IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-488-2018 (O&M)
Reserved on : 19.07.2022
Pronounced on: 10.08.2022

UCO Bank & another ... Appellants

Versus

Raj Kumar ... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI

Present:- Mr.Sanjiv Gupta KKR, Advocate, for the appellant.
Respondent-in-person.

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G.S. Sandhawalia, J.

Consideration in the present Letters Patent Appeal is to the order dated 08.01.2018 passed by the learned Single Judge wherein CWP-6817-2014 filed by the respondent employee was partly allowed to the extent that the appellant-bank would identify the disciplinary authority and then take action accordingly. The reply filed by the writ petitioner to the charge-sheet was to be considered by the said disciplinary authority and in case it was not satisfactory, the bank was directed to hold disciplinary proceedings in accordance with law. Keeping in view the fact that the allegations related to the year 2007-2008, the process was directed to be completed within a period of 6 months. The service benefits of the employee and the monetary benefits from the date of dismissal i.e. 31.05.2010 (Annexure P-2) was to be granted to him and were to be paid and disbursed within a period of 4 months.

The same was primarily done on account of the fact that the disciplinary authority had proceeded to appoint the Enquiry Officer without providing ample opportunity and without taking into account the relevant reply to the charge-sheet and therefore, whatever action had been taken from the date of appointing the Enquiry Officer i.e. 02.04.2009 till the date the review had been dismissed on 28.08.2013, were set aside.

It is pertinent to notice that while issuing notice of motion, the Coordinate Bench had stayed the operation of the impugned judgment and the employee had reached the age of superannuation on 30.04.2021. It is also pertinent to notice that vide detailed order dated 25.01.2021, it was directed that the appellant-bank would seek fresh instructions with regard to substitution of the punishment of dismissal with compulsory retirement so that the relief of retiral dues could be given to the employee. Same was primarily done keeping in view the background and the fact that the employee had 27 years of service and that he had also been discharged on the criminal side by the CJM, Panchkula on 08.11.2012 (Annexure P-5). The bank has taken the stand that the employee is not entitled for the benefit of compulsory retirement and we were informed of the said stand on 25.10.2021.

Counsel for the bank has firstly argued that the learned Single Judge was not correct as the territorial jurisdiction of this Court is lacking and therefore, the judgment of the learned Single Judge is not sustainable on that account and the writ petition be dismissed with liberty to approach the Court of competent jurisdiction. It is the case of counsel for the bank that specific objection had been taken regarding this aspect that the charge-sheet and the impugned order of dismissal were passed by the Zonal Office, Bareilly whereas the orders dismissing the appeal (Annexure P-3) and the review (Annexure P-4) have been passed by the Head Office, Kolkata and therefore, the writ petition was not maintainable. The charge-sheet was issued on account of misconduct while functioning as Branch Manager of the Kandhla Branch in Uttar Pradesh and therefore, the entire disciplinary proceedings were carried out at the Zonal Office, Bareilly, Meerut.

The said preliminary objection was rejected by the learned Single Judge while placing reliance upon the judgment of the Apex Court in **Naval Kishore Sharma Vs. Union of India & others, AIR 2014 SC 3607** that if partial cause of action arises within the territorial jurisdiction of the Court the writ is maintainable.

In order to appreciate the issue of jurisdiction, necessary scrutiny of the factual aspect will have to be done. A perusal of the paperbook would go on to show that the charge-sheet dated 14.02.2009 (Annexure P-1) was served upon the employee who was working as Assistant General Officer, UCO Bank at the Zonal Office, Chandigarh by the Assistant General Manager, Zonal Office, Bareilly, Meerut vide which he was required to submit the written statement in his defence on the statement of allegations and the charges framed which were specified therein. In the event of the non-receipt of his defence or on receipt of unsatisfactory defence, further action was to be taken by the bank on the allegations pertaining to his functioning as a Branch Manager of the Kandhla Branch from 11.08.2007 till 01.07.2008. As per the statement of allegations, 8 call deposits had been issued at the request of one Manoj Kumar which were pledged to the Managing Director of the Haryana State Roads and Bridges Development Corporation, Chandigarh. A letter had been received to encash 4 of the said call deposits from the said Corporation wherein the amount of the call deposits had been shown to be inflated. Similarly, another letter was received on 23.04.2008 for encashing another 2 call deposits wherein also there was inflation of the amounts which had been issued by the Kandhla Branch.

The respondent working as Branch Manager on 30.04.2008 had advised the Corporation that the actual amount of call deposits should be called for and delivered the said communication to an unknown person who was not employee of the Corporation and did not send the same by registered post, vide subsequent request dated 09.05.2008. The Corporation called for remittence of the 6 call deposits to the respondent who vide letter dated 13.05.2008 under the signatures of the employee responded that the Branch had not received such call deposits and delivered the letter to an unknown person instead of sending it by registered post. The Corporation on 22.07.2008 sought confirmation of the call deposits which were stated to be inflated by 100 times and thus, the charge was by the bank that there should have been strong denial vide registered post with AD communication and the official should have been contacted on telephone and by personal visit and the matter should have been reported to the controlling office for further guidance but the matter was taken very casually. It is thus stated that he was the collaborator to the occurrence of the fraud.

Apart from that, other charges were levied against the purchaser of the call deposits namely one Manoj Kumar and the fact that a sum of Rs. 7 lakhs had been got credited in his account which is the demand draft in favour of the Corporation which was stated to have been lost during transaction with HDFC Bank but had been allowed to be deposited in his account and should have been only cancelled with the concurrence of the payee. Other allegations of allowing the overdraft in favour of Manoj Kumar and not submitting any controlled returns and allow him to open another account after closing the first one while not following KYC norms was alleged. Two demand drafts for Rs.9.5 lakhs payable at Chandigarh Branch favouring the Corporation at the request of one Vikas Rajput and of Manoj Kumar was noticed and that the use of funds of 2 different parties for issuance of DD at the request of other person was also one of the charges. Thus the employee was faced with the following allegations of charge:

> "1. Mr. Raj Kumar has failed to ensure and protect interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of a Bank officer which is violative of Regulation 3(1) of UCO Bank Officer Employees (Conduct) Regulations, 1976 as amended.
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> 2. Mr. Raj Kumar in the performance of his official duties and in exercise of powers conferred upon him acted otherwise in

his best judgement which is violative of Regulation 3(3) of UCO Bank Officer Employees (Conduct) Regulations, 1976 as amended.”

It is not disputed that an FIR was lodged by the Deputy General Manager of the Corporation against Manoj Kumar that he had purchased FDRs for Rs.23,000/- and Rs.30,000/- and Vikas Rajput had purchased 2 FDRs of Rs.30,000/- each and prepared them on a computer scanning stationery and enhanced the amount to Rs.23,00,000/- and Rs.30,00,000/- respectively. Similarly, cheques also had been given from Punjab & Sind Bank, Yamunanagar which had been dishonoured and Manoj Kumar had collected toll from the public but did not deposit the same with the Public Exchequer and thus, fraud had been committed by giving fake FDRs. On account of the fact that forged and fake FDRs had been submitted in Panchkula, it had led to lodging of FIR No.15 dated 12.01.2009 at PS Sector 5, Panchkula under the provisions of Sections 420, 467, 468, 471, 120-B IPC. Since Manoj Kumar had committed suicide, the Chief Judicial Magistrate, Panchkula on 08.11.2012 (Annexure P-5) discharged the employee on the ground that he has only been made a scapegoat and the offence had been committed by some of the officials of the department with the connivance of Manoj Kumar.

Thus, it was held out that the employee had failed to discharge his duties with utmost integrity, honesty, devotion and diligence which was unbecoming of a bank officer. The employee had submitted his reply to the charge-sheet on 02.03.2009 (Annexure P-11) that the matter pertained to the year 2007-2008 and it is difficult to recollect the acts of omission and commissions and sought permission to inspect the records and take photocopies and that he would submit his reply after inspection 15 days thereafter. The said request was made to the disciplinary authority through proper channel which was responded on 17.03.2009 that he could visit Kandhla Branch for one day to inspect the documents with the caveat that no copy of the documents would be given to him and he may note down the particulars manually and was asked to submit his reply 5 days after visiting the branch.

The employee vide letter dated 02.04.2009 (Annexure P-59) did not take any such tenable defence but only took the plea that the allegations levelled against him were totally baseless and concocted and sent the same to the disciplinary authority through proper channel. Thus, in the absence of any stand worth the name, the disciplinary authority took the decision to conduct an enquiry and appointed the Enquiry Officer and Presenting Officer and sent the same to the Senior Manager of the Meerut Branch to look into the allegations and misconduct.

Apparently, on 13.04.2009 (Annexure P-13), the bank had also written to the employee that the statement of allegations and article of charge which had been sent earlier along with list of documents and witnesses were only illustrative and the Presenting Officer could produce other documents and witnesses to prove the allegations and the names of the 4 witnesses were mentioned in the said communication. The delinquent officer apparently sought to seek special leave and TA/DA and hotel expenses for his defence representative from Chandigarh Zone vide communication dated 15.07.2009 (Annexure P-18) on the ground that the enquiry was being conducted at Muzaffar Nagar (U.P.) Bareilly Zone which was rejected on 28.07.2009 (Annexure P-19). On 17.08.2009, the venue of enquiry was sought to be changed to Chandigarh on the alleged apprehension of life which was also rejected on 18.08.2009. Subsequently, on 19.08.2009 (Annexure P-20) permission was given to engage defence representative from Chandigarh Zone along with the demand of TA/DA and special leave as per rules. An effort was sought to be made on 08.07.2009 (Annexure P-23) to change the venue out of the Chandigarh Zone to Karnal, Panipat, Ambala Cantt etc. which was followed up on 24.07.2009 (Annexure P-24). The same was disallowed by the Disciplinary Authority and the venue was fixed at the Zonal Office Branch at Bareilly.

The Enquiry Officer vide detailed report dated 17.03.2010 (Annexure P-43) came to the conclusion that allegations No.1 and 9 were partly proved whereas allegations No.3, 5, 7, 8 & 9 were proved and allegations No.2, 4 & 6 remained unproved. Resultantly, letter dated 25.03.2010 (Annexure P-44) was served upon the employee that the enquiry report had come and the disciplinary authority concurs with the findings of the Enquiry Authority and his comments were asked for within 7 days. It is thus apparent that from the time the Enquiry Officer was appointed on 02.04.2009 till 08.07.2009, the employee had participated before the Enquiry Officer at Muzaffar Nagar/Bareilly/ Meerut. However, thereafter he did not participate, forcing the Enquiry

Officer to proceed ex-parte and then submit his detailed report dated 17.03.2010. This would be apparent from the reproduced portion which reads as under:

> "In the backdrop of all the above factors, it was considered appropriate to hold the enquiry proceedings at B/o Muzaffarnagar (Dist. Headquarter). The Preliminary hearing of the enquiry was held on 17.04.09 at B/o Muzaffarnagar.
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> The C.O. attended the hearing at Muzaffarnagar on 17.04.09 and confirmed that he had received the chargesheet dtd.14.02.09 on 21.02.2009. He also stated that he had sent a reply dtd. 02.04.09 to Zonal Office, Bareeily but did not receive any reply. The C.O. stated that the allegations/charges are totally baseless and concocted and denied all the allegations/charges. Accordingly, the enquiry was continued further.
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> It is pertinent to mention here that due to holding of General Elections in the country in April/May 2009, officers at branches were called away for election training & duties from time to time causing working problems at branches including B/o Kandhla (where documents were available) and at Meerut branch where the P.O. was posted. As such, during this period two hearings were held at Meerut so that P.O. could attend to his branch work, and in conduct of these enquiry proceedings also. The two hearings at B/o Meerut were held in initial stages of the enquiry on 20.04.09 and on 03.06.09 only.
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> Hearings at Muzaffarnagar Br. were held from 17.04.09 to 08.07.09 on six days and C.O. came for these six hearings as well as the two hearing at Meerut branch, and also inspected Management as well as Defence documents at Kandhla branch in this period. Prior to 08.07.09, the C.O. Shri Raj Kumar never raised any objections about the venue of the enquiry.

After 08.07.09, the C.O. did not attend any hearing in the enquiry taking one plea or the other, amongst these main being that since he apprehended danger to his life, the enquiry should be held in any office/branch of Chandigarh Zone. No specific source of the danger or previous incident were quoted, but the insistence for change of venue continued. C.O. addressed a letter dtd. 08.07.09 to the Disciplinary Authority (Zonal Manager, Bareilly) (see page 42) for change of venue from Muzaffarnagar branch. The D.A. then decided that enquiry hearing should be held at Zonal Office, Bareilly. Later, in September 2009, the Zonal office at Bareilly was relocated to Meerut and enquiry continued there till 23.11.09.

In this manner, 5 hearings were held at erstwhile Zonal Office Bareilly, and then six hearings were held at Zonal Office, Meerut between 23.07.09 and 23.11.09. The C.O. steadfastly did not attend any hearing during this period, but held continuous correspondence with the Enquiry Authority demanding something or the other. All his letters were duly responded to, as will be seen from the Enquiry Registers from page 46 to 196. Also, copies of day to day proceedings were always sent to the C.O. by the Enquiry Authority, through the Zonal Office, Chandigarh (office of posting of the C.O.). All efforts were made to ensure that full opportunity be provided to the C.O. and rules of natural justice are not violated.

As a consequence of such non-participation by the C.O., the entire enquiry process got extended. He was repeatedly asked to participate but he did not come to Bareilly & Meerut. In the absence of any reasonable evidence/tangible reason furnished by the C.O., there was no ground for conducting of the enquiry at a venue in another zone i.e. in Chandigarh Zone.

As a consequence of such repeated non-participation, there was no way other than to conduct ex-parte proceedings. Management witnesses were called after due intimation to the

> C.O. about their coming to enquiry for deposition. The deposition of the three Management Witnesses during Examination-in-chief by the P.O. was recorded in ex-parte proceedings at Zonal Office, Bareilly in absence of the C.O. as under:-
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> 08.08.09 - MW-1 - Shri - Arun Malhotra – Pages 51 to 58
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> 10.08.09 - MW-2 - Shri Mahabeer Singh – Pages 61 to 67
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> These two witnesses were later called to the enquiry on 15.09.09, 23.09.09, 22.10.09 for cross examination by the C.O. and due information provided to C.O. about their availability for cross examination, but the C.O. did not come citing one reason/pretext or the other. Ultimately, when C.O. again did not come on 29.10.09, the witnesses MW-1 and MW-2 were discharged from the enquiry.
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> The deposition of MW-3 Shri R.K. Miya was then recorded in ex-parte proceedings, at Zonal Office, Meerut in absence of the C.O., during Examination-in-Chief by the Presenting Officer as under:-
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> 10.11.09 - Pages 158 to 162
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> 11.11.09 - Pages 165 to 188
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> Since C.O. had not come on 10.11.09 & 11.11.09 and MW-3 had not been cross examined, MW-3 was called for cross examination on 23.11.09 but C.O. again did not come."

Thereafter, the dismissal order was passed by the disciplinary authority at Meerut on 31.05.2010 (Annexure P-2). An appeal came to be filed by the employee which was dismissed on 29.11.2010 (Annexure P-3) whereby the appellate authority came to the conclusion that the charges proved were serious and grave in nature and there was breach of trust between the management and the employee which was not expected from a man of prudence. In order to accommodate one customer he had flouted all the norms of the bank and risking the bank to great financial loss. In such circumstances, the General Manager felt that the punishment order was commensurate with the gravity of charges levelled against him and it could not afford to have such an employee on whom the bank had lost faith and there was no question of showing any leniency in the matter. The reviewing authority while deciding the review on 28.08.2013 (Annexure P-7) also came to the conclusion that the charges under IPC which was registered are two different proceedings and the outcome of the order of CJM had no bearing on the outcome of the departmental proceedings initiated by the bank. Therefore, it declined to interfere with the order of the disciplinary and the appellate authority.

A cumulative discussion of the above facts would go on to show that the proceedings were initiated on account of a misconduct at Kandhla Branch in the State of Uttar Pradesh and it was on that account the enquiry proceedings were also held therein and the demand of the workman to get the proceedings transferred to Chandigarh Zone was rejected. Various demands had been made by him firstly to get a defence assistance and thereafter, on account of the alleged threat of life to transfer the proceedings from the said place to Chandigarh Zone which was not successful. Eventually the report was submitted by the Enquiry Officer which had led to the dismissal order which was also passed by the disciplinary authorities based at Meerut Branch being the Assistant General Manager. Thus, it is apparent that all the cause of action arose not within the jurisdiction of this Court at any point of time. Mere posting of the employee at Chandigarh would not give him a cause of action.

Reliance by the learned Single Judge upon the judgment in Naval Kishore Sharma (supra) would go on to show that it was a case where the employee was working with the Offshore Department of the Shipping Corporation of India and on being considered unfit for sea service, an order had been passed cancelling the registration of the appellant as a Seaman. He had approached the Patna High Court for grant of various reliefs including 100% disability compensation and pecuniary damages and the writ petition was dismissed on account of the fact that no cause of action had accrued within the territorial jurisdiction of the Patna High Court and while examining the amendment made in the Constitution whereby Clause 1(A) was inserted by the 15th Amendment Act, 1963 and subsequently renumbered as Clause (2) by the 42nd Amendment Act, 1976, the term, 'cause of action' was considered. It was accordingly noticed that the amount of Rs.2.75 lakhs had been offered by the Shipping Corporation in pursuance of the interim order which had not been accepted by the employee and therefore, it was held that the impugned order could not be sustained in the peculiar facts and circumstances. The judgment revolves round peculiar facts which are not applicable to the present situation as there was no misconduct and no proceedings in the form of departmental proceedings.

The Apex Court in **Oil & Natural Gas Commission Vs. Utpal Kumar Basu, (1994) 4 SCC 711,** a three-Judge Bench has held that transgression into the jurisdiction of the other High Court on account of residence to connect the cause of action taking place within the territorial jurisdiction of the High Court which the litigant approaches at his own choice and convenience is to be kept in mind. The cause of action being a bundle of facts which are required to be considered and merely on account of posting of the petitioner at the time when the charge-sheet was served upon him at Chandigarh would not give jurisdiction to this Court. Relevant portion of the judgment reads as under:

> "12. Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of Court

made time and again, some of the learned Judges continue to betray that tendency. Only recently while disposing of appeals arising out of SLP Nos. 10065-66 of 1993, Aligarh Muslim University vs. Vina.v Engineering Enterprises (P) Ltd., this Court observed:

> "We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction."

In that case, the contract in question was executed at Aligarh, the construction work was to be carried out at Aligarh, the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction, the arbitrator was appointed at Aligarh and was to function at Aligarh and yet merely because the respondent was a Calcutta-based firm, it instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of Justice. We do hope that we will not have another occasion to deal with such a situation.

13. The submission of the learned counsel for NICCO based on Section 21 of the Code of Civil Procedure that even if this

> Court comes to the conclusion that the High Court of Calcutta had no jurisdiction, this Court should, in the absence of proof of prejudice, refuse to interfere with the decision of the High Court unless it is otherwise found to be erroneous. While the spirit of Section 21 of the Code of Civil Procedure may support such a submission, we are afraid, the discretion cannot be used in favour of a party which deliberately invokes the jurisdiction of a court which has no jurisdiction whatsoever for ulterior motives. That would only encourage such type of litigation. The object underlying the provision in Section 21 is not to encourage such litigants but to avoid harassment to litigants who had bona fide and in good faith commenced proceedings in a court which is later found to be wanting in jurisdiction. In the instant case, we are convinced, beyond doubt, that NICCO did not act bona fide in moving the Calcutta High Court and, therefore, the submission based on Section 21 must fail."

The Coordinate Bench judgment in **Gurdial Singh Vs. Food Corporation of India, 2006 (3) SCT 97**, which had been relied upon by the appellant-bank was not taken into consideration by the learned Single Judge. In the said case there was a retirement order from the service prematurely and the employee had been relieved of his duties at Shimla, State of Himachal Pradesh. Merely because he had been served the said order at Naya Gaon, Chandigarh, an effort was made to invoke the jurisdiction of this Court and resultantly, it was held that mere service of notice would not constitute any part of cause of action to challenge the order of premature retirement. Reliance was placed upon the judgment in **Gurnam Singh Vs. Union of India, 1994 (3) SCT 386**, that mere settling at a place would not constitute any part of cause of action on account of service of notice apart from **Baldev Singh Vs. Union of India through Secretary, Ministry of Defence, New Delhi, 1997 (1) PLR 655** and **Harvinder Singh Vs. Food Corporation of India, 2003 (2) SCT 706**.

A perusal of the writ petition filed by the employee would also go on to show that it has not been pleaded in any manner that cause of action or part of it arose before this Court regarding the misconduct which was subject matter of enquiry proceedings. Merely because the employee was issued a charge-sheet when he was posted here would not give him a cause of action as he filed reply before the disciplinary authority at Bareilly/Meerut and attended the enquiry proceedings in the State of Uttar Pradesh. The only averment made in the replication is that once the preliminary objection was taken regarding the maintainability of the writ petition and the stance taken was that this Court would have jurisdiction being the place of work and place of carrying on business as per Section 20 of the CPC. We had also called for the FIR to be placed on record to find out whether it was lodged by the bank which would have entitled for some cause of action herein. A perusal of the same would go on to show that as noticed earlier, the case was lodged by the Deputy General Manager of the Corporation and the accused is Manoj Kumar and rather there were no allegations of any forgery against the respondent-employee. As noticed, the charge is of misconduct on account of granting various financial benefits to the clients of the bank and of behaving in an unbecoming manner as the head of the branch and not bringing to the notice of the Corporation and the Head Office at that point of time as to the fact that the FDRs were not of the amount which the Corporation was seeking to encash.

In such circumstances, we are of the considered opinion that reliance upon the judgment in Naval Kishore Sharma (supra) by the learned Single Judge on the ground that the charge-sheet and the dismissal order was served at Chandigarh would not give the requisite cause of action for this Court to go into the merits of the case. Resultantly, the present Letters Patent Appeal is allowed and the judgment of the learned Single Judge dated 08.01.2018 is set aside and the writ petition is dismissed on lack of territorial jurisdiction. Liberty is granted to challenge the said orders before a Court of competent jurisdiction, in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

August 10th, 2022 **(VIKAS SURI)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes
Whether Reportable: Yes