforesaid position in law, this petition seeking to interfere with / thwart the investigation is clearly not maintainable. The SHO PS New Friends Colony had also in the action taken report submitted to the ACMM only stated that on averments in the complaint the offence was found to have been committed within the jurisdiction of Morena but if detailed enquiry is done some link at Delhi may come up. The said investigation is not complete. In fact the counsel for the State has contended that the petitioners are not joining and cooperating in the investigation. Thus till the investigation is completed, the petitioners cannot seek quashing of the FIR or any other order which would have the effect of interfering there with.

10. In view of the aforesaid, there is no need for this Court to at this stage give any finding on the applicability of Section 179 to the present case. Suffice it is to state that both the judgments aforesaid cited by the senior counsel for the petitioner are not at the stage of investigation. In *Y. Abraham Ajith Vs. Inspector of Police* (supra) and *Rajendra Ramchandra Kavalekar Vs. State of Maharashtra* (supra) also the investigation had been completed and the charge-sheet had been filed. The observations in the said judgments qua territorial jurisdiction are thus not relevant for considering the maintainability of the present case.

11. I may further notice that another Single Judge of this Court in *Vishwanatha Tantri Vs. The State of NCT of Delhi* 2007 (99) DRJ 451 while dismissing the petition on the ground that the matter was at a very initial state and investigations are yet to be completed nevertheless in relation to the offences under Sections 416, 464, 465, 468 &

471 read with Section 120(B) of the IPC held that the provisions of Section 179 of the Cr.P.C. are wide enough to enable cognizance to be taken either by a Court where anything was done within the local limits of its jurisdiction, or a court, where the consequence ensued. Reliance was placed on ***Girdhar Das Vs. King Emperor*** AIR 1924 All. 77 laying down that the offence of cheating may be tried either at the place where the cheating was committed (where the accused resided) or at the place where the loss ensued to the complainant i.e. where the complainant resides or his firm is situated. In that case also the registered office of the complainant company was at Delhi and the loans in the fictitious accounts were finally sanctioned and disbursed from the Delhi head office of the bank and it was held that owing thereto the Delhi courts will have jurisdiction. It was also held relying on ***Madhu Limaye Vs. The State of Maharashtra*** AIR 1978 SC 47 and ***State Vs. Navjot Sandhu*** 2003 6 SCC 641 that the powers under Section 482 Cr.P.C. are to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice.

12. The senior counsel for the petitioners next contended that the orders/FIRs are liable to be quashed because no mens-rea can be attributed to the petitioner No.1. Reliance in this regard is placed on ***Kalpna Rai v. State*** (1997) 8 SCC 732 & ***Motorola Incorporated Vs. Union of India*** 2004 CRI. L. J. 1576 (Bom.) and ***Natural Sugar & Allied Industries Vs. Razzak Gaffar*** 2006 CrI. L.J.3680 (Bom.) where it has been held that a company can have no mens-rea. The counsel for the State pointed out that the petitioner No.1 in the present case is not a company but a partnership firm. The reasoning which has prevailed in the aforesaid two judgments was of a company being a judicial person and thus having no mens rea. However, the same cannot be said of a partnership firm which in law is nothing else but a compendious name for its partners. Reference in this regard may be made to ***V. Subramaniam Vs. Rajesh Raghuvandra Rao*** (2009) 5SCC 608. Thus, I am at this stage not inclined to consider the said plea.

13. The senior counsel for the petitioner also relies on the order dated 20th November, 2006 of a Single Judge of this Court in CrI. Revision Petition 819/2006 titled ***Brahm Singh Tanwar Vs. State*** and ***Raghu Raj Singh Rousha Vs. Shivam Sundaram***

Promoters (P) Ltd. 2009 (1) JT 61 but the same are not found applicable in any way to the matter in controversy.

14. No merits are found in the petition, the same is dismissed.

Crl. M. No.428 /2010 (u/S 482 Cr. P.C. for ex parte ad interim order).

With the dismissal of the main petition, this application has become infructuous and is disposed of.

RAJIV SAHAI ENDLAW, J

18th January, 2010

PP/gsr