

19.05.2022

Sl. No. 25.

Mithun

Ct.No.42.

**IA No: CRAN/4/2014 (Old No:CRAN/479/2014),
CRAN/7/2015(Old No:CRAN/1178/2015)**

In

CRR 4037 of 2012

(Via Video Conference)

In the matter of : **Anjana Vasanthkumar & Anr.**

...petitioners.

Mr. Pawan Gupta, Adv.

Mr. Ganesh Narayan Jajodia, Adv.

Ms. Nitu Singh, Adv.

...for petitioner No.2.

This is an application under Section 482 of the Code of Criminal Procedure filed by the accused persons of Complaint Case No.25302 of 2010 under Sections 418/420/120B of the Indian Penal Code pending before the 7th Court of the learned Metropolitan Magistrate, Calcutta. The petitioners have also challenged the legality, validity and propriety of the order dated 13th September, 2010 passed by the learned Trial Judge whereby the learned Magistrate took cognizance of the offence under Sections 418/420/120B of the Indian Penal Code and issued process against the petitioners.

The brief fact leading to the filing of the instant criminal revision is as follows:-

Accused No.1 Karthikeya Ancilliaries is the owner of land measuring about 5.82 Acres at Coimbatore in the State

of Chennai. The petitioner No.2 is the Executive Director of the said Karthikeya Ancillaries. One Presidium Construction entered into a development agreement with Karthikeya Ancillaries on 18th September, 2006 for construction of a Shopping Mall over the said land in Coimbatore. However, the said Presidium Construction was unable to carry out the project due to paucity of fund. Therefore, a tripartite agreement was entered into between the Presidium Construction as developer, Karthikeya Ancillaries, as owner of land and Emami/New Age Realty as Financer for the development of the said property. Even after the execution of tripartite agreement for development, Emami Reality Limited started delaying the project till November, 2009. Therefore, Karthikeya Ancillaries terminated the said agreement as per covenant by notice. An arbitration proceeding at the behest of the accused Company was started at Coimbatore. M/s. Emami Reality Limited sought for initiation of another arbitration proceeding at Kolkata but the application filed by Emami was rejected on the ground of lack of territorial jurisdiction. The said order was affirmed by this Court. Emami filed an appeal against the said order which was also dismissed by the Division Bench of this Court. Subsequently, the opposite party No.2 filed an application under Section 190 of the Code of Criminal Procedure against the petitioners. It is contended on behalf of the petitioner

No.2 that the entire cause of action, if any, arose in Coimbatore. The subject matter of the lis is situated at Coimbatore. The accused No.1 executed the development agreement with one Presidium Construction at Coimbatore. Subsequently, Presidium Construction entered into an agreement with M/s. Emami Reality Limited for financial help to carry out the said project. Accused No.1 had no role in such agreement between Presidium Construction and Emami. Subsequently tripartite agreement was also executed at Coimbatore. Therefore, the Court of the learned Metropolitan Magistrate, Calcutta has no territorial jurisdiction to entertain a complaint against the petitioners.

It is further contended on behalf of the petitioner No.2 that Emami being unable to start the project started delaying the construction showing sluggish market, which led, accused No.1 to terminate of previous agreement. The dispute arising out of contract/agreement is essentially a civil dispute and complainant Company failed to succeed in civil proceeding in the State of West Bengal. Subsequently, the complainant Company/opposite party No.2 filed an application against the petitioners under Sections 418/420/120B of the Indian Penal Code.

It is submitted by the learned Advocate for the petitioner that the learned Magistrate issued process in Complaint Case No.25302 of 2010 against the petitioners

without considering the fact that the courts within the State of West Bengal have no jurisdiction to try the alleged offence in view of Section 177 read with Section 181(4) of the Code of Criminal Procedure.

Having heard the learned Counsel for the petitioners and on careful perusal of the entire materials on record, this Court shares the same opinion with the learned Advocate for the petitioners that the 7th Court of the learned Metropolitan Magistrate, Calcutta has no jurisdiction to entertain the criminal complaint and the Court of the learned Magistrate has territorial jurisdiction to entertain any such complaint under Section 177 and Section 181 (4) of the Code of Criminal Procedure.

In ***Aligarh Muslim University and Another Vs. Vinay Engineering Enterprises (P) Ltd and Another*** reported in ***(1994) 4 Supreme Court Cases 710*** , the Hon'ble Supreme Court held as follows:-

"We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High

Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable.”

The same principle is applicable in the instant case.

Section 177 of the Code of Criminal Procedure- if the general provision which states that the Courts within whose jurisdiction the offence was committed, have the jurisdiction to try offence. There is no uncertainty regarding place of enquiry or trial because no part of offence was committed within the State of West Bengal. The agreement between the parties was executed in Coimbatore. The work was to be executed at Coimbatore. As per the tripartite agreement, Emami was under obligation to finance the said project, was executed in Coimbatore. Therefore, any offence of criminal misappropriation or criminal breach of trust may be enquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject to the offence was received or retained or was required to be returned or accounted for by the accused. The opposite party No.2 has failed to make out any such case that

the offence complaint of or any part thereof was committed within the jurisdiction of the learned Metropolitan Magistrate, 7th Court at Calcutta.

For the reasons stated above, the instant criminal revision is **allowed** on merit, however, without costs.

The criminal proceeding in Complaint Case No.25302 of 2010 be quashed.

A copy of this order be sent down to the Court below forthwith.

Interim order, if any, be vacated.

(**Bibek Chaudhuri, J.**)