

1098.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.2032 of 1991 (O&M)

Date of decision: 09.12.2015

Punjab State through Collector, Gurdapur and others.

... Appellants

versus

Kishan Chand

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Inder Pal Goyal, Additional Advocate General,
Punjab, for the appellants.

None for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The appeal had been admitted on 20.11.1991 without framing substantial questions of law and I have framed the following substantial questions of law after inviting the counsel to present the case:-

- i) Whether the Civil Court at Gurdaspur did not have territorial jurisdiction to try the suit when the order was passed by the Senior Superintendent of Police at Kapurthala and the proper court of jurisdiction would have been only the court at Kapurthala?

ii) Whether the plaintiff who did not challenge the chargesheet or the enquiry but whose challenge through a prayer in the suit was that the order imposing a penalty was erroneous, null and void could allow for considering the departmental proceedings as giving a part of cause of action to institute a suit at the court of Gurdaspur?

2. The counsel had no objection to make submissions on the basis of formulations made by this court immediately.

3. The issue of territorial jurisdiction shall always be taken up at the earliest time and the court must be invited to pass an order on the same without allowing for the entire gamut of trial to take place. The procedure prescribed under the Civil Procedure Code itself is that all objections as to jurisdiction and maintainability ought to be taken immediately at or before settlement of issues and the court shall be invited to render an adjudication on the same. So long as the institution of civil court itself was not barred for lack of inherent jurisdiction, unless grave prejudice is caused by a trial of the suit in one court instead of other, an objection post decision about the territorial jurisdiction shall not be entertained. I must, therefore, point out that without proof of a prejudice to a defendant for institution of the suit in Gurdaspur, the defendant could not have non-suited the plaintiff or successfully obtained reversal of decision at the appellate court. I will, therefore, not find that the issue of

territorial jurisdiction could have been canvassed at the appellate court in the first place.

4. This issue, however, gained a special attention at the appellate court when it found that the challenge in the prayer column was no doubt with reference to the order of punishment issued by the defendant but this decision was a culmination of a process involving serving a charge-sheet on the alleged misconduct, constituting an Enquiry Officer and conducting an enquiry. The challenge to the enquiry was specifically made in the plaint that the person that issued a charge-sheet and carried out the investigation was not competent under the rules to initiate action. It was urged by the plaintiff that the action had been initiated by the Assistant Superintendent of Police when the competent officer that could have initiated the action was the appointing authority who would be the Senior Superintendent of Police. The plaintiff was, therefore, essentially bringing a challenge to the competency of the officer to issue the charge-sheet that resulted in the ultimate order passed. The initial proceedings of enquiry as well as service of charge-sheet had taken place at Gurdaspur within the territorial jurisdiction of the court where the case was instituted. The appellate court was, therefore, justified in stating that the part of cause of action had arisen at Gurdaspur and the objection regarding the want of territorial jurisdiction was not tenable.

5. I maintain the judgments passed by the courts below and hold both the questions as raised as going against the appellants. The second appeal is, consequently, dismissed.

(K.KANNAN)
JUDGE

09.12.2015
sanjeev