

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

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Decided on: 13th February, 2019

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W.P.(CRL) 462/2019

STELLAR CONSTELLATION PROJECTS P.
LTD. & ORS.

..... Petitioners

Represented by: Ms.Manisha Bhandari, Mr.Omkar
Shrivastava, Mr.Anil Mathur and
Mr.Divyadeep Chaturvedi, Advocates

versus

DEEPAK GARG

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A.No.3267/2019

Allowed subject to just exceptions.

W.P.(Crl.) No.462/2019 & Crl.M.A.No.3266/2019

1. By this petition, the petitioners challenge the order dated 4th September, 2018 summoning the petitioners as accused on a complaint being CC No.1858/2017 filed by the respondent No.2 before the Court under Section 200 Cr.P.C. The first ground urged by learned counsel for the petitioners is that the learned Metropolitan Magistrate having territorial jurisdiction over PS Malviya Nagar had no territorial jurisdiction to entertain

the complaint as the complainant is a resident of Noida and the company has its corporate office at Noida. The Directors of the company are also residents of Noida and the property is also situated at Noida. Learned counsel for the petitioners also submits that even if the registered office of the petitioners was in Delhi, the correspondence if any between the petitioners and respondent/complainant was done at Noida.

2. Contentions of learned counsel for the petitioners that the parties are staying at Noida, the correspondence if any is at Noida and the property is also situated at Noida cannot be ground to return/quash the complaint as it is a trite law that the issue of territorial jurisdiction of a Court to try the offence has to be ascertained on the basis of averments in the complaint and not based on the defence of the respondent/ accused. [See 1989 (1) Bom CR 480 Hirak Ghosh Vs. Tata Iron and Steel Co. Ltd.]

3. It is also well settled that an offence has to be tried where it is committed, however the Court where even part offence is committed has the territorial jurisdiction to try the offence. The petitioner being a company, it would be deemed to be working where its registered office is situated. The averments of the respondent in the complaint case to invoke the territorial jurisdiction of learned Metropolitan Magistrate at Delhi are in para 14 of the complaint as under:-

“14. That since the complainant as well as the accuse No.1, 6 and 8 are either ordinary citizens residing in Delhi or having their Registered Offices at Delhi, hence this Hon’ble Court has the territorial jurisdiction to entertain the present complaint.”

4. Indubitably under the criminal law, the territorial jurisdiction to try the offence vests in the Court where the cause of action arises subject to the

exceptions laid down. A perusal of the complaint reveals that the petitioner No.1 the accused, which is a company has its registered office at Sheikh Sarai, Delhi and hence all acts of the petitioners will be deemed to be from the registered office including issuance of the advertisement etc. Thus, it cannot be said that the Metropolitan Magistrate who had territorial jurisdiction over PS Malviya Nagar had no territorial jurisdiction to try the offence as certainly part of cause of action arose in its jurisdiction. No doubt the Magistrate at Noida also has the territorial jurisdiction to try the offences alleged however it cannot be said that the Magistrate having territorial jurisdiction over Malviya Nagar had no jurisdiction to try the offence as the registered office of the petitioner No.1 is at Sheikh Sarai, Phase-I, New Delhi and thus part of cause of action also took place at Sheikh Sarai, Delhi.

5. Similar view was expressed by the Hon'ble Supreme Court in the decision reported as (2007) 5 SCC 786 Asit Bhattacharjee Vs. Hanuman Prasad Ojha & Ors. wherein it was held:-

“20. Chapter XIII provides for jurisdiction of the criminal courts in inquiries and trials. Section 177 provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178 provides for place of inquiry or trial. It provides:

“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 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.”

21. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation.

22. The provisions referred to hereinbefore clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) of the Code of Criminal Procedure will have the jurisdiction to make investigation.

23. The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition stricto sensu may not be applicable for the purpose of bringing home a charge of criminal offence. The application filed by the appellant under Section 156(3) of

the Code of Criminal Procedure disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter. The respondents themselves have referred to the minutes of meeting held on 18-5-2000 between the representatives of the appellant and Mr Hanuman Prasad Ojha at the registered office of the appellant wherein inter alia it was agreed:

“After reconciliation of the purchase and dispatch of the abovementioned 10 rakes and also dispatch of 1211 MT by road and considering dispatch and transaction till date in respect of payment, short receipt of bags and also quality claim it has been agreed by Mr Hanuman Prasad Ojha and the representative of PKS Ltd. that the account is finally treated as settled and closed and there will be no claim on either side on payment of Rs 17,25,398.15 by M/s PKS Ltd. for which the demand drafts are to be issued in favour of Hanuman Prasad Ojha, payable at Kanpur.

Further, Mr Hanuman Prasad Ojha has confirmed being taken all legal formalities in respect of purchase and dispatch of the abovementioned 10 rakes and 1211 MT by road for export to Bangladesh with the Government of U.P. and further confirmed that if anything has not yet been complied with, the same will be done by him as may be necessary by the Government of U.P. and in case of any deficiency he will be solely responsible for the same.”

24. Yet again in respect of another account, it was agreed:

“After reconciliation of the purchase and dispatch till 10-5-2000 of the above quantity in respect of payment, it has been agreed by Mr Hanuman Prasad Ojha and the representative of PKS Ltd. that the account is finally treated as settled and closed and there will be no claim on either side on payment of Rs 40,73,860.24 by M/s PKS Ltd. for which the demand drafts are to be issued in the following manner:

<i>Shree Shyamji Udyog</i>	<i>₹32,00,000</i>	<i>payable at</i>
		<i>Golagokar</i>
		<i>nath</i>
<i>Shree Shyamji Rice Mill</i>	<i>₹5,24,961.94p.</i>	<i>-do-</i>

<i>Hanuman Prasad Ojha</i>	<i>₹3,48,998.30p.</i>	<i>payable at</i>
		<i>Kanpur”</i>

25. If there had been a fraudulent misrepresentation by some of the respondents at Calcutta and a conspiracy was hatched to commit offences of cheating or misappropriation, indisputably a part of cause of action arose within the jurisdiction of the learned Metropolitan Magistrate.”

6. Learned counsel for the petitioner further urges that out of the total 1973 flats, possession of 1876 flats has already been handed-over and the projects are nearing completion hence no case for cheating of the respondent was made out.

7. In the complaint the respondent alleged that the petitioner No.1 came out with a proposal of developing residential apartments on the land measuring 72642 square meters situated at Sector 1, Greater Noida, West District, Uttar Pradesh. It was projected to the complainant that the petitioner No.1 has acquired the right, title and interest in the said land and was in the process of constructing and developing the said residential

apartments and the construction would be ready within 24 months and the flats would be ready for occupation on or before 24 months from execution of the BBA.

8. To show the mala fide and fraudulent intention of the petitioners, respondent has noted various facts which include that the petitioner No.1-company was actually incorporated on 7th April, 2010 whereas the complainant/respondent was induced to book the flat on 30th March, 2010 i.e. when the company had not even been incorporated. It is further alleged that execution of the sale agreements was done, even before the approval of the building plans was granted to the petitioner No.1. Further when the purported possession was sought to be handed over on 2nd March, 2015 the completion certificate had also not been received by the petitioner No.1. In a public notice dated 15th August, 2015 the Greater Noida Authority clearly stated that the builders could not offer possession to the buyers in the absence of completion certificate however still the possession was offered as abovenoted. The petitioner No.1 was required to pay penalty for non-completion of the flat within the stipulated period and the said penalty was not paid to the Noida Authority. It is alleged that thereafter the money was sought to be extorted from the complainant under the fear of penalty. It is also alleged that sales took place without the approval of the sanctioned drawings or other statutory approval. Maintenance charges were asked from the respondent for a period even before handing over the possession. It is alleged that the building construction was not up to the quality and windows of 80 flats fell down and heavy damage was caused due to the winds in May-June, 2016 thereby questioning the quality of the construction.

9. Considering the various allegations levelled by the respondent who appeared before the learned Metropolitan Magistrate as CW-1, at this stage, this Court cannot hold that the order summoning the petitioners is illegal or warrants interference.

10. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 13, 2019

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