

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 8th November, 2016

Decided on: 9th January, 2017

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CRL.M.C. 2367/2016

LALITHA LAKSHMANAN

..... Petitioner

Represented by: Mr Dayan Krishnan, Sr Adv with Mr
Satya Narayan Vashisht, & Ms Aakshi
Lodha, Advs.

versus

CBI

..... Respondent

Represented by: Mr Sanjay Jain, ASG with Mr Sanjeev
Bhandari, Spl PP, Ms Rhea Verma &
Mr Vignaraj Pasayat, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Prosecution case as per the allegations in the charge sheet dated 2nd February, 2016 is that Rajendra Sadashiv Nikaljee @ Chhota Rajan, in pursuance of conspiracy with Lalitha Lakshmanan, Jayshree Rahete and Deepak Natvarlal Shah, who were working in Regional Passport Office (in short 'RPO') Bangalore, submitted a passport application on 10th December, 1998 at RPO, Bangalore. The aforesaid application was made for reissuance of old passport No. F004555 which was already issued to one Enyat Akmal Khan on 20th January, 1989 in the name of Mohan Kumar. The application was accompanied with ration card No. 5210812, fake and fabricated passport No. F004555 in the name of Mohan Kumar and authority letter dated 10th December, 1998 in favour of R. Shekhar r/o No. 142, 1st Cross, 2nd Main, RT Nagar, Bangalore which was a fictitious/non-existent address. On 1st January, 1999, RPO, Bangalore issued passport no. A6705840 in lieu of the

passport No.F004555 in the name of Mohan Kumar. The same was renewed on 19th December, 2003 vide passport No. Z1017162 by High Commission of India at Harare, Zimbabwe. Thereafter, another Passport No. G9273860 dated 8th July, 2008 was issued by Indian Consulate at Sydney, Australia in the name of Mohan Kumar on the basis of the passport procured at Harare. However, the same was revoked by Consulate General of India, Sydney on 1st November, 2015. The application submitted at RPO, Bangalore was accepted by Lalitha Lakshmanan, the petitioner herein, who was then the Assistant Regional Passport Officer (now retired). Facts that the photograph and date of birth on the fabricated passport and the application form did not match were suppressed by the petitioner. The petitioner accepted the application, a fee of ₹300/- was deposited in cash and a computer generated cash receipt was issued. File number E/11935/98 was provided for further processing of the application. The petitioner appended initials on the 1st page and affixed “CANCELLED” stamp in column 13 of the application form as well as first page of the original old passport. She also initialled on the ration card and her handwriting/initials were identified by staff/officers of RPO Bangalore. Jayshree Rahete, Superintendent and Passport Granting Officer, directed for rescreening of the date of birth as per the old passport despite categorical remark on the file that there was no Index Card in the name of Mohan Kumar. She herself corrected the date of birth from 24th July 1969 to 24th July, 1959 despite knowing that passport no. F004555 was in fact issued to Enyat Akmal Khan. Jayshree Rahete regularized the act of Lalitha Lakshmanan by providing new Index card which could be used in future at the time of renewal or reissuance of the passport to prove his bona fide. Deepak Natwarlal Shah, Assistant RPO, issued the handwritten passport No.

A6705840 in the name of Mohan Kumar despite knowing that no Index Card was found in the name of Mohan Kumar and as per Passport Writing Register, passport No. F004555 was not issued in the name of Mohan Kumar. Neither Jayshree Rahete nor Deepak Natwarlal Shah waited for receipt of police verification. No letter was issued to the local police for police verification. As per the CFSL Report, the signature on the application form submitted with RPO was of Chhota Rajan. RPO, Bangalore informed that original or scanned copy of the file pertaining to passport No. F004555 had been weeded out and destroyed. Extract of passport issue register showed that passport No. Z1017162 dated 19th December, 2003 was issued in the name of Mohan Kumar on the basis of passport No. A6705840 dated 1st January, 1999. It was renewed by High Commission of India at Harare. The address furnished in the name of Mohan Kumar was fictitious. Neither any voter ID nor any ration card was issued in the name of Mohan Kumar.

2. After filing of the charge sheet on 2nd February, 2016 with the allegations as noted above, a supplementary charge sheet was filed on 2nd May, 2016 in relation to the offences punishable under Section 120B IPC and Section 12 of the Passports Act along with the sanction under Section 188 Cr.P.C. The petitioner filed an application before the learned Special Judge seeking discharge inter alia on the grounds that the Special Judge lacked territorial jurisdiction under Section 177 Cr.P.C. to try the offence against the petitioner as the alleged offences were committed from 10th December, 1998 to 19th January, 1999 at Bangalore besides the issues of absence of sanction under Section 197 Cr.P.C., 19 of the Prevention of Corruption Act, 1988 (in short 'PC Act') and Section 15 of the Passports Act. The said application was heard along with arguments on charge and

vide the impugned order dated 8th June, 2016 the learned Special Judge directed framing of charge against the petitioner under Sections 120B/419/420/467/468/471 IPC, Section 13 (2) read with Section 13 (1) (d) of the PC Act and Section 12 of the Passports Act.

3. In relation to the contention of the petitioner that the Special Judge lacked territorial jurisdiction to try the offence, the learned Special Judge held that the acts of accused Rajendra Sadashiv Nikaljee @ Chhota Rajan in conspiracy with the petitioner and the other accused in Bangalore were interconnected with his acts of getting renewed the passport at Zimbabwe and Australia and the same cannot be separated, hence, by virtue of Section 188 Cr.P.C. the Special Judge had territorial jurisdiction to try the petitioner and the co-accused.

4. Learned Additional Solicitor General appearing on behalf of the CBI at the outset submitted that since the trial has reached the fag end, plea of territorial jurisdiction cannot be taken at this stage. However, the Learned Counsel for the Petitioner submitted that the plea was taken at the very first instance and the same is reflected in the impugned order thus the contention that the trial has reached at fag end so the petition be dismissed, deserves to be rejected.

5. In the decision of this Court reported as 2012 (3) Crimes 661 Shoreline Infrastructure Developers Ltd. V. State, it was observed:

“8. The next issue that calls for determination is that in a case where objection as to territorial jurisdiction is not raised at an earliest opportunity, is the Court duty bound to decide the same as and when it is raised? To my mind the answer to this is in the negative. In case the objection as to territorial jurisdiction is taken in the first instance i.e. before the trial commences, the Court should first decide the same if it can be

decided on the basis of facts before it. If it comes to the conclusion that it has lack of jurisdiction to try the same, it should return the complaint to be presented to the Court of competent jurisdiction. There may be cases where at the initial stage due to lack of complete facts, the Court cannot take a decision regarding the territorial jurisdiction. In such cases, it can decide the plea by taking affidavits of parties or after recording evidence in this regard. However, in a case where the accused chooses not to agitate this plea at the earliest opportunity, then the Court is not duty bound to decide the same as and when it is raised. In such a case, the Court can defer the decision on the plea of jurisdiction till the end of the trial.

6. It is trite law that if the plea of lack of territorial jurisdiction is taken at the initial stage itself, the Court is bound to decide the same without proceeding further. In the present case it is not disputed that immediately after entering appearance pursuant to summons, the petitioner filed an application seeking discharge inter alia on the ground that the learned Special Judge lacked territorial jurisdiction to try the offence. Thus, the present petition cannot be dismissed on the ground that in the interregnum the trial has reached the fag end.

7. Learned senior counsel for the petitioner contends that since the initial conspiracy was hatched at Bangalore and offences alleged to be committed outside India were in consequence of the said conspiracy; Section 188 Cr.P.C. has no application and the Court at Bangalore alone has jurisdiction to try the offence. He further contends that the issue raised in the present petition is no longer res integra and is covered by the decision of the Supreme Court reported as (1993) 3 SCC 609 Ajay Aggarwal v. Union of India wherein it was observed:

“25. A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa.

26. In K. Satwant Singh v. State of Punjab [1973 Cri LJ 1021: 1972 Raj LR 112] a Constitution Bench of this Court was to consider as to when Section 188 of the Code would be applicable to a case. The facts therein was that the appellant had cheated the Government of Burma whose office was at Simla punishable under Section 420 IPC. The accused contended that the part of the act was done at Kohlapur where payment was to be made and on that basis the court at Simla had no jurisdiction to try the offence without prior sanction of the political agent. Considering that question this Court held that if the offence of cheating was committed outside British India, the sanction would be necessary but on facts it was held that:

“... It seems to us, on the facts established in this case, that no part of the offence of cheating was committed by the appellant outside British India. His false representation to the Government of Burma that money was due to him was at a place in British India which induced that Government to order payment of his claims. In fact, he was paid at Lahore at his own request by means of cheques on the Branch of the Imperial Bank of

India at Lahore. The delivery of the property of the Government of Burma, namely, the money, was made at Lahore, a place in British India, and we cannot regard, in the circumstances of the present case, the posting of the cheques at Kohlapur either as delivery of property to the appellant at Kohlapur or payment of his claims at Kohlapur. The entire argument founded on the provisions of Section 188 of the Code, therefore, fails.”

Far from helping the appellant the ratio establishes that if an offence was committed in India the need to obtain sanction under Section 188 is obviated. In Purushottamdas Dalmia v. State of W.B. [(1962) 2 SCR 101 : AIR 1961 SC 1589 : (1961) 2 Cri LJ 728] this Court, when the appellant was charged with offences punishable under Sections 120-B, 466 and 477, the appellant contended that offence of conspiracy was entered into at Calcutta, the offences of using the forged documents was committed at Madras. Therefore, the court at Calcutta had no jurisdiction to try the offence under Section 471 read with Section 466 IPC, even though committed in pursuance of the conspiracy and in course of the same transaction. This Court held that the desirability of trying the offences of all the overt acts committed in pursuance of a conspiracy together is obvious and Sections 177 and 239 of the Code leave no manner of doubt that the court which has the jurisdiction to try the offence of criminal conspiracy has also the jurisdiction to try all the overt acts committed in pursuance of it even though outside its territorial jurisdiction. In L.N. Mukherjee v. State of Madras [(1962) 2 SCR 116 : AIR 1961 SC 1601 : (1961) 2 Cri LJ 736] it was further held that the court having jurisdiction to try the offences committed in pursuance of the conspiracy, has also the jurisdiction to try the offence of criminal conspiracy, even though it was committed outside its territorial jurisdiction. This view was further reiterated in R.K. Dalmia v. Delhi Administration [(1970) 1 SCC 696: 1970 SCC (Cri) 274: (1971) 1 SCR 119] and Banwari Lal Jhunjhunwala v. Union of India [1963 Supp (2) SCR 338: AIR 1963 SC 1620: (1963) 2 Cri LJ 529]. Therein it was held that the court trying

an accused for offence of conspiracy is competent to try him for offences committed in pursuance of that conspiracy irrespective of the fact whether or not overt acts have been committed within its territorial jurisdiction. The charges framed therein under Section 409 read with Sections 120-B, 420 IPC and Section 5(1)(D) read with Section 5(2) of the Prevention of Corruption Act were upheld.

27. Thus we hold that sanction under Section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins. Conspiracy was initially hatched at Chandigarh and though itself is a completed offence, being continuing offence, even accepting appellant's case that he was at Dubai and part of conspiracy and overt acts in furtherance thereof had taken place at Dubai and partly at Chandigarh; and in consequence thereof other offences had ensued, since the offences have been committed during the continuing course of transaction culminating in cheating PNB at Chandigarh, the need to obtain sanction for various offences under proviso to Section 188 is obviated. Therefore, there is no need to obtain sanction from Central Government. The case may be different if the offences were committed outside India and are completed in themselves without conspiracy. Perhaps that question may be different for which we express no opinion on the facts of this case. The ratio in Fakhruddin Khan [From the Judgment and Order dated June 3, 1992 of the Punjab and Haryana High Court in Criminal Revision No. 443 of 1990] has no application to the facts in this case. Therein the accused were charged for offences under Sections 420, 419, 467 and 468 and the offences were committed in native State, Mysore. As a result the courts in British India i.e. Madras province had no jurisdiction to try the offence without prior sanction. Equally in Verghese case [AIR 1935 Mad 326: 68 MLJ 415: 1935 MWN 325] the offences charged under Section 409 IPC had also taken place outside British India. Therefore, it was held that the sanction under Section 188 was necessary. The ratio in Kailash Sharma case [AIR 1947 Mad 352: (1947) 1 MLJ

277: 60 MLW 233] is not good at law. The appeal is accordingly dismissed.”

8. In the concurring view expressed by R.M. Sahai, J., in Ajay Aggarwal (supra) while dealing with Section 188 Cr.P.C., it was observed:

“29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country. Out of the three there is no dispute that the appellant is an Indian citizen. But so far the other two are concerned the allegations in the complaint are that the conspiracy to forge and cheat the bank was hatched by the appellant and others in India. Whether it was so or not, cannot be gone into at this stage.

30. What is the claim then? Two-fold, one the appellant was in Dubai at the relevant time when the offence is alleged to have been committed. Second, since the bills of lading and exchange were prepared and were submitted to the Emirates National Bank at Dubai and the payment too was received at Emirates National Bank in Dubai, the alleged offence of forgery and cheating were committed outside India. Is that so? Can the offence of conspiracy or cheating or forgery on these allegations be said to have been committed outside the country? Substantive law of extra-territory in respect of criminal offences is provided for by Section 4 of the IPC and the procedure to inquire and try it is contained in Section 188 CrPC. Effect of these sections is that an offence committed by an Indian citizen outside the country is deemed to have been committed in India. Proviso to Section 188 CrPC however provides the safeguard for the NRI to guard against any unwarranted harassment by directing, “that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government”. Since the proviso begins with a non obstante clause its observance is

mandatory. But it would come into play only if the principal clause is applicable, namely, it is established that an offence as defined in clause (n) of Section 2 of the CrPC has been committed and it has been committed outside the country.

31. What has to be examined at this stage is if the claim of the appellant that the offence under Section 120-B read with Section 420 and Section 471 of the IPC were committed outside the country. An offence is defined in the CrPC to mean an act or omission made punishable by any law for the time being in force. None of the offences for which the appellant has been charged has residence as one of its ingredients. The jurisdiction to inquire or try vests under Section 177 in the court in whose local jurisdiction the offence is committed. It is thus the commission of offence and not the residence of the accused which is decisive of jurisdiction. When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means such agreement is designated a criminal conspiracy under Section 120-A of the IPC. The ingredients of the offence are agreement and not the residence. Meeting of minds of more than two persons is the primary requirement. Even if it is assumed that the appellant was at Dubai and he entered into an agreement with his counterpart sitting in India to do an illegal act in India the offence of conspiracy came into being when agreement was reached between the two. The two minds met when talks, oral or in writing, took place in India. Therefore, the offence of conspiracy cannot be said to have been committed outside the country. In Mobarik Ali Ahmed v. State of Bombay [AIR 1957 SC 857: 1958 SCR 328: 1957 Cri LJ 1346] this Court while dealing with the question of jurisdiction of the courts to try an offence of cheating committed by a foreign national held that the offence of cheating took place only when representation was made by the accused sitting in Karachi to the complainant sitting in Bombay. The argument founded on corporeal presence was rejected and it was observed:

“What is, therefore, to be seen is whether there is any reason to think that a foreigner not corporeally present at the time of the commission of the offence does not fall within the range of persons punishable therefor under the Code. It appears to us that the answer must be in the negative unless there is any recognised legal principle on which such exclusion can be founded or the language of the Code compels such a construction.”

If a foreign national is amenable to jurisdiction under Section 179 of the CrPC an NRI cannot claim that the offence shall be deemed to have been committed outside the country merely because he was not physically present.

32. Preparation of bill of lading at Dubai or payment at Dubai were not isolated acts. They were part of chain activities between the appellant and his associates with whom he entered into agreement to cheat the bank at Chandigarh. Any isolated act or omission committed at Dubai was insufficient to constitute an offence. The illegal act of dishonestly inducing the bank at Chandigarh was committed not by preparation of bill at Dubai but its presentation in pursuance of agreement to cheat. The submission thus founded was on residence or on preparation of bills of lading or encashment at Dubai are of no consequence.

33. Nor is there any merit in the submission that even part of the offence would attract Section 188 as the section operates when offence is committed outside India. An offence is committed when all the ingredients are satisfied. The section having used the word offence it cannot be understood as part of the offence. Section 179 CrPC empowers a court to try an offence either at a place where the offence is committed or the consequences ensue. On the allegations in the complaint the act or omissions were committed in India. In any case the consequence of conspiracy, cheating and forgery having taken place at Chandigarh the offence was not committed outside the

country therefore the provisions of Section 188 CrPC were not attracted.”

9. However, learned Additional Solicitor General submits that merely because some offences took place at Bangalore, it cannot be held that the Court at Bangalore alone had territorial jurisdiction to try the offence. In view of the subsequent acts of conspiracy being hatched outside India and the main accused Chhota Rajan being found at Delhi, the Court at Delhi is not divested of its territorial jurisdiction to try the offence. Thus the trial cannot be transferred to a Court at Bangalore. Learned Additional Solicitor General relying upon the judgment reported as (2011) 9 SCC 527 Thota Venkateswarlu v. State of A.P. submits that since the subsequent substantive offences took place outside India, Section 188 Cr. P.C. is attracted. Relevant extracts from the report are:

“12. The question which we have been called upon to consider in this case is: whether in respect of a series of offences arising out of the same transaction, some of which were committed within India and some outside India, such offences could be tried together, without the previous sanction of the Central Government, as envisaged in the proviso to Section 188 CrPC?

13. From the complaint made by Respondent 2 in the present case, it is clear that the cases relating to alleged offences under Sections 498-A and 506 IPC had been committed outside India in Botswana, where the petitioner and Respondent 2 were residing. At the best it may be said that the alleged offences under Sections 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the criminal courts in India and could, therefore, be tried by the courts in India without having to obtain the previous sanction of the Central Government. However, we are still left with the question as to whether in cases where the offences are

alleged to have been committed outside India, any previous sanction is required to be taken by the prosecuting agency, before the trial can commence?

14. The language of Section 188 CrPC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal case [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] , it was held that sanction under Section 188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows: (SCC p. 628, para 29)

“29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country.”

15. Although the decision in Ajay Aggarwal case [(1993) 3 SCC 609: 1993 SCC (Cri) 961] was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 CrPC. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous

sanction of the Central Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.

17. It may also be indicated that the provisions of the Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of Section 4 thereof. Accordingly, the offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Penal Code, subject to the limitation imposed under the proviso to Section 188 CrPC.

18. Having regard to the above, while we see no reason to interfere with the High Court's decision to reject the petitioner's prayer for quashing of the proceedings in Complaint Case No. 307 of 2007, we also make it clear that the learned Magistrate may proceed with the trial relating to the offences alleged to have been committed in India. However, in respect of the offences alleged to have been committed outside India, the learned Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the proviso to Section 188 CrPC."

10. The issue in the present case is not whether the Court at Bangalore has the territorial jurisdiction to try the offences but whether the Court at Delhi also has the jurisdiction to try the offences. In the present case though initial

conspiracy was hatched and offences of forgery etc. were committed in India at Bangalore however, pursuant to the conspiracy hatched and offences committed at Bangalore further offences were committed outside India as forged passport was got renewed twice at Harare and Sydney. The offences committed at Harare and Sydney were not part of offences but completed acts of cheating and forgery. As noted above, in Ajay Aggarwal (supra) the Supreme Court was dealing with a case where the entire facts constituting an offence started in India and culminated in India. Therefore, noting that Section 188 Cr.P.C. uses the word 'offence' and not part of offence, the Supreme Court held that the ingredients of the offence were not satisfied till the illegal act of dishonestly inducing the bank at Chandigarh was committed and an isolated act or omission committed at Dubai was insufficient to constitute an offence.

11. Thus, present is a case where in a chain some offences were committed in India, some in Harare and some in Sydney and the cause of actions arose both in India and outside India. The offences committed in each jurisdiction were not part of offences or part ingredient of offences but complete offences. Section 220 Cr.P.C. directs that if a person commits more offences than one, in one series of acts so connected to form the same transaction, he may be charged and tried at one trial. Sections 177 to 184 of Criminal Procedure Code (Cr. P.C.) provide for the territorial jurisdiction of the Courts for trial of offences committed in India, whereas Section 188 Cr.P.C. deals with the territorial jurisdiction with respect to the offences committed outside India by a citizen of India or by a non-citizen on any ship or aircraft registered in India. Sections 178, 179 and 184 Cr.P.C. which deal

with offences committed in more than one jurisdiction and by more than one person provide:

“178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed, partly in one local area and partly in another, or

(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.-When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

184. Place of trial for offences triable together.- Where-

(a) The offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) The offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223,

the offences may be inquired into or tried by any court competent to inquire into or try any of the offences.”

12. Since the present is a case where offences were committed in three different jurisdictions i.e. at Bangalore, Harare and Sydney though forming

part of a same transaction in respect of the offences committed outside India, the requirement of Section 188 Cr.P.C. is not obviated as held in Thota Venkateswarlu (supra).

13. Having held that Section 188 Cr.P.C would also apply to the facts of the present case as some offences were committed outside India, it is required to be determined that merely because the officers of CBI brought Chhota Rajan to Delhi would it mean that he was 'found' at Delhi as required as per Section 188 Cr.P.C. and the Court at Delhi has the territorial jurisdiction to try the offence. The word 'found' as used under Section 188 Cr.P.C. was interpreted by Vivian Bose J. in the decision reported as AIR 1948 Nag 251:1948 Cri LJ 376 Sahebrao Bajirao v. Suryabhan Ziblaji and it was held-

“9. In my opinion, “found” in S. 188 means found by the Court at the time when the matter comes up for trial, that is to say, any Court which is otherwise competent to try the offence can take seisin the moment the accused appears in its presence. How the accused gets there is immaterial. It does not matter whether he comes voluntarily or in answer to a summons or under illegal arrest. It is enough that the Court should find him present when it comes to take up the matter.

10. In A.I.R. 1936 Nag. 1521 the offence was committed at a place in the Bhopal State, the accused resided at Itarsi in the Hoshangabad District and was tried by a Hoshangabad Court. It is not clear how he got to Hoshangabad but it was held that he must be taken to have been found where he was actually present and so the Hoshangabad Court had jurisdiction. By this I understand the learned Judge to mean that as he was found to be present in the Hoshangabad Court at the relevant time that Court had jurisdiction. I does not think anything turned upon his residence at Itarsi because the section does not deal with residence, nor do I think it mattered how he

reached the Hoshangabad Court. The only relevant point was that he was found to be present in Court at the proper time and that gave the Court jurisdiction.

11. This follows the view taken in 35 Bom. 2252 and 6 Bom. 6223 as also in the English case reported in (1858) 27 L.J.M.C. 48.4 There is also a case in 13 Bom. 147.5 In all these cases the principle applied has been that it does not matter how the accused reaches the Court: he must be taken to have been “found” wherever he is actually present and by that I take it is meant found by the Court. I cannot see how the fact of illegal arrest outside jurisdiction and a forcible and wrongful bringing into Court can make him to be “found” within jurisdiction and not a voluntary appearance or one in answer to a summons.

12. In all these cases the finding was, in my opinion, done by the Court and not by the police or any other body or person. So far as the police are concerned, they “found” their man at the place where they arrested him and that was outside jurisdiction. They could not be said to have re-found him the moment they entered jurisdiction or at any of the places through which they passed; therefore, the matter could not have turned upon their finding. The only authority left was the Court and, in my opinion, the decisions mean and lay down the broad general proposition that an accused is “found” for the purposes of S. 188 at any Court with jurisdiction otherwise in which he happens to be present irrespective of how he got there.

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20. Turning to the dictionary-meaning of the word, it is defined in the Oxford English Dictionary as meaning not only a discovery but also “to come upon in the course of events” and “to perceive or recognise the presence of.” I am clear that the authority which has to do the “finding” is the Court and if a person is present in Court, the Court either “comes upon

him in the course of events” or “perceives or recognizes his presence.” The application fails and is dismissed.”

14. The Apex Court in the decision reported as (2005) 1 SCC 617 Om Hemrajani v. State of U.P., while reiterating the law laid down in Sahebrao Bajirao v. Suryabhan Ziblati and Emperor v. Vinayak Damodar Savarkar (supra) further observed that:

“15. In our opinion, the law has been correctly enunciated in the aforesaid case. The scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege that the accused may be found in India. The court where the complaint may be filed and the accused either appears voluntarily pursuant to issue of process or is brought before it involuntarily in execution of warrants, would be the competent court within the meaning of Section 188 of the Code as that court would find the accused before him when he appears. The finding has to be by the court. It has neither to be by the complainant nor by the police. The section deems the offence to be committed within the jurisdiction of the court where the accused may be found.”

15. The Division Bench of High Court of Bombay in the decision reported as 1911 Cri LJ 356 Emperor v. Vinayak Damodar Savarkar, while dealing with the word 'found' used under Section 188 Cr.P.C. observed that:

“The principle upon which these cases are based underlies also section 188 of the Criminal Procedure Code which, in that Vinayak, a Native Indian subject, is charged inter alia in respect of certain offences committed in London, applies to this case. Under that section it has been held in Empress v. Maganlal [(1882) 6 Bom. 622.] that a Native Indian subject arrested without a warrant by British Indian Police in a Native State and brought to Ahmedabad was ‘found’ in Ahmedabad so as to give jurisdiction to the Magistrate at that place. This decision followed that of 14 Judges sitting in the case of The Queen v. Lopez [(1858) 27 L.J.M.C. 48.] where it was held that a man is ‘found’ for the purposes of criminal jurisdiction under 18 and 19 Viet., c. 91, s. 21, wherever he is actually present whether or not he has been brought to that place against his will.”

16. Thus, once an offence is committed within India, the territorial jurisdiction vests in the Court to try the offence as per Sections 177 to 184 Cr.P.C. whereas if the offence is committed by a citizen of India outside India or by any person on an Aircraft or ship registered in India then it has to be tried as per Section 188 Cr.P.C., that is, the Court where the accused has been found will have the territorial jurisdiction to try the offence. However, when offences are allegedly committed by a citizen of India within the country and outside as well, both the Courts i.e. where the offence was allegedly committed in India and also where the accused on being brought to India is found would have territorial jurisdiction to try the offences so committed, if the offences can be tried together as per Sections 219 to 223 Cr.P.C. Thus though the Special Judge at Bangalore has the territorial jurisdiction to try the offences however, the Special Judge at Delhi also has territorial jurisdiction to try the offences allegedly committed by the petitioner and co-accused.

17. In view of the discussion aforesaid, no case is made out for transfer of the trial from Special Judge, Delhi to Special Judge, Bangalore.

18. Consequently the petition is dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2017
‘vn’

