

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

Reserved on: 26.08.2015

Date of decision: 31.08.2015

+ W.P.(CRL) 1674/2013

ASHOK GOEL

..... Petitioner

Through Mr.P.S. Bindra, Adv. with
Mr.Ravi Kumar & Ms.Asmita,
Advts.

versus

STATE GOVT. OF NCT OF DELHI & ORS..... Respondents

Through Mr.Rajesh Mahajan, ASC.
Mr.Mananjay Mishra, Adv. for
R2 to R4.
Mr. Sandeep Srivastava, Adv.
for impleadment.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner who is the Director of M/s.Jaipuria Buildcon Pvt Ltd, a firm/company which is dealing in construction and development of housing projects, seeks quashing of FIR No.174/11 registered at P.S.EOW, Malviya Nagar on 14.9.2011 under Sections 409 and 420 of the IPC.

2. During the course of prosecuting the present petition, the petitioner submitted that instead of quashing of the subject FIR, he would be satisfied if the investigation of this case is transferred to investigating agency at Ghaziabad, Uttar Pradesh for the reason that

the entire cause of action arose in Ghaziabad and the petitioner as well as the respondent Nos.2 to 5 are residents of Uttar Pradesh.

3. During the pendency of this petition, CrI.M.A No.4509/2015 was preferred on behalf of seven intervenors whereby a prayer was made to implead them as respondents in the array of parties in the interest of justice and further provide opportunity to them to be heard and oppose the writ petition. In the aforesaid, CrI.M.A No.4509/2015 notice was issued to the non-applicants by order dated 26.3.2015.

4. The subject FIR was lodged on the joint complaint of one Dr.Jitender Gupta, authorized representative of Diwari Lal Gupta; Devender Kumar Gupta, authorized representative of Sh.Neelesh Sharma; Abhishek Singh and Lt.Col.Anupam Gupta. It has been alleged that all of them had booked flats measuring 1200 sq.feet area in the project which was to be developed by M/s.Jaipuria Buildcon Pvt Ltd having its registered office at Shankar Vihar, Main Vikas Marg, New Delhi. The petitioner is the director of the aforesaid building company. It has been alleged in the first information report that M/s.Jaipuria Buildcon Pvt Ltd had undertaken projects in Ghaziabad. It was represented by the company that all necessary sanctions and approvals for the construction of the multi-storeyed building was obtained. Pursuant to such a representation, the investors, some of them being the complainants, deposited a huge amount of money. However, later, to their consternation and dismay, the complainants found that no construction work had begun. No satisfactory answer also was given at the end of the company. Finally in the year 2008, the company cancelled all its bookings. Hence the first information report.

5. It has been urged on behalf of the petitioners that each of the complainants had paid a sum of Rs.3,64,500/- at the time of booking, which booking was only provisional in nature. The construction work began after necessary sanction was obtained in the year 2007. It has further been submitted that after the construction work started, demand notices were sent to the complainants to pay the installments and get their allotment letters. Instead of complying with such notices, the complainants lodged the subject FIR on 14.9.2011 for the offence of cheating and forgery.

6. It has been submitted on behalf of the petitioner that the allegations are absolutely false. However, the main plank of argument on behalf of the petitioner is that Delhi Police does not have the jurisdiction to investigate the present case as no transaction between the parties had taken place in Delhi. In fact, as has been argued, at the relevant time, neither the petitioner nor the company had any office or its place of business in Delhi. The office at Delhi was only acquired in the month of June, 2007 but prior thereto no part of business was conducted within the territorial limits of Delhi.

7. In support of such contention namely that the company did not have a place of business in Delhi, the petitioner has drawn the attention of this Court towards the receipt cum acknowledgement of payments made by respondent Nos.2 to 5 in which the address of the company is shown at Ghaziabad, Uttar Pradesh; the lease deed dated 7.6.2007 disclosing that the company namely M/s.Jaipuria Buildcon Pvt Ltd took lease of 900 sq.feet area at Shankar Vihar, New Delhi and that the petitioner even now is resident of 1105, Express

Apartments, Sector-4, Vaishali, Ghaziabad which falls under Uttar Pradesh.

8. The aforesaid contention has been rebutted by the State as well as the other respondents who have categorically stated that the address of the company is Second Floor, Shankar Vihar, Main Vikas Marg, New Delhi and after the booking in the year 2006, in the demand notices as well as the cancellation letters issued by the company the address of the company has been shown as Delhi.

9. It has further been stated on behalf of the respondents and the State that the performance agreement dated 4.12.2007 between M/s.Crossing Infrastructure Pvt Ltd and M/s.Jaipuria Buildcon Pvt Ltd also declare the address of the company at Delhi. It is thus stated that apart from the offence being prima facie made out against the accused persons, Delhi Police especially the Economic Offence Wing of Crime Branch has the jurisdiction to investigate the subject FIR.

10. Section 156 of the Code of Criminal Procedure provides for the police officers' power to investigate cognizable cases. The said sections is reproduced hereunder:-

“156. Police officer' s power to investigate cognizable case

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

11. From the bare reading of Section 156 of the Cr.P.C it would appear that though sub-Section (1) permits an officer incharge of a police station to investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such police station, without the order of the Magistrate; sub Section (ii) makes the position clear by providing that in proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate.

12. After investigation is completed, the report has to be submitted as provided under Sections 168 to 170. Section 170 of the Code of Criminal Procedure specifically provides that if upon an investigation, it appears to the officer incharge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. If the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the

police station having jurisdiction over the area in which crime is committed.

13. Chapter XIII of the Code of Criminal Procedure provides for “jurisdiction of Criminal Courts in enquires and trials”. There are various provisions in the aforesaid Chapter which empower the Court to enquire or try a criminal case. There is no absolute prohibition that the offence committed beyond the territorial jurisdiction cannot be investigated, enquired or tried. It would be necessary to refer to the provisions of Sections 177 and 178 of the Code of Criminal Procedure. The said Sections are reproduced below:-

“177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

*178. Place of inquiry or trial.- (a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed partly in one local area and partly in another, or
(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
(d) 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.”*

14. Section 177 of the Code, therefore, states as to what would be an “ordinary” place of enquiry or trial. In case of an uncertainty as to in which of the several local areas, an offence has been committed or that an offence is stated to have been committed partly in one local area and partly in other and whether the offence consists of several acts done in different local areas, Section 178 permits the same to be

enquired into or tried by a Court having jurisdiction over any of such local areas.

15. Therefore, at the stage of investigation, it cannot be said that the Delhi Police does not have the territorial jurisdiction to investigate the crime.

16. It has been submitted on behalf of respondent Nos.2 to 5 that the flats were booked at the office of the petitioner company in Delhi. Under such circumstances, the prayer of the petitioner for quashing of the FIR on grounds of lack of territorial jurisdiction of the Delhi Police to investigate the offence does not appear to be tenable.

17. So far as the substance of allegation is concerned, on a plain reading of the first information report, the offences appear to have been made out, thus justifying the continuance of the investigation.

18. The alternative prayer of the petitioner namely transferring the investigation to Ghaziabad, Uttar Pradesh cannot be acceded to as the power to transfer a case from one State jurisdiction to another State is vested with the Supreme Court of India under Section 406 of the Code of Criminal Procedure. Section 406 of the Code of Criminal Procedure, 1973 is being reproduced below:-

“406. Power of Supreme Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney- General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney- General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.”

19. On the aforementioned grounds the writ petition is held to be misconceived and is dismissed.

Crl.M.A. 4509/2015

Since the writ petition has been dismissed, no order is required to be passed in the instant application.

The application is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 31, 2015
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