

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1209 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - PATNA

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Dipak Bajaj, Son of Late Awat Ram Bajaj, Resident of House No. 12/6 - Flaxley Road, Modern, SM46LJ, London (UK)

.... Petitioner

Versus

1. Union of India through Department of Revenue, Government of India, North Block, New Delhi-110 001
2. The Department of Revenue through its Secretary, North Block, New Delhi-110 001
3. The Secretary, Department of Revenue, Government of India, North Block, New Delhi- 110 001
4. The Chief Commissioner of Customs (Preventive) Zone Patna, 4th Floor, C.R. Building, Birchand Patel, Path, Patna - 800001
5. The Joint Commissioner, Customs (Preventive) Zone Patna, 4th Floor, C.R. Building, Birchand Patel, Path, Patna- 800001

.... Respondents

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Appearance :

For the Petitioner : Mr. Amit Pandey, Advocate

Mr. Rakesh Chandra, Advocate

For the Respondents : Mr. S. D. Sanjay, Additional Solicitor General

Mr. Satya Prakash Tripatty, Sr. S.C., Customs

Mr. Anshay Bahadur Mathur, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the parties.

2. A preliminary objection has been raised by Mr. S. D.

Sanjay, Additional Solicitor General to the respondents-Union of India regarding maintainability of this writ application under Article 226 of the Constitution of India before this Court on the ground that entire cause of action arose within the territorial jurisdiction of the State of Uttar Pradesh, hence, this writ application should not have been filed in the Patna High Court.

3. Contention of the learned counsel is that indisputably



the petitioner claims to be a non-resident Indian and a business man in the United Kingdom. The Custom Officials seized gold and foreign currency from the possession of the petitioner at LCS, Sonauli in the district of Maharajganj in the State of Uttar Pradesh near Indo-Nepal Border. The petitioner was apprehend and produced before the learned Chief Judicial Magistrate, Varanasi and sent to judicial custody on 27.05.2014. Subsequently, prosecution of the petitioner was sanctioned and launched at Lucknow. The petitioner was released on bail by the Hon'ble Allahabad High Court on 29.01.2015 vide order passed in Criminal Misc. Bail Application No. 18322 of 2014. The proceeding of adjudication for confiscation of the gold was also held and completed at Allahabad.

4. Thereafter, the petitioner filed application dated 25.01.2016 vide Annexure-4 before the Compounding Authority for compounding of the aforesaid case. The term "Compounding Authority" is defined in Rule 2(C) of the Customs (Compounding of Offences) Rules, 2005 as follows:-

"Rule 2(C) Compounding Authority means the Chief Commissioner, Customs having jurisdiction over the place where the offence under the Custom Act, 1982 has been or alleged to have been committed".

5. According to learned counsel, a bare perusal of the aforesaid provision would make it abundantly clear that the Chief



Commissioner, Customs having jurisdiction over the place where the offence was committed (in the present case in the State of Uttar Pradesh) is the Compounding Authority for the present case. Therefore, by necessary implication, the application of the petitioner vide Annexure-4 was filed before the Chief Commissioner having jurisdiction in the State of Uttar Pradesh.

6. Learned counsel has pointed out that the Chief Commissioner, Customs having seat at Patna is presently exercising territorial jurisdiction over the State of Uttar Pradesh, Bihar and Jharkhand as the Compounding Authority. Therefore, the petitioner filed Annexure-4 for compounding before the Chief Commissioner having seat at Patna. During the pendency of the aforesaid petition, this writ application was filed for issuance of mandamus commanding the respondent-authorities to allow the application of the petitioner dated 25.01.2016, vide Annexure-4. However, during pendency of the writ application, Annexure-4 was rejected by the Compounding Authority by order dated 16.01.2017 vide Annexure-4/2 to the counter affidavit. Thereafter, the petitioner filed I.A. No. 195 of 2017 seeking leave of this Court to amend the prayer portion by adding that appropriate writ/order be issued, setting aside order dated 16.01.2017 vide Annexure-4/2 issued under the signature of the Compounding Authority.



7. Learned counsel for the petitioner does not dispute the aforesaid factual position. However, submits that since the Compounding Authority passed the order at Patna, this Court has jurisdiction to entertain this writ application under Article 226 of the Constitution of India as part of the cause of action arose within the territorial jurisdiction of the Patna High Court also. Article 226(2) reads as follows:-

“226 (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

8. A bare perusal of the provisions of Clause 2 above would reveal that the power conferred by Clause 1 may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such persons is not within those territories. In the present case, no cause of action arose within the territorial jurisdiction of this Court. The application of the petitioner was filed before the Compounding Authority exercising



territorial jurisdiction on the place of offence i.e. the Chief Commissioner having jurisdiction over the State of Uttar Pradesh. Therefore, the petitioner's grievance arose beyond the territorial jurisdiction of this Court. A similar question was there in **Aligarh Muslim University and Another v. Vinay Engineering Enterprises (P) Ltd. and Another** reported in [(1994) 4 SCC 710] where the Hon'ble Apex Court in paragraph 15. 2 stated as follows:-

"15. 2 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 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."

9. In **National Textile Corpn. Ltd. and Ors. v. M/s. Haribox Swalram and Ors.** [JT 2004 (4) SC 508] where the Hon'ble Apex Court in paragraph 17 stated as follows:-



“17. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petitioner and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed.....”.

10. Considering the aforesaid authority and the provisions of Clause 2 of Article 226 of the Constitution of India as well as the fact that no cause of action for filing of this writ application arose within the territorial jurisdiction of this Court, in my view, this writ application is not maintainable hereat and is fit to be dismissed.

11. Learned counsel for the petitioner has relied on the Hon’ble Apex Court judgment in the case of **KUSUM INGOTS & ALLOYS LTD. Versus UNION OF INDIA** reported in **2004(168) E.L.T. 3 (S.C.)**.

12. In my view, the referred case is not applicable in the facts and circumstances of this case as no part of cause of action arose within the territorial jurisdiction of this Court and in the case of **KUSUM (supra)** also the Hon’ble Apex Court had considered that cause of action or part thereafter even a smallest part arisen within the territorial jurisdiction of the High Court would be sufficient to confer



jurisdiction to entertain application under Article 226 of the Constitution of India. In the present case no part of cause of action arose within the territorial jurisdiction of this Court. Hence, the case (**supra**) is not helping the petitioner.

13. In the result, this writ application is dismissed as devoid of merit.

(Birendra Kumar, J)

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