

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 1845 OF 2017

M/s. Comfort Security Limited ..Petitioner.
V/S
The State Of Maharashtra And Ors ...Respondent .

WITH

CR. WRIT PETITION NO. 1764 OF 2017

M/s. Comfort Intech Limited Through
Ravindra Kumar Sharma . ..Petitioner.
V/S
The State Of Maharashtra And Ors ...Respondents.

WITH

CR. WRIT PETITION NO. 1846 OF 2017

M/s. Comfort Intech Limited ..Petitioner.
V/S
The State Of Maharashtra And OrsRespondents.

WITH

CR. WRIT PETITION NO. 1718 OF 2017

M/s. Priya Blue Industries Limited ..Petitioner.
V/S
Inspector Of Police Incharge And OrsRespondents.

WITH

CR. WRIT PETITION NO. 1989 OF 2017

Ankur S/o Anil Kumar AgrawalPetitioner
V/S
The State Of Maharashtra And Ors . ..Respondents.

WITH

CR. WRIT PETITION NO. 1990 OF 2017

M/s. Confort Fincap Limited . ..Petitioner.
V/S
The State Of Maharashtra And Ors. ...Respondents.

WITH
CR. WRIT PETITION NO. 1991 OF 2017

M/s. Comfort Security Limited . ..Petitioner.
V/S
The State Of Maharashtra And Ors ..Respondents.

WITH
CR. WRIT PETITION NO. 1992 OF 2017

Amit Kumar Khemka . ..Petitioner.
V/S
The State Of Maharashtra And Ors ..Respondents.

WITH
CR. WRIT PETITION NO. 1994 OF 2017

M/s. Comfort Security Limited ..Petitioner.
V/S
The State Of Maharashtra And Ors ..Respondents.

WITH
CR. WRIT PETITION NO. 1995 OF 2017

Anil Beniprasad Agarwal . ..Petitioner.
V/S
The State Of Maharashtra And Ors ..Respondents.

WITH
CR. WRIT PETITION NO. 2009 OF 2017

M/s. First Financial Services Ltd. ..Petitioner.
V/S
The State Of Maharashtra And Ors ..Respondents.

WITH
CR. WRIT PETITION NO. 2050 OF 2017

M/s. Syncom Formulations (india)
Ltd Through Vijay Bank. ..Petitioner.
V/S
The State Of Maharashtra And Ors. ..Respondents.

Mr. Shirish Gupte, Senior Advocate a/w Mr. P K Dhakephalkar, Senior Advocate a/w Mr. A M Saraogi for the Petitioner in all above Writ Petitions except Writ Petition No.1718 of 2017.

Mr. Prajot H Jaggi for the Petitioner in Writ Petition No.1718 of 2017.

Mrs. S.D.Shinde APP for the Respondent/State.

Mrs. A S Pai for Respondent No.2/State of Telangana.

Mr.R Raghavacharayulu, Mr.Kiran Kulkarni, Ms.K Padmashri a/w Mr.P Praveen Kumar, Sonak Jadhav i/by Kulkarni & Associates for Respondent No.3.

Ms. Savita Mundra for Respondent No.4 in W.P.No.1845/2017 and W.P.No.1846/2017.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.

Date : **November 22, 2017.**

P. C. :

1. Heard. By these petitions filed under Article 226 of the Constitution of India, the Petitioners are challenging the instructions given by Respondent No.2 (State of Telangana) to other Respondents for freezing the bank accounts/ DEMAT accounts / share accounts of the Petitioners.

2. At the inception, the learned Counsel for Respondent No.3 – original complainant raised objection

regarding jurisdiction of this Court to entertain these petitions under Article 226 of the Constitution of India. We have, therefore, heard Mr. Gupte and Mr. Dhakephalkar, the learned Senior Counsel appearing for the Petitioners, Mr. R Raghavacharayulu, the learned Counsel for Respondent No. 3 and Mrs. Pai, the learned Counsel for Respondent No. 2.

3. The learned Senior Counsel for the Petitioners submitted that though FIR bearing No. 248 of 2013 is registered in Nacharam Police Station at Hyderabad, the part of cause of action arose in Mumbai inasmuch as the Petitioner Companies are having their registered offices in Mumbai, their bank accounts or demat accounts are in the banks at Mumbai and even the Central Depository Services (India) Limited Authority is situated in Mumbai. Apart from these, Mr. Gupte and Mr. Dhakephalkar submitted that, even the cause of action for registration of the crime also arose in Mumbai. Relying upon the decision of the Hon'ble Supreme Court in the case of *Navin Chandra N. Majithia vs. State of Maharashtra [(2000) 7 SCC 640]*, the learned Senior Counsel appearing for the Petitioners submitted that when cause

of action arises at more than one place, then, the petition is maintainable at any of those places. They submitted that since part of the cause of action has arisen in Mumbai, the petitions are perfectly maintainable before this Court and there is no impediment to this Court to entertain the same, in exercise of jurisdiction under Article 226(2) of the Constitution of India.

4. *Per contra*, the learned Counsel for Respondent No. 3 though fairly conceded that this Court has jurisdiction in terms of the ratio of Apex Court's decision in the Majithia's case (supra), however relying upon the decision of the Apex Court in the case of Alchemist Ltd vs. State Bank of Sikkim [(2007) 11 SCC 335], he submitted that the Court has to consider the principle of forum conveniens and applying this principle, this Court should revert the Petitioners to the High Court of Andhra Pradesh within whose jurisdiction the FIR is registered. He further submitted that while deciding the forum convenience / jurisdiction, this Court should consider not each and every fact which gave rise to the cause of action, but only the material fact. According to him, as in the present case, the offence has taken place within the jurisdiction

of High Court at Andhra Pradesh and the FIR is lodged there, these facts are the material ones and this Court should, therefore, refrain from entertaining these petitions.

5. It is also submitted by the learned Counsel for Respondent No. 3 that the Petitioners had previously filed writ petition bearing W.P. No. 2059 of 2014 in this Court seeking quashing of the subject FIR. However, when the point of jurisdiction was raised, the Petitioners had filed another writ petition in the High Court of Andhra Pradesh for the same reliefs. Thereafter, they have withdrawn Writ Petition No. 2059 of 2014 filed in this Court. This conduct on the part of the Petitioners is also required to be taken into consideration while deciding the discretion to be exercised by this Court for entertaining these writ petitions. It is also submitted that if the main cause of action that of commission of the alleged offence and the registration of FIR has not taken place within the jurisdiction of this Court, then, merely because some other part of cause of action had taken place within the jurisdiction of this Court, this Court should not entertain these writ petitions. According to him, even on the

point of forum conveniens, it can be seen that the convenience of all the parties lie in having all the offshoots of the subject FIR, like quashment of FIR or defreezing of accounts are decided at one forum, i.e., High Court of Andhra Pradesh.

6. We have given our thoughtful consideration to the submissions advanced on behalf of both sides. We have also perused the entire record and the various case-laws cited before us.

7. In this case it is not disputed that some part of cause of action like accounts of the Petitioners being in the banks situated in Mumbai, the Petitioners being based in Mumbai, the public issue was floated in Mumbai and two memorandum of understanding being executed in Mumbai have arisen within the territorial jurisdiction of this Court. However, in our considered opinion the main part of the cause of action, namely the commission of the offence and lodging of the FIR has taken place in the jurisdiction of High Court of Andhra Pradesh. Moreover, the Petitioners themselves have chosen the forum of

High Court of Andhra Pradesh for quashment of the subject FIR. Even if one considers the concept of forum conveniens, as explained by Hon'ble Apex Court in various judgments relied upon by both the parties, fundamentally it is obligatory on the part of the Court to see convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to lis, verification of certain facts which are necessary for just adjudication of the controversy and such other ancillary aspects. At this stage one may also refer to the observations made in Kusum Ingots and Alloys Ltd vs Union of India [(2004) 6 Sc 274], according to which even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

8. In the instant case, therefore, having regard to the

fact that FIR is registered at Nacharam Police Station in Hyderabad and the investigation of the same is carried out by the said Police Station, the order of the attachment of the accounts of the Petitioners was also passed at Hyderabad by the Investigating Officer and major part of cause of action has arisen within the territorial jurisdiction of High Court at Andhra Pradesh, all the evidences, witnesses are available there, the company which went into public issue, namely, Ravikumar Distilleries is also situated in the State of Telangana; the offences of criminal breach of trust, cheating, fabrication of documents, criminal conspiracy are also resorted to in the State of Andhra Pradesh, and also considering the fact that the writ petition for quashment of the subject FIR was filed by the Petitioners in the High Court of Andhra Pradesh, in our considered opinion, the forum conveniens in this case lies in the order that matter should be moved before the High Court of Telangana. Hence, it would be appropriate to revert the Petitioners to High Court at Andhra Pradesh.

9. In the light of the above, writ petitions being not

maintainable in this Court are dismissed with liberty to the Petitioners to approach the High Court at Andhra Pradesh.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]