

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

CRIMINAL WRIT PETITION NO. 866 OF 2018

PETITIONER :-

Sunil Ratnakar Gutte
Aged about 36 years, Occupation
Business, C/o M/s Sunil Hitech Engineers
Limited, 97, East High Court Road,
Ramdaspath, Nagpur, 440010
(Maharashtra).

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through Police Station Officer, Police Station, Sitabuldi, Nagpur.
2. Commissioner of Police, Nagpur.
3. State of Punjab, Through Principal Secretary, Ministry of Home Affairs, Chandigarh.
4. Director General of Police, State of Punjab, having office at Jan Marg, 9A, Sector -9.
5. Senior Superintendent of Police, Bathinda, Punjab.
6. Police Station Officer, Police Station, Civil Lines, Bathinda, Punjab.
7. Officer In Charge, Economic Offences Wing City-II,

Bathinda, Punjab.

8. Shri.Ajay Pal Garg
Proprietor of M/s Siya Trading Company,
having its office at 12762,1st Floor,
Bhatti Road, Bhatinda, Punjab.

Mr. S.V. Bhutada, counsel for the petitioner.
Ms. H.N. Jaipurkar, APP for respondent nos.1 and 2
Mr. S.A.Chaudhari, counsel for respondent nos.5 to 7.
Mr. Anand Parchure, counsel for respondent no.8.

**CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.**

DATE : 11.01.2021.

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

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsels appearing for the parties.

3. The petitioner is one of the accused in Crime No.0158
of 2018 registered for an offence punishable under Section 420 of
the Indian Penal Code against him on the basis of the complaint
lodged by respondent no.8. The respondent no.8 has alleged that
the petitioner, as Managing Director of VAG Buildtech Limited,

formerly known as Sunil Hitech India Infra Pvt.Ltd., after having purchased steel and cement from respondent no.8 at different times, and also having furnished corporate guarantees for paying the items purchased from respondent no.8, failed in his promise and committed default in making proper payments to the respondent no.8. According to respondent no.8, the petitioner purchased steel and cement worth ₹ 1,07,88,262/- from him and the purchase was made at Bathinda. Respondent no.8 further alleged that out of the said amount of ₹ 1,07,88,262/-, the petitioner paid some amount and an amount of ₹ 82,46,180/- is still outstanding against him. The respondent no.8 has alleged that not making payment of such huge amount displayed dishonest intention on the part of the petitioner and the persons, who signed the corporate guarantees on behalf of the Company and therefore, respondent no.8 filed a complaint against the petitioner and other persons. This is how the offence punishable under Section 420 of the Indian Penal Code vide FIR No. 0158 of 2018 came to be registered against the petitioner and some other persons at Bathinda.

4. The petitioner submits that the complaint has been filed by respondent no.8 against him and other persons with a *mala fide* intention to harass the petitioner, although no criminal offence of any nature is made out against any of them. The petitioner has therefore filed this petition with a prayer for quashing and setting aside the impugned First Information Report registered at Police Station Bathinda with an alternate prayer seeking transfer of the investigation into the said First Information Report from Bathinda Police Station to Police Station Sitabuldi, Nagpur.

5. Shri. Bhutada, learned counsel for the petitioner submits that as the alleged offence has taken place at different places namely, Bathinda and also Nagpur from where the purchase order was placed, this Court would have the jurisdiction. He also submits that *prima facie* no offence of cheating as punishable under Section 420 of the Indian Penal Code is made out in the present case as the allegations, accepted as they are, do not disclose any dishonest intention since the beginning of the transactions.

6. The petition is strongly opposed by learned counsel appearing for respondent nos.5 to 8. Shri. Anand Parchure, learned counsel appearing for respondent no.8 submits that *prima facie* case for registration of the offence of cheating is squarely made out in the present case against the petitioner and other persons and that custody of the petitioner is very much required for the reason that the petitioner is not co-operating with Bathinda police in any manner. Shri Saurabh Chaudhari, learned counsel appearing for the respondent nos.5 to 7 submits on the similar lines. Thus, respondent nos.5 to 8 seek dismissal of this petition.

7. Learned APP adopts the argument advanced by Shri Anand Parchure learned counsel appearing for respondent no.8.

8. On going through the allegations made in the complaint, *prima facie*, we are of the opinion that the place of the alleged offence in the present matter is Bathinda and it does not appear to us that the offence or any part thereof has also taken place at any place situated in Maharashtra including Nagpur. In order to determine territorial jurisdiction of this Court, what is

material is the place of occurrence of the offence and not the place of residence of the accused person. The law laid down by the Hon'ble Suprer Court in this regard is well settled. In the case of *Navinchandra N.Majithia Vs. State of Maharashtra* reported in *AIR 2000 SC 2966*, the Hon'ble Supreme Court has observed in Paragraph Nos.13,38 and 43 as under:-

“13. We make it clear that the mere fact that FIR was registered in a 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 the 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.

38. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed.

43. Tested in the light of the principles laid down in the cases noted above the

judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of international jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court”.

9. It would be clear from the above referred observations that the High Court would be invested with jurisdiction under Article 226 of the Constitution of India only when a complaint or the First Information Report discloses that

the place where the alleged offence is committed is within the territorial jurisdiction of the High Court and that, the place of residence of the accused persons, is hardly material.

10. Similar is the view taken by Hon'ble Supreme Court in the case of *Rajendra Ramchandra Kavalekar Vs.State of Maharashtra and anr.* reported in (2009) 11 SCC 286.

11. In the present case, the alleged offence consisted of three parts namely: (1) placing of purchase order and its acceptance (2) delivery of the purchased articles and (3) payment to be made to the seller. The articles that were purchased by the petitioner from respondent no.8 were steel and cement and although the purchase order was issued from a place in Maharashtra, it was accepted at a place in Bathinda and so the transaction of the purchase was completed at a place situated at Bathinda. Secondly, the articles were supplied and delivered not at a place anywhere in Maharashtra but at Bathinda only. Thirdly, the payment was to reach a dealer i.e. respondent no.8 whose office and place of business was situated at Bathinda. There is no

dispute about these facts. These facts, therefore, would show that all the ingredients of the offence had arisen and had taken place at Bathinda and therefore, in our considered view, it would only be the Criminal Court situated at Bathinda which would have territorial jurisdiction over the alleged offence and therefore, it would be for Bathinda Police to make investigation into the offence, if any.

12. In the circumstances, we are of the view that this Court would not have any jurisdiction to entertain this petition seeking quashing of the First Information Report and or in the alternative granting transfer of the investigation to Nagpur Police. On similar facts in the case of *Rajendra Kavalekar Vs. State of Maharashtra (Supra)*, a Division Bench of this Court had declined to entertain the writ petition and the Hon'ble Supreme Court had found such refusal to entertain the petition by this High Court as just and proper.

13. In the result, the petition cannot be allowed and it is rejected on the ground that it is not maintainable before this

Court. Rule is discharged.

14. Shri Bhutada, learned counsel appearing for the petitioner has made a request for continuation of the interim relief granted by this Court on 10.09.2018 for a further period of two weeks to enable the petitioner to take appropriate steps in the matter. The prayer is opposed by Shri. Anand Parchure, learned counsel for the respondent no.8 and by Shri. Saurabh Chaudhari, learned Counsel appearing for respondent nos.4 to 7.

15. Considering the fact that interim order is in operation for a period of one and half year, we are of the view that its further continuation for another two weeks more would not prejudice any of the parties here and as such interim relief granted on 10.09.2018 is further extended for a period of two weeks from the date of the order.

JUDGE

JUDGE