

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 19.03.2021

PRONOUNCING ORDERS ON : 24.03.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.32536 and 35863 of 2019

and

WMP Nos.36769, 36772 and 32894 of 2019

WP.NO.32536 of 2019

Ajay Kumar BishnoiPetitioner
in W.P.No.32536 of 2019

.Vs.

1.The State

Rep.by Inspector of Police,
J-2, Adyar Police Station,
Dr.Muthulakshmi Road,
Indira Nagar,
Adyar, Chennai TN.

2.The State

Rep.by
The Inspector of Police,
Janakpuri Police Station,
New Delhi.

3.M/s.Techno Colors and Chemicals,

Rep.by its Authorized Rep.
Mr.Ghullshan Kakkar,
411, DDA Building-I, Distt Center,
Jnakpuri, West Delhi, India.

..Respondentsin
W.P.No.32536 of 2019

PRAYER in W.P.No.32536 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare that the FIR in Crime No.490 of 2017, on the file of 2nd respondent police station dated 24.06.2016 under Section 420, 406 r/w Section 34 IPC, as null and void, ultra vires, non est and invalid in law in light of the full and final settlement arrived between the petitioner and the 3rd respondent/ de facto complainant for the entire amount of 1.9 Crores as alleged in the FIR.

W.P.No.32536 of 2019:

Ajay Kumar Bishnoi

...Petitioner
in W.P.No.35863 of 2019

.Vs.

1.The State

Rep.by Inspector of Police,
J-2, Adyar Police Station,
Dr.Muthulakshmi Road,
Indira Nagar,
Adyar, Chennai TN.

2.The State

Rep.by
The Inspector of Police,
Janakpuri Police Station,
New Delhi.

3.The Metropolitan Magistrate-08,
Court No.311, Dwarka Courts,
New Delhi.

4.M/s.Techno Colors and Chemicals,
Rep.by its Authorized Rep.
Mr.Ghullshan Kakkar,
411, DDA Building-I, Distt Center,
Jnakpuri, West Delhi, India.

..Respondents
in W.P.No.35863 of 2019

PRAYER in W.P.No.35863 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, forbearing the 2nd respondent herein from in any manner arresting or taking coercive action against the petitioner pursuant to the order of the proclamation dt.31.03.2017 for appearance of peti accused in FIR No.490 of 2016, issued by the 3rd respondent herein.

For Petitioner : Mr.Nithyaesh Natraj
(in Both WPs)

For Respondents : Mr.M.Mohamed Riyaz
(in Both WPs) Additional Public Prosecutor
for R 1

Mr.Hari Radhakrshnan
for R 3 in WP.No.32536/2019
for R 4 in W.P.No.35863/2019)

No Appearance for R 2 & R 3
in W.P.No.35863/2019

No Appearance for R 2
in W.P.No.32536/2019

COMMON ORDER

The issues involved in both the writ petitions are common and interconnected and hence they are taken up together, heard and disposed of through this common order.

2.The writ petition in W.P.No.32536 of 2019, has been filed challenging the FIR registered by the Janakpuri Police Station, New Delhi in Crime No.490 of 2017, and W.P.No.35863 of 2019, has been filed forbearing the said Police from taking coercive action against the petitioner in any manner, pursuant to the order of proclamation dt.31.03.2017, issued by the Metropolitan Magistrate-08, Dwaraka Courts, New Delhi.

3.For easy understanding, the rank of the parties in W.P.No.32536 of 2019, will be used as the basis for identifying the parties in this order.

4.The 3rd respondent gave a complaint to the 2nd respondent on 24.06.2016, to the effect that the petitioner along with another Director named Mr.AmulGabrani, belonging to ABAG Hi-Tech Educational Pvt., Limited, approached the 3rd respondent and apprised him about an on-line Education Scheme to be undertaken by the Company and the 3rd respondent was asked to invest in the Company. The 3rd respondent on believing the representation made by the petitioner and the other Director, invested a sum of Rs.4.26/- crores. The further allegation made by the 3rd respondent is that the project did not go through and the 3rd respondent therefore, insisted for the repayment of the amount invested by him. The 3rd respondent repaid a sum of Rs.2.36/- crores and he never received the balance amount of Rs.1.90/- crores. Based on this complaint, the 2nd respondent registered an FIR against the petitioner and another in Crime No.490 of 2017, for offence under Sections 420, 406 r/w 34 Indian Penal Code, 1860 (hereinafter referred to as "IPC").

5.After the registration of the FIR, since the

with the investigation and was not appearing on summons, they took steps to declare the petitioner as a proclaimed offender. The concerned Court by an order dt.31.03.2017, declared the petitioner as a proclaimed offender.

6.The petitioner filed a quash petition before the Delhi High Court in W.P (Crl).No.1594 of 2017, seeking to quash the FIR registered by the 2nd respondent. This writ petition was dismissed as withdrawn by an order dt.07.03.2018, by granting leave to the petitioner to file a fresh petition to quash the FIR on the basis of the compromise entered into between the parties.

7.In the meantime, the balance amount of Rs.1.90/- crores is said to have been settled to the 3rd respondent through payments made from Utkal Alumina International Ltd. The Payments were made on 11.09.2017, 14.09.2017, 11.10.2017 and 14.11.2017. The payment is borne out by records and the communications that took place between the parties clearly shows that the 3rd respondent received Rs.1.90 crores.

8.It is also seen from records that the negotiation with the 3rd respondent was made both by the petitioner and the other Director viz, Mr.AmulGabrani.

9.It is also seen from records that the 3rd respondent was regularly having communications by exchange of messages with the counsel representing the petitioner in this case and the message sent on 08.03.2018, by the 3rd respondent categorically says that the job is done. Therefore, the petitioner was expecting that the FIR will be closed based on the settlement between the parties.

10.There is yet another important material that must be taken into consideration by this Court and the same is the quash petition filed by the other Director viz Mr.AmulGabrani, before the Delhi High Court based on the settlement between the parties. The Delhi High Court after taking into consideration the settlement between the parties, quashed the FIR in Crime No.490 of 2016, insofar as Mr.AmulGabrani is concerned. This order was passed on 22.01.2019.

11.The petitioner has filed the present quash petition before this Court on the ground that the 3rd respondent is using the criminal proceedings to extract money from the petitioner even after the entire amount has been settled and the FIR is kept alive only insofar as the

petitioner is concerned. Therefore, according to the petitioner, there is an abuse of process of law and the same requires the interference of this Court under Article 226 of the Constitution of India. As consequence, the petitioner has also sought for forbearing the 2nd respondent from taking coercive action against the petitioner pursuant to the petitioner being declared as a proclaimed offender.

12. Heard Mr. Nithyaesh Natraj, learned counsel for the petitioner, Mr. M. Mohamed Riyaz, learned Additional Public Prosecutor for the 1st respondent and Mr. Hari Radhakrishnan, learned counsel appearing on behalf of M/s. Techno Colors and Chemicals.

13. The present writ petitions are a classical representation of how criminal law is misused in this country and is used as a tool for recovery of money in disputes which are purely civil in nature. The sum and substance of the complaint given by the 3rd respondent is that he invested a sum of Rs. 4.26/- crores in the Company belonging to the petitioner and another Director and the project did not go through and he was repaid only a sum of Rs. 2.36/- crores and the balance amount of Rs. 1.90/- crores was not repaid to him. On these allegations, there is absolutely no criminal offence made out. This is more so since even according to the complaint, there was no deception at the inception and the same is evident on the repayment of Rs. 2.36/- crores made to the 3rd respondent.

14. In order to end this dispute through settlement, the parties negotiated and the 3rd respondent received a sum of Rs. 1.90 crores and it is evident from the records. This settlement is acknowledged by the 3rd respondent. When it came to the other accused person viz, Mr. Amul Gabrani, the FIR was quashed based on the settlement by the Delhi High Court, by order dt. 22.01.2019. The 3rd respondent cannot take a different stand when it comes to the petitioner, with regard to the settlement since, what applies to Mr. Amul Gabrani will equally apply to the petitioner also.

15. However, the 3rd respondent by filing an affidavit before this Court, comes up with a totally different version with regard to the payment of Rs. 1.90/- crores. What is clearly evident is that the 3rd respondent wants the pound of flesh of the petitioner and he is willing to go to any extent in taking contradictory stands and misusing criminal law for this purpose.

16.The learned counsel for the 3rd respondent mainly raised the issue of jurisdiction before this Court and contended that the 2nd respondent police is beyond the jurisdiction of this Court and the order of proclaimed offender was passed by a Court which is beyond the jurisdiction of this Court and this order was also confirmed by the Sessions Court and therefore, both the writ petitions are liable to be dismissed on this ground alone. The learned counsel also relied upon some of the earlier orders passed by this Court on the issue of jurisdiction.

17.The Hon'ble Supreme Court inNavinchandraN.Majithia v. State of Maharashtra and Others reported in(2000) 7 SCC 640 has directly dealt with the issue of jurisdiction under Article 226 of the Constitution of India. The relevant portions in the judgment are extracted hereunder:

"43.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 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 Bombay. It is unnecessary to repeat those events over again as Mohapatra, 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.

18. The Hon'ble Supreme Court has categorically held that the High Court must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction and it was made clear that such determination will depend upon the facts of each case.

19. This judgment was subsequently reiterated by the Hon'ble Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra* and *Another*, reported in (2014) 9 SCC 129. The relevant portion of the judgment is extracted hereunder:

"13. We are alive to the possible incongruities that are fraught in extrapolating decisions relating to civil law onto criminal law, which includes importing the civil law concept of "cause of action" to criminal law which essentially envisages the place where a crime has been committed empowers the court at that place with jurisdiction. In *Navinchandra N. Majithia v. State of Maharashtra* [(2000) 7 SCC 640 : 2001 SCC (Cri) 215] this Court had to consider the powers of High Courts under Article 226(2) of the Constitution of India. Noting the presence of the phrase "cause of action" therein it was clarified that since some events central to the investigation of the alleged crime asseverated in the complaint had taken place in Mumbai and especially because the fundamental grievance was the falsity of the complaint filed in Shillong, the writ jurisdiction of the Bombay High Court was unquestionably available. The infusion of the concept of "cause of action" into the criminal dispensation has led to subsequent confusion countenanced in High Courts. It seems to us that *Bhaskaran [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284]* allows multiple

venues to the complainant which runs counter to this Court's preference for simplifying the law. Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned".

20. Both these judgments were considered by a learned Single Judge of this Court in *S. Ilanahai v. The State of Mumbai*, rep. by the Sr. Inspector of Police, Mumbai and Others reported in (2015) 1 LW (Cr1) 395. The relevant portions in the judgment are extracted hereunder:

"38. From the above judgment of the larger Bench, now it is crystal clear that what is relevant for the High Court to entertain a petition under Section 482, is not the cause of action as the term "cause of action" is foreign to criminal law. In *Navinchandra N. Majithia* case the Hon'ble Supreme Court had not dealt with the question as to whether the power of the High Court under Section 482 of the Code could be exercised beyond the territorial limits of the High Court. As I have already pointed out, the Court only held that writ jurisdiction could be exercised beyond the territorial limits provided either the cause of action in full or in part has occurred outside the jurisdiction of the High Court concerned.

39. As we have already noticed, before the introduction of Clause 2 of Article 226 of the Constitution of India, as per the Constitution Bench judgment in *Election Commission, India v. Saka Venkata Subba Rao*, reported in AIR 1953 SC 210 the jurisdiction was based only on the situs of the person or authority concerned against whom writ or order is to be issued. The jurisdiction was extended beyond the territorial limits by the introduction of Clause 2 to Article 226 of the Constitution of India based on the cause of action. So far as the territorial jurisdiction under Section 482 of the Code of Criminal

Procedure is concerned, it is akin to Article 226 of the Constitution of India as it stood prior to the

introduction of Clause 2 of Article 226. When Parliament thought it fit, after the above Constitution Bench judgment, to extend the writ jurisdiction of the High Court beyond the territorial limits of the said High Court, it did not think it appropriate, similarly to amend Section 482 of the Code of Criminal Procedure so as to add provision like Clause 2 of Article 226 of the Constitution of India extending the inherent power of the High Court under Section 482 of the Code of Criminal Procedure beyond the territorial limits of the said High Court based on the fact that the part of offence is committed outside the territorial limits of the said High Court.

40. Thus, in my considered opinion, so far as the power under Section 482 of the Code of Criminal Procedure for the purpose of quashing the F.I.R. is concerned, the only criteria is the situs of the authority who has registered the case and not the place of commission of the crime either in full or in part. Similarly, the writ jurisdiction of the High Court under Article 226 of the Constitution to quash a criminal case also does not extend beyond the territorial limits of the said High Court if the case is pending on the file of an authority who is located outside the territorial limits of the said High Court. This conclusion is inescapable, in view of the authoritative pronouncement of the larger Bench of the Hon'ble Supreme Court in DashrathRupsingh Rathod case (cited supra) wherein the Court has held that the concept of "cause of action" which is relevant to Civil Law cannot be imported to Criminal Law".

21. In the present case except for the fact that the petitioner is having his residence at Chennai, there is no other cause of action that has arisen within the jurisdiction of this Court. Almost all the major events have taken place only within the jurisdiction of New Delhi. Even the registered office of the Company in which the petitioner is a Director, is situated at New Delhi. All the transactions had taken place in New Delhi and even the earlier writ petitions

were filed by the petitioner seeking to quash the FIR only before the Delhi High Court. In fact, the FIR was quashed for the co accused only by the Delhi High Court.

22. In view of the above, in spite of this Court finding that the 3rd respondent has misused criminal proceedings and it is a clear abuse of process of law and the FIR cannot be sustained only as against the petitioner after it has been quashed for the co-accused on the ground of settlement, this Court is of the considered opinion that it will be exceeding its territorial jurisdiction if the present writ petitions are entertained and

allowed. Judicial discipline is tying the hands of this Court from exercising its jurisdiction into the territorial jurisdiction of New Delhi. For if this Court entertains the present writ petitions, it may set a bad precedent and with a very heavy heart, this Court has to relegate the petitioner to file an appropriate petition before the Delhi High Court. The petitioner will have the liberty to move the Delhi High Court on the same cause of action and workout his remedy.

23. The petitioner had the benefit of an interim order right through the proceedings. Since this Court is granting liberty to the petitioner to move the Delhi High Court, this Court deems it fit to continue the interim order till the petitioner approaches the Delhi High Court. Hence, the interim order granted by this Court is extended for a period of eight weeks and in the meantime, the petitioner shall approach the Delhi High Court and work out his remedy.

24. In the result, both the writ petitions are disposed of with liberty to the petitioner to approach the Delhi High Court. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

KP
To

1. The Inspector of Police,
J-2, Adyar Police Station,
Dr. Muthulakshmi Road,
Indira Nagar,
Adyar, Chennai TN.

2. The Inspector of Police,
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