

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16937 of 2015

Date of decision : 11.09.2017

M/s Sharda Foundry and Engineering Works & ors.

....Petitioners

V/s

State of Punjab & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sartaj Singh Gill, Advocate for
Ms. Isha Goyal, Advocate for the petitioners.

Mr. Aditya Sharda, AAG Punjab.

RAJAN GUPTA J.

Petitioners have sought quashing of FIR registered against them in District Purulia, West Bengal. It appears that a complaint was lodged at police station Jhakkada, police station Purulia, West Bengal stating that complainant company had a unit under the name and style of M/s Swastika Spoles Manufacturing company. For carrying out manufacturing activities in the said unit, certain equipment was required. Having knowledge of this, Mr. R.K. Sekhri contacted Mr. S.S. Singhania, representative of the complainant company. Quotation was, thus, sent by Mr. R.K. Sekhri which complainant accepted. It was promised that the equipments would be delivered within one/two months from the date of receipt of advance amount. Delivery was expected by 30.11.2011. However, delivery was not made within the prescribed period in the year 2011. An advance amount of ₹30,00,000/- had already been paid. After having received the amount through cheque, Mr. R.K. Sekhri refused to assemble the required machinery

and started demanding more money on one pretext or the other. Complainant even visited the premises of Mr. R.K. Sekhri but found that no steps had been taken for manufacturing the machinery. He was, however, forced to part with more money i.e. ₹10,71,000/- on 02.02.2012. After much persuasion only part of the machinery was delivered. In this manner, accused misappropriated a total sum of ₹25,25,700/-. Number of reminders were sent but to no avail. According to complainant, accused had dishonest intention from the very inception of the transaction. Pursuant to this complaint, FIR No. 6 dated 21.01.2013 was registered at police station Jhalda, District Purulia, West Bengal under sections 406, 419 & 420 IPC. In the instant petition, number of pleas have raised for challenging the FIR. At the outset, a query has been put to counsel for the petitioners about the jurisdiction of this court to entertain the petition for quashing of FIR registered in West Bengal, however, no clear answer is forthcoming. Reliance has been placed on judgment reported as *Navinchandra N. Majithia vs. State of Maharashtra & ors. (2000) 7 Supreme Court Cases 640*. In the said case, the Apex court had clarified that the High court must ascertain whether any part of cause of action had arisen within the territorial limit of its jurisdiction. This would depend on facts of each case. In *Navinchandra N. Majithia's* case (supra), apart from prayer for quashing, an alternative prayer had been made for transfer of investigation outside the State of Meghalaya. The Apex court found, in the peculiar facts situation, that it would be apt that further investigation relating to the complaint in question be made by Mumbai police. It, thus, directed transfer of investigation pending at Shilong to a competent investigating wing at Mumbai. In the instant case, however, entire transaction appears to have

taken place in Purulia in West Bengal. Complaint was lodged there only. Stand of the petitioners that cause of action arose within the jurisdiction of this court is bereft of any supportive material. In my considered view, said judgment is not applicable to the facts of instant case. Besides, it appears that investigation of the case is still pending. It is inexplicable how petitioners can maintain this petition for quashing of FIR during pendency of same. Though this court is refraining from expressing any opinion on the merits of the case, it is evident that jurisdiction of this court has been wrongly invoked and there is no plausible explanation forthcoming for the same. The averments made in paras 5 & 6 of the petition regarding jurisdictional issue are unacceptable. In paras 5 A & B certain questions have been framed regarding jurisdictional aspect, one of them being that courts in West Bengal had jurisdiction to entertain any petition as cause of action had accrued in Batala. This court finds that such a question does not arise as FIR has been registered in Purulia, West Bengal and investigation ensued pursuant thereto. The averment made by petitioners in para 6 that they have no other alternative remedy except to approach this court by filing the instant petition and no other remedy is available in the conspectus of the case is contumacious in nature. It appears that Registry of this court while entertaining this petition also objected to filing of the same before this court. In view of the fact that petition has been filed during the pendency of investigation that too before a forum which has no jurisdiction to entertain the same, it is dismissed with ₹1.00 lac as costs.

September 11, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No