

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO.352/2020

1. Bhajan S/o Jagu Malkam,
aged about 50 Yrs., Occ. Agricultural,
R/o Tultuli, Armori, Post Bhakrundi,
Taluka Armori, Dist. Gadchiroli,
Maharashtra 441 208.
2. Patiram S/o Zigu Hichami,
aged about 45 Yrs., Occ. Agricultural,
R/o Tultuli, Armori, Post Bhakrundi,
Taluka Armori, Dist. Gadchiroli,
Maharashtra 441 208.

..Petitioners.

..Vs..

1. The State of Maharashtra,
through its Secretary to Home
Department, Mantralaya,
Mumbai 32.
2. L & T Finance Ltd.,
having its registered office at
L & T House, Ballard Estate
Mumbai 400 001.

Second Alternate Address:
8th Floor, C-25/C-26, E Block,
Bandra Kurla Complex Bandra (E),
Mumbai 400 051.

Third Alternate Address:
L & T Finance Ltd., 2/1 Russel
Street, 4th Floor, Kankaria Center,
Kolkata - 700 071.

3. The State of West Bengal,
through its Secretary to Home
Department, Nabanna, HRBC Building

14th Floor, 325, Sarat Chatterjee
Road, Mandirtala Shibpur,
Howrah - 711 102.

..Respondents.

Shri D.H. Sharma, Advocate for the petitioners.
Shri A.S. Fulzele, Additional Public Prosecutor for respondent No.1.
Shri Anand Deshpande, Advocate for respondent No.2.

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE , JJ.
DATED :- 11.3.2021

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties present before the Court.

2. Learned counsel appearing for respondent No.2 has taken an objection to the maintainability of this petition before this Court as the writ sought by the petitioners is to be directed against a Court of Metropolitan Magistrate situated at Kolkata. Learned counsel for the petitioners submits that the issue has been settled by the Apex Court in it's decision in the case of *Navinchandra N. Majithia V/s. State of Maharashtra and others* reported in **(2000) 7 SCC 640**. Shri Fulzele, learned Additional Public Prosecutor agrees. He submits that this Court would have to decide the objection as to the maintainability of the petition on the parameters set out in the case of *Navinchandra N. Majithia (supra)*. In the case of *Navinchandra N. Majithia (supra)*,

the Supreme Court considered the effect of clause (2) of Article 226 which was inserted in the Constitution through 15th Amendment. The Apex Court observed that the power conferred upon the High Courts under Article 226 could be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The relevant paragraphs in which these observations appear, for the sake of convenience, are reproduced as under:-

“36. It was the said decision of the Constitution Bench which necessitated Parliament to bring the Fifteenth Amendment to the Constitution by which clause (1-A) was added to Article 226. That clause was subsequently renumbered as clause (2) by the Constitution Forty-Second Amendment. Now clause (2) of Article 226 read thus:

“226(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.”

37. The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Subba Rao and to

restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which “the cause of action, wholly or in part, arises” and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts.”

3. The Supreme Court then went on to lay down the criteria on the basis of which the issues of maintainability of such a petition be decided. It was held that mere fact that F.I.R. was registered in a particular State would not be a sole criteria to decide that no cause of action has arisen within parts of territorial limits of another Court. It further held that place of residence of the person moving the Court is not the criteria to determine the cause of action in that particular petition. Then, the Apex Court observed that High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction and this would depend upon facts of each case. It also found that where part of the investigation is carried out, the High Court having territorial jurisdiction over that place would also have the jurisdiction in such matters. It would be useful for us to reproduce these observations made in paragraphs 43, 44 and 45 so that the issue

becomes clear to us. They go as under:-

“43. We make it clear that the mere fact that FIR was registered in an particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.

44. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at the Bombay. It is unnecessary to repeat those events over again as Mohapartra, J. has adverted to them with precision and the needed details.

45. In the aforesaid situation it is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Bombay itself, shows that the cause of action cannot escape from the territorial limits of the Bombay High Court.”

4. It is thus clear that a High Court of one State would have

jurisdiction over the authority situated in another State if the part of the cause of action has arisen within the territorial limits of that High Court. In the present case, as could be seen from the complaint filed before the Court of Metropolitan Magistrate, part of the cause of action had arisen within the district Gadchiroli as the alleged loan was disbursed to the petitioners at Gadchiroli and that the vehicle which was hypothecated to respondent No.2 was being plied at Gadchiroli with its registration having been done at Gadchiroli. It is also seen that some of the loan instalments were admittedly paid by the petitioners to respondent No.2 and this transaction occurred at Gadchiroli. Then, for recovery of loan, respondent No.2 had initiated arbitration proceedings bearing FARM/642/2016 LOT No.199/2219 of 2016 before the Arbitrator having seat at Mumbai. The award determining the liability of the petitioner to be at Rs.6,62,664/- and giving a direction to pay the amount to respondent No.2 was pronounced on 23.1.2017 at Mumbai. The hypothecated vehicle was directed to be repossessed in the arbitration proceedings by interim order passed on 4.10.2016, at Mumbai. All these facts and circumstances of the case would show that major portion of the bundle of facts constituting the cause of action had taken place within the territorial limits of State of Maharashtra and in particular within the limits of district Gadchiroli falling under the jurisdiction of Nagpur

Bench of Bombay High Court. Therefore, we are of the view that this case fits in the criterion set out in the case of Navinchandra N. Majithia (supra) and accordingly we hold that there is no substance in the preliminary objection regarding maintainability of this petition. We find that this petition is indeed maintainable and the objection is rejected.

5. Now, if we consider the averments made in the complaint, we find that the complaint does not *prima facie* disclose commission of any cognizable offence in the present case. The complaint only discloses that the dispute between the parties is nothing but a civil dispute based upon the recovery of loan granted to the borrowers like the petitioners. The allegations made in the complaint show that after the grant of loan to the petitioners, the petitioners had admittedly paid some loan instalments. If this is an admitted fact, we do not think that any inference about presence of dishonest intention since the inception of the loan transaction could be made by any stretch of imagination.

6. The complaint before the Metropolitan Magistrate has been filed on 7.2.2018 and its cognizance was taken by the Metropolitan Magistrate, Kolkata on 26.3.2018 when order for

issuance of summons under Sections 420, 406 read with Section 120B of the Indian Penal Code was passed. In this complaint, the material fact of passing of the arbitration award much before filing of the complaint has been suppressed. As stated above, the arbitration award was pronounced on 23.1.2017. Copy of the arbitration award has been filed along with the petition. It shows that the loan transaction involved in the arbitration proceedings was the same as the one involved in the criminal complaint filed before the Court of Metropolitan Magistrate, Kolkata. The complaint categorically avers that the accused persons have availed of commercial loan of Rs.6,12,000/- being Loan No.OKG002067R1300731295 and then goes on to say that it were this loan account in respect of which various defaults as regards repayment of loan were committed by the petitioners subsequently. In the arbitration award also, the loan account number was same and the allegations were also same except for the allegations relating to dishonest intention since inception of the loan transaction, as could be seen from the summary of facts stated in the award. After giving opportunity of hearing to both sides the learned Arbitrator passed the award to determine the liability of the petitioners as regards the repayment of the loan. The liability was determined at Rs.6,62,664/- and it was also held that respondent No.2 was entitled to repossession of the hypothecated vehicle. The

permission was granted to respondent No.2 to dispose of the vehicle for recovery of its dues under the award. All these facts are not mentioned in any manner in the complaint filed before the Metropolitan Magistrate and, therefore, we have to say that respondent No.2 approached the Metropolitan Magistrate with unclean hands and the Metropolitan Magistrate ought not to have taken any cognizance of the complaint so filed before him.

7. Then, there is another angle to the whole dispute. In the present case arbitration award determining the liability of the petitioners as regards the repayment of loan to respondent No.2 and also a declaration regarding entitlement to seize hypothecated vehicle and permission to sell the hypothecated vehicle for recovery of the loan dues was passed much before filing of the complaint. Once civil dispute has been determined by passing an award in arbitration proceedings, which is nothing but a decree, no criminal Court on the basis of the same cause of action would have any jurisdiction to take cognizance of the so-called offences claimed to have been committed by the borrower. That apart, as stated earlier, in the present case, it is an admitted fact that after availing of the loan, the petitioners made the repayment of some of the instalments and this fact would itself show that there was no dishonest intention on the part of the

petitioners at the beginning of the transaction of loan. All these facts, have not been considered in any manner by the learned Metropolitan Magistrate.

8. The learned Metropolitan Magistrate not only issued process under Section 420 of the Indian Penal Code but also issued it under Section 406 of the Indian Penal Code. The offence punishable under Section 406 of the Indian Penal Code is an offence of criminal breach of trust. The essential ingredients of such an offence is entrustment of the property or transfer of dominion over the property and it's misuse against the expressed or implied direction of the person entrusting the property. Both these ingredients are conspicuously absent in the present case. It is an admitted fact that hypothecated vehicle was repossessed by respondent No.2 on 18.9.2016 (see communication dated 24.9.2016 issued on behalf of respondent No.2, page 25). If the hypothecated vehicle was repossessed by respondent No.2, there was basically no entrustment or handing over of dominion of property to the petitioners. Then, it is also not the case of respondent No.2 that the petitioners when they were having dominion over the hypothecated vehicle had dishonestly transferred the vehicle to somebody else. So, the essential ingredients of the offence punishable under Section 406 of the Indian Penal Code

are absent in this case and it appears to us that these material facts have gone unnoticed by the learned Metropolitan Magistrate when he took cognizance of the complaint filed by respondent No.2. In fact, respondent No.2 did not mention all these facts in the complaint itself though he ought to have mentioned them, they being material facts. If these facts had been disclosed in the complaint, perhaps the result of taking cognizance by learned Metropolitan Magistrate would have been different and perhaps the complaint would have been dismissed by the learned Metropolitan Magistrate.

9. In the circumstances, we find that this is a case wherein by no stretch of imagination offence punishable under Section 420, or under Section 406 of the Indian Penal Code could be seen as constituted even remotely. If this is so, it will follow that offence punishable under Section 120B of the Indian Penal Code could also not be constituted. This case, we must say, goes beyond absence of any cognizable offence being disclosed by the complaint and it reflects upon the conduct of respondent No.2. The conduct of respondent No.2, we must say, appears to be not in good faith. Respondent No.2 has suppressed the material facts and made false allegations in the complaint filed before the learned Metropolitan Magistrate, Kolkata. Whenever there is suppression of truth and propounding of falsehood,

the whole proceeding initiated at the behest of the person indulging in falsehood, gets vitiated on the principle of *Suppressio veri, suggestio falsi* as held in the case of *Moti Lal Songara V/s. Prem Prakash alias Pappu and Anr.* reported in **AIR 2013 SC 2078**.

10. In the result, the petition is allowed.

Criminal Complaint Case No.C.S./28163/2018 (L. & T. Finance Ltd. V/s. Bhajan Jagu Malkam & another) pending before the 16th Court of Metropolitan Magistrate at Kolkata is hereby quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

Tambaskar.