

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 53 OF 2017

1. Mr. Mohamed Rizwan Memon, aged about 35 years, businessman, son of Mr. Abdul Razzak, Indian National;
2. Mrs. Nida Rizwan Memon alias Nida Riaz, aged about 32 years, housewife, wife of Mr. Mohamed Rizwan Memon, Pakistani Citizen;
Both the above are residents of 803, Mariam Manzil, Behind Pandava Chapel, Aquem, Margao, Salcete, Goa;
3. Mrs. Nausheen Hasan Memon, Door No. 91, 4th Main, Subhash Nagar, Mysore, Karnataka. Petitioners

Versus

1. The State of Goa, through the Public Prosecutor, High Court Complex, Altinho, Panaji, Goa.
2. The Police Inspector, Khadak Police Station, Pune, Maharashtra.
3. Mrs. Afreen Faizan Memon, wife of Mohammed Faizan Memon, aged about 24 years, Indian National, r/o 94, Shankar Sheth Road, Opp. Pacific Mall, Green Park Housing Society, Pune, Maharashtra 411 042. Respondents

Shri Nitin Sardessai, Senior Advocate with Ms. S. Borkar, Advocate for the Petitioners.

Shri Pravin N. Faldessai, Additional Public Prosecutor for the Respondent No. 1.

Shri Shreyas S. Adyanthaya, Advocate for the Respondent No. 3.

CORAM:- C.V. BHADANG &

PRITHVIRAJ K. CHAVAN, JJ.

RESERVED ON: 8th SEPTEMBER, 2017

PRONOUNCED ON: 14th SEPTEMBER, 2017

JUDGMENT: (Per C.V. BHADANG, J.)

By this petition, under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), the petitioners are seeking quashing of FIR No. 33/2016, registered with Khadak Police Station, Pune and the consequent Criminal Case No. 368/2016, before the competent Court at Pune (Maharashtra).

2. The brief facts necessary for the disposal of the petition may be stated thus:

That, the petitioner no. 1 is the brother, while petitioner no. 3 is the sister of Mohammed Faizan Memon, who happens to be the husband of the respondent no. 3. The petitioner no. 2 is the wife of the petitioner no. 1. The petitioner nos. 1, 3 and Mohammed Faizan Memon, are Indian Citizens, while the petitioner no. 2 is a Pakistani National. According to the petitioners, she is entitled to protection under Articles 14 and 21 of the Constitution of India.

3. The respondent no. 3 and Mohammed Faizan Memon were married at Pune on 24.10.2008. The maternal place of respondent no. 3 is at Pune. After marriage, the respondent no. 3 came to reside at Margao. The respondent no. 3 and her husband Mohammed Faizan Memon are blessed with three children. However, disputes and differences arose between them, which led the respondent no. 3 to leave the matrimonial home alongwith her belongings and children on 12.08.2015 and since then, she is staying with her parents at Pune.

4. On 10.12.2015, the respondent no. 3, filed a complaint against the petitioners and her husband Mohammed Faizan Memon, before the Commissioner of Police at Pune, alleging ill treatment and assault on account of non satisfaction of demand for dowry. On the basis of the said complaint, offence at Crime No. 33/2016, came to be registered under Sections 313, 406, 325, 498-A, 323, 504, 506, 120-B and Section 34 of the Indian Penal Code, 1860 (IPC, for short), with Khadak Police Station at Pune. When this petition was filed, the said matter was under investigation. Subsequently, on completion of the investigation, a charge sheet is filed against the petitioners and Mohammed Faizan Memon being Criminal Case No. 368/2016, pending before the competent Court at Pune.

5. According to the petitioners, the complaint is false and frivolous and is filed only with an intention to harass and coerce the petitioners. It is contended that the petitioner no. 3 is married and is staying at Mysore. It is contended that the respondent no. 3 was not happy in staying at Goa and had a fascination for staying at Pune. The contention on behalf of the petitioners is that there is no evidence, worth the name, against the petitioners, showing their complicity in offences as alleged against them. It is contended that even if, the allegations are taken on their face value, no offence as such is made out against the petitioners. This is the principle ground on which the petitioners are seeking the quashing of the FIR and the consequent charge sheet.

6. We have heard Shri Nitin Sardesai, the learned Senior Counsel for the petitioners and Shri Adyanthaya, the learned Counsel for the respondent no. 3. We have also heard Shri Faldesai, the learned Additional Public Prosecutor, who has been instructed by the Investigating Officer.

7. It is submitted by Shri Sardesai, the learned Senior Counsel for the petitioners that notwithstanding the fact that the

criminal case is pending before a Court at Pune (Maharashtra), this Court would have jurisdiction to entertain a petition for quashing. It is submitted that there is a common High Court for the State of Maharashtra and Goa and it is only for convenience's sake, that the territorial jurisdiction of the Principal Seat at Bombay, the Benches at Nagpur and Aurangabad and the seat of the High Court of Bombay at Goa, are defined. It is strenuously urged that notwithstanding such de-limitation, a Judge/Bench sitting at Goa can exercise jurisdiction over whole of the territory over which, the High Court of Bombay exercises jurisdiction. Strong reliance in this regard is placed on a Division Bench judgment of this Court, in the case of **S.V. Puranik Vs. Indian Airlines & Others, 1991(1) Goa L.T. 218** and **Nitin Industrial Associates Vs. State of Maharashtra & Others, AIR 1986 BOM 298**.

8. It is next submitted that under Article 226(1) of the Constitution of India, the High Court has powers "throughout the territories in relation to which it exercises jurisdiction" to issue writs, for enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. It is submitted that notwithstanding the de-limitation of the territorial jurisdiction of the High Court of Bombay at Goa, such a

jurisdiction can be exercised throughout the territories over which, the High Court of Bombay exercises jurisdiction, which would include Pune. It is submitted that even assuming that the jurisdiction of this Court is limited to the territorial limits of the State of Goa, under Article 226(2) of the Constitution of India, this Court can issue such writs beyond such territories, if the cause of action, wholly or in part, is shown to have arisen, within such territorial limits, namely, that of Goa.

9. The learned Senior Counsel has taken us through the complaint and the gravamen of the allegations against the petitioners, in order to show that whatever allegations are made against the petitioners, pertain to the incidents, which have allegedly occurred at Margao and in view of that, this Court can exercise jurisdiction to quash an FIR/charge sheet, notwithstanding the fact that same is filed and is pending beyond the State of Goa. It is submitted that the de-limitation of the jurisdiction as per Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 (Rules, for short), is only for the purposes of convenience and the said Rules cannot be read in derogation of the constitutional provisions or the Goa, Daman and Diu Reorganisation Act, 1987 (Act of 1987, for short).

10. On the contrary, it is submitted by the learned Counsel for the respondent no. 3 that High Court of Bombay at Goa would not have territorial jurisdiction to quash an FIR/charge sheet, pending beyond the territorial limits of Goa. Reliance is placed on Rule-3 of Chapter XXXI of the Rules to submit that a Judge/Bench sitting at Panaji, Goa can exercise powers under Articles 226 and 227 of the Constitution of India in respect of matters arising in the State of Goa and not otherwise. It is submitted that if, such petition/s is/are entertained, it will create a flood gate of similar petitions, where the proceedings to be quashed are pending either before the territorial jurisdiction of the Principal Seat or another Bench, which will not be conducive to the smooth working and administrative convenience as envisaged by the Rules.

11. In reply, Shri Sardesai, the learned Senior Counsel for the petitioners has placed reliance on the decision of the Supreme Court in the case of **Coal India Limited & Others Vs. Saroj Kumar Mishra, (2007) 9 SCC 625**, in order to submit that the argument as “possibility of a flood gate litigation” has not been accepted by the Supreme Court, as a ground justifying refusal to entertain a petition, if otherwise, a case is made out.

12. We have carefully considered the rival circumstances and the submissions made.

13. Article 226 of the Constitution of India to the extent relevant reads thus:

“226. Power of High Courts to issue certain writs –
(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].
(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.”

It can thus be seen that every High Court has power “throughout the territories, in relation to which it exercises

jurisdiction” to issue to any person or Authority, including in appropriate cases, any Government, within those territories directions, orders or writs for the enforcement of any rights conferred by Part III or for any other purpose.

Under Article 226(2) of the Constitution of India, such a power can also be exercised by any High Court, if the cause of action wholly or in part arises, within its territorial jurisdiction, notwithstanding that the seat of such Government or Authority or the residence of such person is beyond such territories. We will not be presently concerned with Article 226(2) of the Constitution of India, in as much as there is a common High Court for the States of Maharashtra and Goa (and the Union Territories of Daman and Diu and Dadra and Nagar Haveli).

14. There cannot be any manner of dispute with the proposition that all Judges, irrespective of the fact whether, they are sitting at Bombay, Nagpur, Aurangabad or Goa are the Judges of the common High Court, the Principal Seat whereof, is located at Bombay. Prior to coming into force of the Goa, Daman and Diu Reorganisation Act, 1987 (Act of 1987, for short), there was a Bench of Bombay High Court at Goa and after coming into force of the said Act of 1987, there is a common High Court for the States of Maharashtra and Goa and the two Union

Territories. Under Section 20(3) of the Act of 1987, the Bombay High Court has jurisdiction throughout the territories of the States of Maharashtra and Goa and the two Union Territories.

15. In the case of **S.V. Puranik** (supra), there was a challenge to the process of selection to the post of Traffic Officer in Indian Airlines by an employee posted at Goa. A contention was raised that the Head Office of Indian Airlines being at Delhi and the selection and the interview having taken place at Bombay, the Bench sitting at Goa, would have no territorial jurisdiction. While refusing to accept the said contention, this Court held that the place of framing of the Rules and finalisation of the selection process, would not constitute cause of action, as the consequences of the Rules affect person all over India. It can thus be seen that on facts, it was found that the Rules and procedure formulated by the Indian Airlines for governance of its employees, who are not only posted in Delhi, but, throughout India and the Rules, which affect them at different places, would itself afford a cause of action. This Court further found that if, place of framing of Rules or making of a legislation, were only to afford the cause of action, nobody could challenge an Act passed by the Parliament in any other part of the Country, except in Delhi, where the Act has been enacted. This Court *inter-alia*

held that the Judges, wherever they sit, continue to be the Judges of the common High Court and the jurisdiction of the common High Court, vested by Article 226 of the Constitution of India, covers the whole territory of Maharashtra as well as Goa. It can thus be seen that the aforesaid principle apart (which cannot be disputed), the case of **S.V. Puranik** (supra) turned on its own facts.

16. In the case of **Nitin Industrial Associates** (supra), there was a challenge to a notice inviting tender issued by the Director of Health Services at Mumbai. The petition was filed before the Bench at Nagpur. A contention was raised about the territorial jurisdiction to receive, try and hear the petition, when admittedly, the tender notice was issued at Bombay and the resolution impugned therein was also passed at Bombay. It was contended that the cause of action having arisen at Bombay, the Bench at Nagpur would have no territorial jurisdiction. The Division Bench after taking note of Article 226 (1) and (2) of the Constitution of India and Chapter XXXI of the Appellate Side Rules, refuted the contention. While doing so, the Division Bench placed reliance on the decision of the Supreme Court in the case of **Election Commission of India Vs. Sake Venkata Rao**, AIR 1953 SC 210, in which it has been held thus:

The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority within the territories in relation to which the High Court exercises jurisdiction.

Then again in dealing with the writ jurisdiction in (In re The Kerala Education Bill, 1957)³, A.I.R. 1958 S.C. 956 the Court was pleased to observe as follow:

“Article 226 of the Constitution confers extensive jurisdiction and power on the High Courts in the States. This jurisdiction and power extend throughout the territories in relation to which the High Court exercises jurisdiction. It can issue to any person or authority, including in appropriate cases any Government, within, those territories, directions, orders or writs of the nature mentioned therein for the enforcement of the fundamental rights for to any other purpose.”

17. Insofar as the provisions of Chapter XXXI, Rule 1 of the Appellate Side Rules are concerned, it was held that the jurisdiction so conferred by Article 226 of the Constitution of India, cannot be abridged by the Bombay Reorganisation Act, 1960, read with the provisions of Chapter XXXI of the Appellate Side Rules, in as much as, no enactment passed by the Parliament and/or by the State Legislature can possibly trench upon the jurisdiction conferred on the High Court by Article 226 of the Constitution of India. These observations and findings will

apply with equal force to the provisions of the Goa, Daman and Diu Reorganisation Act, 1987 and Rule 3 of Chapter XXXI of the Appellate Side Rules.

18. Thus, although on principle, the existence of such jurisdiction cannot be disputed, different considerations may arise in its exercise. Even in the case of **S.V. Purnaik** (supra), the Division Bench accepted the contention that ordinarily the Judges, who sit at Goa, would take cases, which arise only out of Goa, as it would be administratively proper, but, when it comes to the point of jurisdiction, this argument cannot be accepted (see para 21).

19. The following observations in para 6, in the case of **Nitin Industrial Associates** (supra) would make the position further explicit:-

“Turning to the next limb of the argument namely that since the cause of action had arisen in Bombay the writ jurisdiction of the High Court Bench at Nagpur stands abridged by reason of the provisions of Section 41 of the Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) read with the provisions of Chapter XXXI of the Appellate Side Rules, 1960, we do not see how any enactment passed by the Parliament and/or by the State Legislature can possibly trench upon the jurisdiction conferred on the High Court by Article

226. *in re The Kerala Education Bill, 1957*, A.I.R. 1958 Supreme Court 956, it has been observed as follows :

"No enactment of a State Legislature can, as long as that Article (i.e. 226) stands, take away or abridge the jurisdiction and power conferred on the High Court by that Article."

In view of this, the contention must be negated. But be that as it may, although the said two provisions cannot abridge the jurisdiction, the said two provisions need to be looked at in their proper perspective. The said two provisions, namely, Section 41 of the Bombay Reorganisation Act, 1960 (Act No. 11 of 1960) and the provisions of Chapter XXXI of the Appellate Side Rules, 1960 are designed to meet administrative requirements and administrative convenience. Hence it is not that every petition under Article 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench. However, in so far as this matter is concerned, in view of the above discussion, it cannot be said that the Bench at Nagpur has no jurisdiction to try and hear the petition. Ordinarily we are extremely slow in entertaining such matters which are required to be entertained and tried at Bombay, but in the peculiar facts and circumstances of this case, when the matter has already been admitted as back as on 25-9-1984 and if we may say so, we have decided to hear and decide this matter

while sitting at Nagpur.”

(Emphasis supplied)

20. A useful reference may be made at this stage to the judgment of this Court (S.A. Bobde, J., as His Lordship then was) in the case of **Haji Abdul Razak Yasim Patel Vs. Bara Imam Masjid Trust & Others, 2006 (1) Mh.L.J. 184**. That was a case where the order passed by the Joint Charity Commissioner, Pune, refusing permission to the Trust, to alienate some immovable properties, was challenged. The petition was filed at the Principal Seat at Bombay. The contention about want of territorial jurisdiction was raised on account of locus of the properties, in respect of which such permission to alienate was sought. This Court while refuting the contention held that the impugned order passed at Pune, would indicate that the cause of action has “almost wholly arisen” within the jurisdiction of the Appellate Side of the Principal Seat of this Court, since the only action challenged is the refusal of the permission at Pune by the Joint Charity Commissioner under Section 36 of the Bombay Public Trusts Act (see para 14).

21. Thus, although, this Court negated the contention as to the want of territorial jurisdiction, observed thus, in para

15 of the judgment:-

*“15. It must be made clear that as observed by the Division Bench in **Nitin Industrial Associates** (supra), the jurisdiction of the Court is co-terminus with the territory of the State. Therefore, as a matter of law, the litigants would be entitled to invoke the jurisdiction of the Principal Seat of any Bench in respect of any matter arising anywhere in the State of Maharashtra in view of the express language of clause (1) of Article 226. It makes no difference if the jurisdiction of the Court under Article 227 is invoked since clause (1) of Article 227 is couched in similar language. It reads as follows:-*

"Art. 227.(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

However, having regard to the High Court (Appellate Side) Rules, the Benches of the Principal Seat would be extremely slow in entertaining matters which have arisen within the ordinary territorial jurisdiction of another Bench."

(Emphasis supplied)

22. The principles, which can thus be culled out from the aforesaid discussion are:-

(i) That, under Article 226(1) of the Constitution of India, the emphasis is on the presence of any person or Authority, including

in appropriate cases, any Government, within those territories, over which the High Court exercises jurisdiction, for issuance of any directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose.

(ii) That, there is a common High Court exercising jurisdiction over the States of Maharashtra and Goa and the two Union Territories.

(iii) That, every Judge wherever he sits, sits as a Judge of a common High Court, exercising jurisdiction over the entire territory, to which the territorial jurisdiction of Bombay High Court extends and this cannot be curtailed by any statutory enactment or the Rules.

(iv) That, it is for the administrative convenience that the territorial jurisdiction of the Principal Seat and the Benches and the High Court of Bombay at Goa, under Chapter XXXI of the Appellate Side Rules, has been defined and has normally to be adhered to.

23. We are thus of the considered view that although, as a principle, it cannot be disputed that a Judge/Bench of this Court wherever he/it sits, sit as a part of a common High Court, exercising jurisdiction over the two States and the two Union Territories, for administrative convenience, the Court would

normally adhere to the territorial jurisdiction as defined by the Appellate Side Rules. The question of exercise of such discretionary powers would depend upon facts and circumstances of each case.

24. In the present case, the FIR has been lodged at Pune and the consequent charge sheet and the criminal case is pending before the Court at Pune. The petitioners are seeking quashing of the said proceedings and the FIR. In our considered view, the cause of action can thus be said to have arisen within the territorial jurisdiction of the Principal Seat of Bombay. As noticed earlier, this Court would be slow in entertaining matters, which have arisen within the jurisdiction of another Bench/Principal Seat (as per the Appellate Side Rule). In the present case, we find that the petitioners can as well approach the Principal Seat and there are no exceptional circumstances shown for exercising jurisdiction in this case at Goa. We therefore, decline to entertain the petition on this ground.

25. In view of the fact that we have declined to entertain the petition, it is neither necessary nor appropriate to go into the merits of the challenge.

The petition is accordingly dismissed, leaving it open to the petitioners to approach the Principal Seat of this Court at Mumbai, if so advised.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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