IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

268 CRM-M-3986-2018 (O&M)
Date of decision : 12.07.2023

Sidharath Chaturvedi
.....Petitioner

Versus

State of Punjab and another
..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Yash Pal Singh, Mr. Shivender Malik
and Mr. Ashutosh Verma, Advocates for the petitioner

Ms. Himani Arora, AAG, Punjab

Mr. Pardeep Virk and Dr. Neha Awasthi, Advocates
for respondent No.2.
***

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for quashing of First Information Report No.65, dated 20.03.2017, registered under Section 408 of the Indian Penal Code at Police Station Division No.5, Ludhiana and the consequential proceedings arising therefrom.

2. Briefly, the facts that emanate from the complaint filed by respondent No.2-company are that the petitioner was working as Head (Operation) for the State of Haryana on behalf of the complainant-company. In the first week of November, 2016, he collected an amount of Rs.10 crore approximately from the local cable operations for providing Set Top Boxes (for short 'STB') but did not deposit the same in the bank account of the

company, thus misappropriated the same. After enquiry in the matter by Additional Deputy Commissioner, Ludhiana, and on the opinion of the District Attorney, FIR was lodged.

3. Learned counsel would submit that the petitioner joined the complainant-company on 01.07.2014 as Associate Director and his job was to oversee the operations department. No offence under Section 408 IPC is made out against the petitioner as there was no deficit reflected in the balance sheets and books of accounts for the period during which he was working with the company. At the most, it is a case of recovery of money. He further submits that company is being run from Delhi and the petitioner also resides in Delhi, therefore, the police have no jurisdiction to register the FIR at Ludhiana.

4. On the other hand, learned State counsel assisted by learned counsel for respondent No.2-complainant submitted that after investigation, final report was presented, upon which finding a prima facie case, even charges were framed against the petitioner. The said order of framing of charge has been challenged and is pending for consideration before the Revisional Court. Three prosecution witnesses have also been examined.The bail granted to the petitioner was also cancelled by the trial Court. The registered office of the company was in Ludhiana, as admitted by the petitioner, however, as a matter of fact, overall supervision of the business operations of Delhi office was also done by the company officials at Ludhiana. It was the duty of the petitioner to deposit the amount in the account of the company at Ludhiana that he received from the local operators on account of installation of STBs, but he did not. He committed

criminal breach of trust and defrauded the company by siphoning off a huge amount of Rs.9,38,41,100/- of the company. He has also filed an application before the trial Court discharging him, but the same was dismissed vide order dated 25.10.2018. The plea jurisdiction was never raised by the petitioner before the trial Court at any stage. The intention of the petitioner is merely to delay the proceedings. Thus, they pray for the dismissal of the present petition.

5. Heard the learned counsel for the parties.

6. Pertinently, complaint dated 17.01.2017 was submitted by respondent No.2, whereafter, matter was initially enquired by ADCP, Ludhiana, and as revealed from the reply filed by the State after obtaining opinion of DA Legal, the FIR was registered and after conducting investigation, final report under Section 173 CrPC was presented. It is an admitted position that the proceedings have now reached the stage where 3 prosecution witnesses also stand examined. The petitioner has also challenged the order whereby charges were framed against him, which is pending adjudication before the Revisional Court.

7. Apropos the submissions advanced on behalf of the petitioner, it would be gainful to make reference to the judgment in **Lee Kun Hee, President, Samsung Corporation, South Korea vs. State of Uttar Pradesh**, (2012) 3 SCC 132, wherein Hon'ble The Supreme Court while examining Sections 179, 181 and 182 CrPC, observed and held thus:

> "12. On the question of jurisdiction, based on the factual position indicated above, reference may first be made to Section 179 of the Criminal Procedure Code which is being reproduced hereunder:-
>
> "179. *Offence triable where act is done or consequence*

ensues: When an act is an offence by reasons of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

In Section 179 aforesaid, two phrases need to be noticed. Firstly, "anything which has been done", with reference to the offence. And secondly, "consequence which has ensued", also with reference to the offence. Both the aforesaid phrases substantially enlarge and magnify the scope of jurisdiction contemplated under Section 179 aforesaid, so as to extend the same over areas contemplated by the two phrases. In so far as the present controversy is concerned, the offence(s) alleged in the complaint emerge from the fact, that even though the complainant faithfully performed its obligations under the agreement/contract dated 1.12.2001, the accused dishonestly/fraudulently/falsely denied/avoided the reciprocal obligation(s) which they were obliged to perform thereunder. In our view, the words "anything which has been done", for the present controversy, would extend to anything which has been done in furtherance of the execution of the agreement dated 1.12.2001. The facts constituting the performance of obligations by the complainant, actually constitute the foundational basis for the criminal accusation levelled against the accused (in refusing to honour the corresponding obligation). The instant foundational basis for establishing the commission of the offence, in our view, would fall within the ambit of the words "anything which has been done" used in the aforesaid provision. In the absence of the instant affirmation of the factual position, in the present controversy, the culpability of the accused cannot be established. In the complaint it is asserted, that the contracted goods/product were/was supplied by JCE Consultancy from Ghaziabad in India. The factum of having supplied the goods/product to Samsung, Dubai through Sky Impex Limited, is sought to be established not only through a delivery receipt dated 28.1.2002 (issued by the intermediary buyer - Sky Impex Limited), but also, on the basis of the bill of exchange executed on 1.2.2002 by Samsung, Dubai (the ultimate beneficiary), constituting the payment for the goods/product purchased. The factum of supply of goods from Ghaziabad (in India) to Dubai (in the United Arab Emirates), as an essential component of the offence(s) allegedly committed by the accused, in our view, is relatable to the words "anything which has been done" used in Section 179 aforesaid. This factual position, in our view, is sufficient to vest jurisdiction under Section 179 of the Code of Criminal Procedure, with a competent Court at Ghaziabad.

13. Besides the aforesaid, under Section 179 of the Code of Criminal Procedure, even the place(s) wherein the consequence (of the criminal act) "ensues", would be relevant to determine the court of competent jurisdiction. Therefore, even the courts within whose local jurisdiction, the repercussion/effect of the criminal act occurs, would have jurisdiction in the matter. The reciprocal consideration, flowing out of the agreement dated 1.12.2001, is comprised of a monetary payback. The aforesaid monetary payback was allegedly transmitted by the recipient of goods (Samsung, Dubai) to the intermediary buyer (Sky Impex Limited), by way of a bill of exchange valued at US$ 14,32,745, on 1.2.2002. The aforesaid bill of exchange was then endorsed by Sky Impex Limited, to the complainant-JCE Consultancy. JCE Consultancy maintains, that it holds the said bill of exchange at Ghaziabad in India. The execution of the bill of exchange (by Samsung, Dubai) and its endorsement (by Sky Impex Limited) is in consonance with the terms and conditions of the agreement dated 1.12.2001. Upon alleged denial of payment to JCE Consultancy (under the bill of exchange dated 1.2.2002), a legal notice dated 20.12.2004 came to be issued demanding payment. In its response dated 21.12.2004, Samsung, Dubai, allegedly dishonestly/fraudulently/falsely denied liability/responsibility. Since the complainant is allegedly holding the bill of exchange dated 1.2.2001 at Ghaziabad in India, the consequence emerging out of the said denial of encashment of the bill of exchange, *in our view*, would be deemed to "ensue" at Ghaziabad in India. In the instant view of the matter, the competent Court at Ghaziabad in India, *in our view*, would have jurisdiction in the matter under Section 179 of the Code of Criminal Procedure.

14. Insofar as Section 181 of the Code of Criminal Procedure is concerned, while inviting our attention to the same, learned counsel for the complainant-JCE Consultancy, in order to emphasise the issue of jurisdiction, brought to our notice sub-section (4) thereof. section 181(4) of the Code of Criminal Procedure is being extracted hereunder:-

181. *Place of trial in case of certain offences -*

(1) xx xx xx

(2) xx xx xx

> (3) xx xx xx
>
> (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.
>
> A perusal of the aforesaid provision leaves no room for any doubt, that in offences of the nature as are subject matter of consideration in the present controversy, the court within whose local jurisdiction, the whole or a part of the consideration "were required to be returned or accounted for" would have jurisdiction in the matter. In the present case, a bill of exchange dated 1.2.2002 was issued on behalf of Samsung, Dubai, to Sky Impex Limited; Sky Impex Limited, in terms of the agreement dated 1.12.2001, endorsed the aforesaid bill of exchange in favour of the complainant-JCE Consultancy; JCE Consultancy claims to be holding the aforesaid bill of exchange at Ghaziabad in India. Being holder of the bill of exchange dated 1.2.2002, JCE Consultancy demanded the right of payment thereunder, which is being denied by the accused. Since the bill of exchange issued by Samsung, Dubai, dated 1.2.2002 for US$14,32,745 was received, and is allegedly being held by JCE Consultancy at Ghaizabad in India; the aforesaid bill of exchange, according to the complainant, has to be honoured/realized at the place where it is held (i.e. at Ghaziabad, in India). In the instant alleged factual background of the matter, we are of the view, that the competent court at Ghaziabad in India, would have jurisdiction to hold the trial of the complaint under section 181(4) of the Code of Criminal Procedure."

8. The allegations against the petitioner, who was working as a Senior Officer of the company with the rank of Associate Director, is of having embezzled an amount close to Rs.10 crores, which was received by him on account of supplying 'Set Top Boxes' from Ludhiana. It is apparent from a perusal of the case file as well as other documents relied upon by the petitioner himself, that include the Auditor's report depict the registered office of complainant-company to be at Ludhiana, a fact thus admitted by

the petitioner. Though the operations of the company were stated to be in different States, including Haryana, to supply ‘Set Top Boxes’ to the cable operators for further installation in the house of consumers and as a natural corollary, the amount of which would be credited to the account of the company at Ludhiana. Evidently, the above process was intertwined as cause and effect considering the two phrases in Section 179 CrPC, i.e., "anything which has been done", and "consequence which has ensued", with reference to the offence, also the scope of jurisdiction in the present case would extend to Ludhiana. As envisaged in Section 181(4) CrPC, any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.Therefore, the repercussion of the criminal act of misappropriating the amount, as are the allegations in the present case, occurred, within the jurisdiction of the Court, which is presently trying the case.

9. Furthermore, certain cheques that the petitioner had given as per the agreements dated 27.09.2017, Annexure P-4 and dated 26.09.2017, Annexure R-2, executed at Ludhiana, under circumstances that may be any, as alleged by him in the petition, were also therefore presented at Ludhiana, which though were dishonoured due to insufficiency of funds. The petitioner had also filed an application for discharging him but it was dismissed by the trial Court vide order dated 25.10.2018, the relevant of which reads thus:

> “I have heard the Ld. APP for the state as well as Ld. Counsel for the accused and have gone through he file with minute care. In this case police has filed Challan

> under Section 408 IPC against the accused person. Allegations against the accused are that he was working with the complainant company i.e. Fastway Transmission Pvt.Ltd. Accused was incharge of the Haryana State for the affairs of the company. As per case of the complainant accused collected amount on behalf of the company. He has deposited Rs.3,04,97,000/- with the company but he has not deposited sum of Rs.9,38,41,100/- with the company. Alongwith report under Section 173 Cr.P.C.,documents have been annexed by the police. Accused has filed this application for discharging him. This court is of the view that from the report under Section 173 Cr.P.C. and documents annexed with it prima facie case under Sections 420, 408 IPC is made out against the accused person and no ground is made out to discharge the accused. Hence, present application stands dismissed."

10. Having evaluated the facts and circumstances of the case as narrated hereinabove, in light of the law laid down in **Lee Kun Hee** (supra) this Court finds no substance in the present petition and the same is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

12.07.2023
gsv

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No