

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.26908 of 2015
and M.P.No.1 of 2015

Shobana Ravi

Petitioner

Vs

1.State, Rep by
The Officer-in-charge, J3 Police Station
Thiru-vi-Ka Industrial Estate, Guindy
Chennai 600 032, Tamil Nadu.

2.State, rep by
The Officer-in-Charge, T2 Police Station
1st Cross Street, Ambattur Industrial Estate
Chennai 600 058, Tamil Nadu.

3.State, rep by
The Officer-in-Charge, J6 Police Station
Thiruvannamiyur, Chennai 600 041
Tamil Nadu.

4.State, Rep, by (Investigating Officer)
The Officer-in-Charge, Topsia Police Station
Kolkata Police, 106A, New Park Street
Kolkata 700 17, West Bengal.

5.Shyam DRI/SEL Ltd-Shyam Group (De-Facto Complainant)
Rep by its Commercial Manager Shri.L.N.Sharma
Having registered office at
Trinity Tower, 83, Topsia Road, 7th Floor
Kolkata 700 046.
West Bengal.

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration to declare that the FIR in Cr.No.189 of 2013 registered on 18.10.2013 on the file of the 4th respondent police as without jurisdiction and therefore ultra vires and non est in law.

For petitioner Mr.Nithyaesh Natraj

For R1 to R4 Mr.C.Emalias
Addl.Public Prosecutor

For R5

Mr.Karthick, Senior Counsel
for Mr.Abudu Kumar Rajaratnam

RESERVED ON	PRONOUNCED ON
21.11.2016	25.11.2016

ORDER

This petition has been filed seeking a writ of declaration to declare that the FIR in Cr.No.189 of 2013 registered on 18.10.2013 on the file of the 4th respondent police is without jurisdiction and therefore, ultra vires and non est in law.

2. Heard Mr.Nithyaesh Natraj, learned counsel for the petitioner, Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State and Mr.Karthick, learned Senior Counsel for the de facto complainant.

3. On the complaint lodged by L.N.Sharma, Commercial Manager, Shyam Metalics & Energy Limited, the Inspector of Police, Topsia Police Station, registered a case in Cr.No.189 of 2013 on 18.10.2013 u/s 420, 406 and 120-B IPC against four persons, challenging which Shobana Ravi [A2] has filed the above writ petition.

4. On a reading of the complaint, it is seen that Shyam Metalics & Energy Ltd./complainant had supplied TMT Bars valued at Rs.1,49,68,178/- during 2010 and that the accused had taken delivery of the materials and had not paid its value.

5. When the matter came up for admission on 02.09.2015, this Court passed the following order:

"Notice of motion returnable in four weeks. Private Notice is also permitted.

2. Prima facie reading of the complaint, that formed the basis of the FIR, appears to be civil transaction between the petitioner and the defacto complainant concerning supply of steel by the complainant to the petitioner during 2008. The learned counsel appearing for the petitioner relied upon the judgment rendered in Navinchandra N.Majithis v. State of Maharashtra and others (AIR 2000 SC 2966), in support of his contentions.

3. Hence, there shall be an order of interim stay till four weeks."

After notice, the de facto complainant entered appearance and the matter was heard at length.

6. Mr.Nithyaesh Natraj, learned counsel appearing for the petitioner sought to justify the prayer, by placing reliance upon the judgment of the Supreme Court in Navinchandra N Majithia v. State of Maharashtra [(2000) 7 SCC 640].

7. Per contra, Mr.Karthick, learned Senior Counsel appearing for the de facto complainant submitted that in S.Ilanahai v. The State of Mumbai and others, [2015-1-LW (Cr1.) 395], a learned single Judge of this Court had extensively considered the law relating to the jurisdiction of this Court to issue a writ for quashing an FIR registered in a police station outside the State of Tamil Nadu and has held that such a writ cannot be issued.

8. Mr.Nithyaesh Natraj made a valiant attempt to distinguish the said judgment by citing various authorities and the provisions of the Constitution. Suffice it to say that the learned single Judge has discussed the law in Navinchandra N Majithia's case (supra) and had come to the aforesaid conclusion, based on the subsequent judgment of a larger Bench of the Supreme Court in Dashrath Rupsingh Rathod v. State of Maharashtra and another [(2014) 9 SCC 129]. It may be relevant to extract the following paragraphs from the said judgment:

"38. From the above judgment of the larger Bench, now it is crystal clear that what is relevant for the High Court to entertain a petition under Section 482, is not the cause of action as the term "cause of action" is foreign to criminal law. In Navinchandra N.Majithia case the Hon'ble Supreme Court had not dealt with the question as to whether the power of the High Court under Section 482 of the Code could be exercised beyond the territorial limits of the High Court. As I have already pointed out, the Court only held that writ jurisdiction could be exercised beyond the territorial limits provided either the cause of action in full or in part has occurred outside the jurisdiction of the High Court concerned.

39. As we have already noticed, before the introduction of Clause 2 of Article 226 of the Constitution of India, as per the Constitution Bench judgment in Election Commission, India v. Saka Venkata Subba Rao,

reported in AIR 1953 SC 210 the jurisdiction was based only on the situs of the person or authority concerned against whom writ or order is to be issued. The jurisdiction was extended beyond the territorial limits by the introduction of Clause 2 to Article 226 of the Constitution of India based on the cause of action. So far as the territorial jurisdiction under Section 482 of the Code of Criminal Procedure is concerned, it is akin to Article 226 of the Constitution of India as it stood prior to the introduction of Clause 2 of Article 226. When Parliament thought it fit, after the above Constitution Bench judgment, to extend the writ jurisdiction of the High Court beyond the territorial limits of the said High Court, it did not think it appropriate, similarly to amend Section 482 of the Code of Criminal Procedure so as to add provision like Clause 2 of Article 226 of the Constitution of India extending the inherent power of the High Court under Section 482 of the Code of Criminal Procedure beyond the territorial limits of the said High Court based on the fact that the part of offence is committed outside the territorial limits of the said High Court.

40. Thus, in my considered opinion, so far as the power under Section 482 of the Code of Criminal Procedure for the purpose of quashing the F.I.R. is concerned, the only criteria is the situs of the authority who has registered the case and not the place of commission of the crime either in full or in part. Similarly, the writ jurisdiction of the High Court under Article 226 of the Constitution to quash a criminal case also does not extend beyond the territorial limits of the said High Court if the case is pending on the file of an authority who is located outside the territorial limits of the said High Court. This conclusion is inescapable, in view of the authoritative pronouncement of the larger Bench of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod case (cited supra) wherein the Court has held that the concept of "cause of action" which is relevant to Civil Law cannot be imported to Criminal Law."

9. Despite the eloquence of Mr.Nithyaesh Natraj, I am unable to persuade myself to disagree with the conclusion arrived at by the learned single Judge in S.Ilanahai's case (supra). Even though I am convinced that the FIR registered by Topsia Police Station deserves to be quashed, yet, judicial discipline demands that I should not trespass into the territorial jurisdiction of the Calcutta High Court and assume the power to quash the FIR, especially in the light of the reasoning given in S.Ilanahai's case (supra), by the single Judge of this Court.

In the result, this writ petition is dismissed with liberty to the petitioner to approach the Calcutta High Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gms

To

1.The Officer-in-charge, J3 Police Station
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4. The Investigating Officer
The Officer-in-Charge, Topsia Police Station
Kolkata Police, 106A, New Park Street
Kolkata 700 17, West Bengal.

1 cc to M/s. Abudu Kumar Rajaratnam, Advocate, Sr. 68855

W.P.No.26908 of 2015

MV (CO)
kk 23/12