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W.P.Nos.2688 & 25129 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2022

Date of Verdict : 11.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.2688 & 25129 of 2021
and W.M.P.Nos.3019, 26488 & 26490 of 2021

1. Maria Ramesh
2. P.K.Ramesh @
Pallavaram Kothandaraman Ramesh

... Petitioners in W.P.
No.2688 of 2021

S.Venkatakrishnan

... Petitioner in W.P.
No.25129 of 2021

Vs.

1. The State rep. by
The Assistant Commissioner of Police,
Chennai -CCB,
CCB-1, Chennai.
(CCB Cr.No.253/2019)

2. The State rep by
The Inspector of Police,
Delhi -EOW,
(FIR No.218 of 2020)

3. SH Hans Sachdev
4. Pee Empro Exports (P) Ltd.,
Rep by Prit Mohinder Singh Uppal,
504, Skyline house,
85 Nehru place,
New Delhi – 110 019.

... Respondents in
both W.Ps.



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Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records which culminated into the FIR No.218 of 2020 dated 16.12.2020 on the file of the second respondent and quash the same as it is violation of Article 21 of the Constitution of India.

For Petitioners in

W.P.No.2688 of 2021 : Mr.B.Kumar, Senior Counsel
For Mr.Gaurav Chatterjee

For petitioner in

W.P.No.25129 of 2021 : Mr. M.S.Krishnan, Senior Counsel
For Mr.N.P.Vijayakumar

For Respondents in
both W.Ps.

For R1 : Mr.A.Damodaran
Additional Public Prosecutor
For R2 : Mr.J.Madanagopal Rao
For R3 & R4 : Mr.Maninder Singh, Senior Counsel
For Mr.Divakaran & Ms.Smriti Asmita

COMMON ORDER

These Writ Petitions have been filed to quash the FIR in Crime No.218 of 2020 on the file of the second respondent registered for the offences punishable under Sections 406, 420 & 120B of IPC as against the petitioners.

2. The petitioners in both Writ Petitions are arrayed as accused in Crime No.218 of 2020 on the file of the second respondent registered for the



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offences under Sections 406, 420, 120B of I.P.C., as A1, A2 & A7. The

respondents 3 & 4 are complainants lodged complaint before the second respondent alleging that the accused persons assured them that the project viz., USHERA situated at Kancheepuram, Chennai, is well funded by M/s. Call Express Construction (India) Private Limited for which, a promotional event was organized at Maurya Sheraton Hotel, New Delhi on 27.02.2015. In that promotional event, the complainants were induced and misrepresented regarding the project called USHERA. Therefore, the complainants handed over post dated cheques to the accused persons.

3. As per the sale & construction agreements, the project has to be completed within three years from the date of signing of the construction agreement i.e., 05.06.2015. Further alleged that one of the accused traveled to New Delhi to met with victims and got signed the loan application forms as well as the construction agreements. However, the construction of the said project was stopped in the year 2017 and the accused persons failed to handed over the flats. All the accused persons connived together misappropriated the amount which was invested by the complainant as follows :-



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<i>Name of the victims</i>	<i>Payment made through LIC (INR)</i>	<i>Payment made from own/family account</i>	<i>Total Payment (INR)</i>
Hans Sachdev	1,93,40,000	37,50,000	1,30,90,000
Harpreet Sachdev	1,94,40,000	37,50,000	2,31,90,000
Charu Sachdev	2,01,00,000	37,50,000	2,38,50,000
Priya Sachdev	1,87,00,000	37,50,000	2,24,50,000
M/s. Pee Empro Exports Pvt. Ltd (Prit Mohinder Singh Uppal)		2,31,18,352	2,31,18,352
M/s. Bir Hotels (Anis Bir)		1,00,00,000	1,00,00,000
M/s.CTC Geo technical Pvt Ltd through Sh. Jessa Chawala		1,49,00,000	1,49,00,000
Suubash Sachdev		73,79,000	73,79,000

4. The accused persons have collected money in the name of the companies called M/s. Call Express Engineering Pvt. Ltd., Chennai, M/s. Call Express Construction (India) Pvt. Ltd., Chennai, M/s. Callex Creations Pvt. Ltd., Chennai, M/s. Callex Australia Pvt. Ltd., Australia. All the accused persons are Directors and Auditor of the said companies. On 27.02.2015, the function was organized in the Hotel Maurya Sheraton, New Delhi and a sum of Rs. 8,13,603/- was paid by the company M/s. Call Express Construction India Pvt. Ltd. In the said hotel, the accused persons had stayed on 27.02.2015 & 28.02.2015.



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5. While pending the investigation, the petitioner filed the present

Writ Petitions before this Court to quash the FIR registered in Crime No. 218 of 2020 on the file of the second respondent. This Court admitted the Writ Petitions and also granted stay of all further proceedings in Crime No.218 of 2020 on the file of the second respondent by an order dated 08.02.2021. Aggrieved by the same, the respondents 3 & 4 herein filed an appeal before the Hon'ble Supreme Court of India in S.L.P.No.1806 of 2021 and after considering the submission made by the respondent 3 & 4 with regards to territorial jurisdiction of this Court to entertain these Writ Petitions, the Hon'ble Supreme Court of India by an order dated 04.10.2021 set aside the interim order passed by this Court and also directed this Court to decide the preliminary objection of territorial jurisdiction in the first place. As directed by the Hon'ble Supreme Court of India, the learned Senior Counsel appearing for the respondents 3 & 4 raised objection with regard to maintainability of these Writ Petitions before this Court.

6. Mr.B.Kumar, learned Senior Counsel appearing for the petitioners in CrI.O.P.No.2688 of 2021 raised the following grounds to maintain the Writ Petitions before this Court:- Even according to the respondents 3 & 4, the



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entire transactions happened within the territorial jurisdiction of this Court viz., at Chennai. The father of the third respondent already lodged complaint before the City Crime Branch, Chennai, and the same was registered in Crime No.253 of 2019 as against the petitioners for the offences under Sections 406, 420, 120B of IPC for the very same set of allegations. After completion of investigation, it was closed as mistake of fact and filed referred charge sheet. The father of the third respondent filed protest petition and it is pending before the jurisdictional Court. Except the meeting convened in the hotel situated at New Delhi, there is absolutely no cause of action to lodge complaint before the second respondent. Even assuming that part of cause of action arose at New Delhi, major part of cause of action arose at Chennai. Therefore, this Court has got jurisdiction to entertain the Writ Petitions challenging the FIR registered by the second respondent.

6.1. He mainly relied upon the Article 226 sub Clause 2 of the Constitution of India and submitted that this Court has got jurisdiction to entertain the Writ Petitions. He further submitted that the entire cause of action arose at Chennai as the land situated within the jurisdiction of this Court; construction put in the land within the jurisdiction of this Court; the agreement



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entered between them within the jurisdiction of this Court and the payment also was made within the jurisdiction of this Court. Except the meeting conveyed at New Delhi, the entire cause of action arose within the jurisdiction of this Court. Therefore, this Court has got jurisdiction to entertain these Writ Petitions. In fact, this Court already admitted these Writ Petitions and also granted ex parte interim order. However, now it has been set aside by the Hon'ble Supreme Court of India and remanded the matter back to this Court for fresh consideration. In support of his contention, he relied upon the following judgments:-

- i. (2002) 7 SCC 640 – Nainchandra N. Majithia Vs. State of Maharashtra and others.*
- ii. (2014) 9 SCC 129 – Dashrath Rupsingh Rathod Vs. State of Maharashtra and anr.*
- iii. (2015) 1 LW (Crl) 395 – S.Ilanahai Vs. The State of Mumbai.*
- iv. Order dated 29.11.2018 in W.A.(MD)NO.1018 of 2017 passed by this Court.*
- v. (2005) 6 SCC 292 – Vadilal Chemicals Ltd., Vs. State of A.P and anr.*
- vi. (2021) 2 LW (Crl) 744 – Ravi Parthasarathy Vs. State rep. by the SI.*

7. Mr.M.S.Krishnan, learned Senior Counsel appearing for the petitioner in W.P.No.25129 of 2019 submitted that there are totally seven accused in which the petitioner is arrayed as A7. On the complaint lodged by



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the third and fourth respondents, the second respondent registered the impugned FIR in Crime No.218 of 2020 for the offences under Sections 406, 420, 120B of I.P.C. The petitioner is a Chartered Accountant by profession and he has been started practicing in the year 1986. M/s. Call Express Construction (India) Private Limited is one of his clients and he has been undertaking its statutory audit since the year 2006. The second respondent registered the impugned FIR solely on the allegation that the accused persons organized an even for launch of USHERA Project at Hotel Maurya Sheraton, Chanakyapuri, New Delhi, in the month of February 2015. Except the said allegation, other allegations pertaining to the transactions or events as alleged in the FIR had occurred at Sholinganallur Village & Taluk, Kancheepuram District, Tamil Nadu.

7.1. He further submitted that the petitioner had no authority to sign any cheque or carrying out any banking/financial transactions for or on behalf of the company. Therefore, the petitioner is not involved in any crime and all the allegations made in the FIR as against the petitioner are malicious, vindictive and without any merit. That apart, the entire allegations are purely civil in nature and no ingredients to attract any of the offence as alleged by the complainant. In fact, the present impugned FIR has been lodged by the third



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respondent suppressing the earlier complaint lodged by his father. After registration of the present FIR, the earlier complaint was closed as “mistake of fact” as against which the father of the third respondent also filed protest petition and it is pending. Even according to the defacto complainant, the entire cause of action arose at Chennai. Therefore, this Court has got jurisdiction to entertain the present writ petitions to quash the FIR. The petitioner has knowledge about the transactions of sale and consideration agreement in his capacity of being statutory auditor of the company. His duty is to disclose the details in the balance sheet which shall eventually be filed before the Registrar of Companies and Income Tax authorities. Therefore, the petitioner has no control or even concern as to the company is to be managed or being managed or how shares are allotted or how the consideration is fixed. The learned Senior Counsel also adopted the submissions made by the learned Senior Counsel who appeared for other accused persons in respect of maintainability of this Writ Petition.

8. Per contra, Mr.Maninder Singh, learned Senior Counsel appearing for the respondents 3 & 4 submitted that the Hon'ble Supreme Court of India directed this Court to decide with regard to territorial jurisdiction of this Court



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to entertain these Writ Petitions as first issue. On the complaint lodged by the respondents 3 & 4 and others, the second respondent registered the FIR in Crime No.218 of 2020 for the offences punishable under Sections 406, 420, 120B of IPC. There are totally seven accused in which, the petitioners are arrayed as A1, A2 and A7. After registration of the FIR, the concerned jurisdictional Magistrate has seized up the said FIR and also the investigation is off-way through on the file of the second respondent herein. Once the second respondent registered the FIR, this Court has no territorial jurisdiction to deal with the FIR registered by the second respondent.

8.1. He further submitted that Article 226 (2) of the Constitution of India, is applicable only in respect of the civil cases and not for the Writ Petitions. The entire cause of action arose within the jurisdiction of the second respondent, since the accused persons organized the function at Hotel Maurya Sheraton, New Delhi, on 27.02.2015, where the defacto complainant booked and paid part of the amount to the accused persons. All the accused persons were stayed there on 27 & 28th February, 2015. The said promotional event was organized at New Delhi and the respondents 3 & 4 were induced by the accused persons and also misrepresented with regard to the project and received post dated cheques. They entered into agreement only at New Delhi



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as such major portion of cause of action arose only at New Delhi. In support of

his contention, he relied upon the following judgments :-

- i. (2020) SCC Online Sc 654 – Rhea Chakraborty Vs. State of Bihar & ors*
- ii. 2011 SCC Online All 612 - Nishant Mishra and ors Vs State of U.P and ors.*
- iii. (2009) 11 Scc 286 – Rajendra Ramachandra Kavalekar Vs. State of Maharashtra & anr.*
- iv. Order dated 22.08.2012 in W.P.SR.Nos.69241, 39245 & 69249 of 2017 passed by this Court.*
- v. Order dated 08.01.2019 in S.B.Criminal Writ No.211 of 2016 -Anubhav Ajmani Vs. State of Madhya Pradesh.*

9. Mr.J.Madanagopal Rao, learned counsel appearing for the second respondent submitted that after registration of FIR, during the course of investigation, notice under Section 91 Cr.P.C., was served to M/s.Jaypee Hotels, Rajender Nagar, New Delhi regarding stay of the accused persons in month of October & November, 2016. A separate notice was also served to the Indigo Airline about the accused travel on relevant time from Chennai to New Delhi. On receipt of the report revealed that the accused persons traveled from Chennai to New Delhi and they also stayed at Jaypee Hotels, New Delhi. In fact, even before that, the notice under Section 41A of Cr.P.C., was also served



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to the accused persons. However they failed to appear due to Covid-19 pandemic situation. After registration of FIR, it has been seized up by the jurisdictional Court viz., the Chief Metropolitan Magistrate, Patiala House Court, New Delhi. The investigation also commenced and it is under progress. Therefore, this Court has no territorial jurisdiction to entertain these Writ Petitions, since already the accused persons filed anticipatory bail petition before the jurisdiction Court at New Delhi and the notice issued under Section 41A of Cr.P.C., was also under challenge before the Hon'ble High Court of New Delhi.

10. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioners in CrI.O.P.NO.2688 of 2021, Mr.M.S.Krishnan, learned Senior Counsel appearing for petitioner in CrI.O.P.No.25129 of 2021, Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent, Mr.J.Madanagopal Rao, learned counsel appearing for the second respondent and Mr.Maninder Singh, learned Senior Counsel appearing for the respondents 3 & 4 in both petitions.

11. Both the Writ Petitions have been filed by the petitioners challenging the FIR in Crime No.218 of 2020 registered for the offences



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punishable under Sections 406, 420, 120B of IPC on the file of the second respondent. The crux of the complainant is that the defacto complainants are home buyers who were invested their money in the USHERA project, launched and promoted by the petitioners and others through their family-owned company called M/s.Call Express Construction India Private Limited, in which both the petitioners in W.P.No.2861 of 2021 are share holders.

12. All the accused persons assured the home buyers that the project would be completed and handed over in three years, as the petitioner had dishonest intention since inception and their sole purpose was to siphon off the money collected from the home buyer, financial institutions as well as investor abroad and in order to swindle the entire money, various shell companies were created in India and abroad. One such company was created in Australia viz., Callex Australia Pvt. Ltd, which is managed and run by the son of the petitioner in W.P.No.26881 of 2021.

13. Therefore, the defacto complainants lodged complaint on 18.08.2020 before the second respondent for the offence of cheating, fraud, Criminal breach of trust, syphoning off funds, delay in handing over the



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possession of the flats as promised by the accused persons. After detailed preliminary enquiry, the second respondent registered the FIR which is impugned in these Writ Petitions. Now the second respondent commenced investigation and it is pending.

14. In fact, the second respondent issued notice under Section 41A of Cr.P.C., on 29.12.2020 to the accused persons. Even after receipt of the same, the petitioners have not chosen to challenge the same before the Hon'ble High Court of New Delhi. The petitioners in W.P.No.2688 of 2021 filed this Writ Petition to quash the FIR registered in Crime No.281 of 2020 on the file of the second respondent and this Court by an order dated 08.02.2021, admitted the Writ Petition and stayed all further proceedings of the investigation in Crime No.218 of 2020. Aggrieved by the same, the defacto complainant filed Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.2806 of 2021. The Hon'ble Supreme Court of India by an order dated 09.04.2021 granted interim stay of the order passed by this Court dated 08.02.2021.

15. In the mean while, the petitioners in W.P.No.2688 of 2021 filed anticipatory bail petition before the learned Assistant Session Judge, Patiala



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House Court, New Delhi in Crime No.218 of 2020 and the same was dismissed as withdrawn. Further directed the Investigating Officer to serve notice of seven working days before securing them. Likewise, the petitioner in W.P.No.25129 of 2021 filed anticipatory bail petition before the learned Assistant Session Judge, Patiala House Court, New Delhi and the said petition also dismissed as withdrawn and also granted protection for seven days notice before securing him.

16. In the meantime, by an order dated 04.10.2021, the Hon'ble Supreme Court of India passed order thereby set aside the interim order passed by this Court dated 08.02.2021. Further ordered that since the matter is pending before this Court, the Hon'ble Supreme Court of India refrain to express opinion on this aspect to the matter and leave it for the parties to raise objections including territorial jurisdiction before this Court and if such objection is being raised, it is expected to decide the preliminary objection of territorial jurisdiction in the first place. Accordingly, the learned Senior Counsel appearing for the respondents 3 & 4 raised preliminary objections as regards to the maintainability of the Writ Petitions on the ground of territorial jurisdiction of this Court to entertain the Writ Petitions to quash the FIR registered at New Delhi.



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17. The impugned FIR in these Writ Petitions has been registered by the second respondent in New Delhi. While investigating the crime, the second respondent issued notice under Section 41A of the Cr.P.C., to the accused persons. After registration of FIR, it has been duly sent to the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi, who has jurisdiction over the matter to take cognizance under Section 190 of Cr.P.C., in pursuant to the registration of FIR. The second respondent have already commenced investigation and in fact they have been freezed the accounts of the petitioners.

18. The learned Senior Counsel appearing for the petitioners relied upon the judgement of the Hon'ble Supreme Court of India reported in **2007 SCC 640** in the case of *Navinchandra Vs. State of Maharashtra & ors* and emphasis that the this Court has got territorial jurisdiction to entertain the Writ Petition despite the fact that the FIR impugned in these Writ Petitions is registered in New Delhi. The Hon'ble Supreme Court of India relied upon the Article 226 of the Constitution of India which provides the power to High Courts to issue certain writs reads as follows :-

*“226. Power of High Courts to issue certain writs.—
(1) Notwithstanding anything in article 32 every*



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High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(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”

19. Further held that Clause (2) of Article 226 of the Constitution of India is clear that the maintainability or otherwise of the Writ Petition in the High Court depends on whether cause of action for filing the same arose, wholly or in part, within the jurisdiction of that Court. In that case, cause of action arose to register the FIR are available in both places viz., Meghalaya as well as at Mumbai. Therefore, the Hon'ble Supreme Court of India transferred



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the investigation pending from the file of Meghalaya Police to the file of Mumbai Police. Further held that mere the 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 jurisdiction of the other State. The place of residence of present 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 jurisdiction of that Court. It depends upon the facts in each cases. The Hon'ble Supreme Court of India also held that the Writ Petition can be entertained even a part of the cause of action arose, after 15th amendment of the Article 226 of the Constitution of India.

20. In the case on hand the second respondent registered the FIR impugned in these Writ Petitions for the reason that the marketing event to induce the defacto complainants was held at Maurya Sheraton Hotel at New Delhi. All the payments were made to the accused from the accounts of the defacto complainant which are in New Delhi. The agreements were signed in New Delhi as well as notarized in New Delhi on 18.11.2016. The power of



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attorney has been issued by the defacto complainants in favour of one Vijayalakshmi Gopi, President of the Company run by the petitioners on 18.11.2016 in New Delhi. The loan agreement was signed by the defacto complainants in New Delhi. All the defacto complainants are living in New Delhi. Therefore, the judgment of the Hon'ble Supreme Court of India is not applicable to the case on hand. Hence, the second respondent rightly registered the FIR and the Hon'ble High Court of New Delhi alone has exclusive jurisdiction to deal with the impugned FIR.

21. The learned Senior Counsel appearing for the respondents 3 & 4 relied upon the judgment of the Hon'ble Division Bench of the Allahabad High Court reported in **2011 SCC online All 612** in the case of **Nishant Mishra & ors Vs. State of U.P. & ors** held that if the investigation is being carried out at a particular place in another State and if the High Court in another State can interfere with the investigation because part of the cause of action is connected with that State, it could give rise to an anomalous position because different High Court may exercise jurisdiction over the same subject matter in different ways. Also as the investigation had commenced in other State, where the report etc were registered, obtaining of police remand and bail etc



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would ordinarily be considered by the High Court of the said State.

Therefore, the concerned territorial High Court would have jurisdiction because it was the superior Court before which the said subordinate Courts would submit the reports of investigation or remands etc.

22. As stated supra, the second respondent now registered the FIR. Thereafter, the accused persons filed anticipatory bail petitions before the learned Additional Sessions Judge, Patiala House Court, New Delhi and the same were dismissed and issued direction to the second respondent to issue notice under Section 41 A of Cr.P.C., after giving sufficient time. The said order was challenged by the defacto complainants before the Hon'ble High Court of New Delhi in CrI.M.C.Nos.2848 & 2842 of 2022 and both are pending. That apart, after registration of FIR, the learned Chief Metropolitan Magistrate, New Delhi, has seized the FIR and it is pending. Therefore, the Hon'ble High Court of New Delhi alone has got jurisdiction to deal with the FIR impugned in this Writ Petitions.

23. The learned Senior Counsel appearing for the respondents 3 & 4 also relied upon the judgement of this Court dated **22.08.2017** passed in



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W.P.SR.Nos.69241, 69245 & 69249 of 2017 in the case of **Karthi P.**

Chidambaram Vs. Superintendent of Police, which held as follows:-

“32.According to the writ petitioners, with regard to territorial jurisdiction, part of the cause of action arises in Chennai that too within the jurisdiction of this Court. Therefore, this Court has territorial jurisdiction over the subject matter and this Court has territorial jurisdiction to entertain these writ petitions.

33.According to the prosecution, though part of cause of action arises in Chennai, but the FIR was registered in New Delhi, the FIR was sent to the Special Judge CBI Cases, Patiala House Courts, New Delhi and the Special Court, New Delhi has seized the matter and now the Delhi High Court only has territorial jurisdiction over the subject matter under Article 227 of the Constitution of India, because the Delhi High Court has superintendence over all the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

.....

46.As already conclusively held by the Hon'ble Supreme Court in Dasrath Rupsingh Rathod V. State of Maharashtra, reported in (2014) 9 SCC 129, the concept of "part of cause of action", is absolutely irrelevant and has no application in criminal proceedings and only that High Court would entertain a prayer for quashing which has the



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supervisory jurisdiction over the jurisdictional court which is monitoring the investigation as per CrPC.

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77. As already narrated above, the FIR is registered at New Delhi and also the same has been produced before the Special Judge CBI cases, Patiala House Courts, New Delhi and after investigation also the charge sheet will be filed before the Special Court, New Delhi. As per the doctrine of forum convenience, since because part of the cause of action arises in Chennai, the Court will not constitute to determining the factor compelling the Court to entertain the matter. Further, as held above, the writ petitions are maintainable before this Court and this Court has territorial jurisdiction. As admitted by both the counsel the writ petitions are maintainable. As this Court held that this Court has territorial jurisdiction, considering the facts and circumspection of the case, that the FIR is registered at New Delhi and produced before the Special Judge CBI cases, Patiala House Courts, New Delhi against the petitioners herein and other unknown persons/officials for the offences constituted under Section 120B r/w.420 and Sections 8 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 relating to the officials in the Ministry of Finance Department, Government of India, New Delhi and Further, the petitioners are businessmen and their companies are involved in the issue, hence, they would not



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have any impediment or any financial crisis to approach the Delhi High Court.

78. Under the said circumstances, this Court is not entertaining these writ petitions, for the reason that this Court is inclined to adopt the doctrine of forum convenience, that being so no prejudice would be caused to the petitioners and also they are having an alternative remedy to approach the Delhi High Court for the very same relief, which has superintendence power over the Special Court for CBI Cases at New Delhi which is within its jurisdiction. In this case, though the writ petitions are maintainable and this Court has territorial jurisdiction, however, in the interest of justice and in order to avoid conflicting view, in case any one of the party approaches before the Delhi High Court or Bombay High Court for the very same relief, this Court is inclined to adopt the doctrine of forum convenience.”

24. As per the doctrine of forum convenience, since because part of the cause of action arose in Chennai, this Court will not constitute to determining the factor compelling this Court to entertain the matter. Even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative



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factors compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience. The principle of forum convenience in its ambit a sweep encapsulates the concept that the cause of action arising within the jurisdiction of the Court will not itself constitute to be the determining factor compelling the Court to entertain the matter.

25. As stated supra, this Court has no jurisdiction to deal with the impugned FIR since it is registered by the second respondent within the jurisdiction of the Hon'ble High Court of New Delhi. Hence, this Court is inclined to adopt the doctrine of forum convenience that being so no prejudice would be caused to the petitioners as they have alternative remedy to approach the Hon'ble High Court of New Delhi, which has superintendence power over the trial Court at New Delhi which is within its jurisdiction.

26. It is also relevant to rely upon the judgement of this Court in the case of *S.Ilanahai Vs. The State of Mumbai* in CrI.O.P.No.22498 of 2014 dated 13.01.2015 in which, this Court held that though it may be true that a part of offence has been committed within the State of Tamil Nadu, since the



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situs of the authority who has registered the crime falls outside the territorial limits of this Court, this petition is not at all maintainable before this Court.

This Court also dealt with the issue in detailed manner with regard to the term “cause of action” as discussed by the Hon'ble Supreme Court of India in the case of **Navinchandra Vs. State of Maharashtra & ors** and the relevant paragraphs are extracted hereunder :-

“33. In Navinchandra N. Majithia case (cited supra) the term "cause of action" has been referred to as though it has got relevance to the criminal law. The Division Bench in the said judgment has interchangeably used the term "cause of action" for the term "place of commission of the crime". In the said judgment, though Hon'ble Justice K.T. Thomas, has made reference to Section 2(e) of the Code of Criminal Procedure, the Hon'ble Supreme Court has not specifically dealt with the question as to whether the term "cause of action" has got any relevance to the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure.

34. Subsequently, a larger Bench of the Hon'ble Supreme Court consisting of three Judges in Dashrath Rupsingh Rathod Vs. State of Maharashtra reported in (2014) 9 SCC 129 had occasion to notice the said judgment of the earlier Division Bench in Navinchandra N. Majithia case (cited supra), where the Hon'ble Supreme Court dealt



with the territorial jurisdiction for filing a complaint for offence under Section 138 of the Negotiable Instruments Act.

35. Interestingly, the term "cause of action" is employed in section 142(b) of the Negotiable Instruments Act. For better understanding, let us have a look into Section 142, which reads as follows:

"Section 142. Cognizance of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

36. In the said judgment while referring to Navinchandra N. Majithia case, in paragraph 13, the Hon'ble Supreme Court has observed as follows:

"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



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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 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....."

37. Having said so, the Hon'ble Supreme Court in paragraph 16 categorically held that the civil law concept of "cause of action" is not applicable to criminal law at all in this country. In paragraphs 16(1) and 16(2) the Hon'ble Supreme Court held as follows:

"16(1) Unlike civil actions, where the Plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the Defendant in a civil action may be relevant, the



convenience of the so called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 of CrPC, we hasten to adumbrate that the exceptions to it are contained in the CrPC itself, that is, in the contents of the succeeding Section 178. The CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report. Prosecution ensues from a Complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or "prosecuted") by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary 5th Edition is

"(a) criminal action; the proceeding instituted and carried on by due process of law, before a competent Tribunal, for the purpose of determining the guilt or innocence of a person charged with crime."

These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings.

16(2) We reiterate that Section 178 admits of no debate that



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in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal Trials. Section 178, CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted. In fact, since cognizance of the offence is subject to the five Bhaskaran components or concomitants the concatenation of which ripens the already committed offence under Section 138 NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of Corruption Act 1988. Similar situation is statutorily created by Section 19 of the Environmental Protection Act 1986, Section 11 of the Central Sales Tax Act



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1956, Section 279 of the Income Tax Act, Sections 132 and 308, CrPC, Section 137 of the Customs Act etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial. If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution."

27. This Court relied upon the judgements of the Hon'ble Supreme Court of India in the case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra and anr*** reported in ***(2014) 9 SCC 129*** in which the Hon'ble Supreme Court of India held that the civil law concept of "part of cause of action" cannot be borrowed for the purpose of ascertaining jurisdiction in criminal matters. The civil concept of "part of cause of action" cannot be imported in all the matters, where the matter of criminal proceedings or the proceedings arising there from, in respect of whether the petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution of India or under Section 482 of Cr.P.C. The infusion of the concept of cause of action



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into criminal dispensation had led to subsequent confusion countenanced in High Courts. Therefore, the concept of cause of action which is relevant to civil law cannot be imported to criminal law that too for the cause of action needs to register the FIR and the second respondent rightly registered the FIR, since the part of cause of action arose at New Delhi, whereas the cause of action does not arise to entertain the Writ Petition before this Court. Further, when the second respondent already registered the FIR and after registration of the FIR, the High Court which has got territorial jurisdiction has only jurisdiction to deal with the said FIR. Therefore, the petitioners cannot use the doctrine of forum convenience which is deprecated by the Hon'ble Supreme Court of India as well as by this Court.

28. In fact, the petitioners filed second anticipatory bail petitions before the learned Assistant Session Judge, Patiala House Court, New Delhi. Though the Court below dismissed the earlier anticipatory bail petitions, directed the second respondent to issue seven days prior notice and do the investigation. The said orders have been challenged by the defacto complainant viz., fourth respondent herein in CrI.M.C.Nos.2848 & 2842 of 2022 before the Hon'ble High Court of Delhi and they are pending.



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29. The Hon'ble Division Bench of High Court of Gujarat at Ahmedabad dealt with the same issue in the case of ***Bhavendra Hasmukhlal Patadia Vs. Union of India*** in ***R/Special Civil Application No.4820 of 2022*** and by the judgment dated **27.04.2022** considered the provision under Article 226 of the Constitution of India as it stood prior to amendment which read as follows:-

"Article 226. Power of High Courts to issue certain writs. -

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them or the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by Clause (1) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32".

While interpreting the aforesaid provisions, the Constitution Bench of the Hon'ble Supreme Court of India, in the case of ***Election Commission, India***



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Vs. Saks Venkata Rao, reported in *AIR 1953 SC 210*, held that the writ Court

would not run beyond the territories subject to its jurisdiction. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under Article 226 of the Constitution, which makes no reference to any cause of action or where it arises but insist on the presence of the person or authority within the territories in relation to which the High Court exercises jurisdiction.

30. As a result, Clause 1(A) was inserted in Article 226 of the Constitution in 15th Amendment Act, 1963 and subsequently renumbered as Clause (2) of the Constitution in 42nd Amendment Act, 1976. As per the amended provisions, the High Court can issue writ, when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the territorial jurisdiction. The expression “cause of action” has not be defined either in the Code of Civil Procedure or the Constitution.

31. Article 226(2) of the Constitution of India was again considered by the Hon'ble Supreme Court of India in the case of *Oil and Natural Gas*



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Commission Vs. Utpal Kumar Basu and ors reported in ***(1994) 4 SCC 711***,

and held that whether the High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. In the case of ***Kusum Ingots and Alloys Ltd., Vs. Union of India and anr*** reported in ***(2001) 6 SCC 254***, the Hon'ble Supreme Court of India held that the meaning of the word “cause of action” with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed as follows:-

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.



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10. Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

Their Lordships further observed as under:-

'29. In view of Clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

32. The Hon'ble Supreme Court of India also held in the case of ***Om Prakash Srivastava Vs. Union of India & anr*** reported in ***(2006) 6 SCC 207*** as follows :-

"7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial



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limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

Thus, it is clear that a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action would possibly accrue or would arise. It is also clear from the above judgments that in order to exercise jurisdiction to entertain a Writ Petition, the Court must be satisfied from the entire facts pleaded in support of the cause of action that those fact do constitute a case so as to empower the Court to decide the dispute which had, at least in part, arisen within its jurisdiction.

33. After considering all the above judgements, the Hon'ble Division Bench of the High Court of Gujarat at Ahmedabad held in the case of ***Bhavendra Hasmukhlal Patadia Vs. Union of India*** in ***Special Civil Application No.4820 of 2022*** dated ***27.04.2022*** that the principle of forum



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convenience also makes it obligatory on the part of the Court to see the convenience of all the parties before it. Be it the existence of a more appropriate forum, expenses, law relating to the lis, convenience of the witnesses, verification and examinations of the facts or adjudications of the controversy and other similar and ancillary aspects. Even in a scenario where a part cause of action has arisen within one High Court's territorial jurisdiction, that High Court can still refuse to exercise jurisdiction under Article 226 of the Constitution of India, on account of other considerations as defined under the concept of forum convenience.

34. In the case on hand, the cause for lodging the complaint at a particular place must not be confused with the cause of action for filing the Writ Petition to quash the said FIR. Even if a fraction of the cause for filing the complaint has arisen at New Delhi, an FIR could be lodged at New Delhi. Even assuming that the said registration of FIR in New Delhi is malafide, the cause of action for filing this Writ Petition to quash the said FIR could arise only before the Hon'ble High Court of New Delhi and not at all places where part of cause for lodging the complaint may have arisen and where the FIR could have been registered and investigated and where the ensuing criminal



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case could have been tried. Thus cause of action for lodging the criminal complaint is different from the cause of action for quashing the FIR.

35. The provisions of Sections 177 & 178 of Cr.P.C., therefore, could not and ought not to be applied for determining the territorial jurisdiction of the High Court, which has to only consider the provisions of Article 226 of the Constitution of India. Therefore, the present Writ Petitions are unnecessarily and with ulterior motives dragged to face the authorities in New Delhi and that it is a calculated move to choose this Court and it cannot be accepted so as to usurp territorial jurisdiction and undermine the authority and jurisdiction of another High Court viz., the Hon'ble High Court of New Delhi.

36. The Hon'ble Division Bench also observed that if several accused persons approaching several High Court in a case part of cause of action taken place more than one State, if all the High Courts within whose territorial jurisdiction any of the acts constituting the offences have taken place and all the High Courts assume extraordinary writ jurisdiction for intervention in a criminal case registered in any one of the States, a distinct possibility of several High Court taking inconsistent views and issuing conflicting directions may arise. Therefore, the judicial discipline requires and expediency demands



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that only the High Court within whose territorial jurisdiction the complaint is filed or criminal case is pending entertains the petitions arising therefrom.

Thus, because of the petitioners reside at Chennai, they came to be filed these Writ Petitions before this Court by itself will not confer the jurisdiction of this Court, more particularly when the petitioners are being accused in the FIR registered by the second respondent at New Delhi.

37. In view of the above discussions, both the Writ Petitions are not maintainable before this Court, since this Court has no territorial jurisdiction to entertain these Writ Petitions. Accordingly, both the Writ Petitions are dismissed. However, the petitioners are at liberty to approach the Hon'ble High Court of New Delhi to challenge the FIR impugned in these Writ Petitions, which is having territorial jurisdiction.

38. Accordingly, both the Writ Petitions stand dismissed. Consequently, connected Miscellaneous Petitions are also closed. There shall be no order as to costs.

11.08.2022

Internet : Yes / No

Index : Yes / No



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Speaking / Non Speaking order

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Assistant Commissioner of Police,
Chennai - CCB,
CCB-1, Chennai.
(CCB Cr.No.253/2019)
2. The Inspector of Police,
Delhi - EOW,
(FIR No.218 of 2020)
3. The Public Prosecutor
Madras High Court,
Chennai.

order in
W.P.Nos.2688 & 25129 of 2021
and W.M.P.Nos.3019,
26488 & 26490 of 2021

11.08.2022