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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2467/2023 & CRL.M.A. 23356/2023**

KAILASH RATHI

.....Petitioner

Through: Mr. Neeraj Kumar Jha, Advocate.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Yasir Rauf Ansari, ASC with Mr. Alok Sharma & Mr. Vasu Agarwal, Advocates with SI Mohan Lal, PS Alipur.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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07.10.2024

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner seeks to assail notices/summons dated 03.04.2023, 02.05.2023 & 05.06.2023 issued by the Police Officials at Police Station Sector 10-A, Gurugram, Haryana.
2. The only premise for filing the present petition is that while the petitioner is carrying out his work in Delhi, the notices could not have been issued by the concerned police officer at Gurugram, Haryana.
3. Learned counsel of the petitioner submits that the the impugned notices/summons requiring the presence of the petitioner before the respondent No. 5 are wholly untenable, unwarranted, and hence, liable to be quashed. It is submitted that the notices/summons directing the presence of the petitioner are devoid of jurisdiction as the petitioner lives and works from Delhi whereas the notices were issued by police officials of police station at Gurugram, Haryana. He further submits that the said notices are



vague and does not specify for what purposes the petitioner is being coerced to present himself before the concerned officer. Accordingly, the said notices are liable to be quashed.

4. I have heard the parties and perused the material available on record. A Status Report has been placed on record, as per which no complaint has been registered in the State of Delhi and the notices were issued in the context of dispute pending between the petitioner and his erstwhile partner/respondent No.6 who is the complainant. The report also reflects that the petitioner has claimed himself to be a partner of one JMD Foods. The deed of partnership dated 03.01.2022 is also placed on record indicating that there are three partners in the said partnership i.e. *Mr. Harish Kumar, Mr. Sanjay Saxena & Mr. Kailash Rathi*. The partnership deed is executed on a non-judicial stamp paper issued by the Government of Haryana. Further, the partnership was officially registered and issued a GST certificate by the Government of Haryana.

5. A perusal of the Status Report would further indicate that respondent No.6 has lodged a complaint by alleging that the complainant was a registered dealer of edible oil/desi ghee. The complainant/respondent No. 6 contends that the petitioner has forged a bill of material in respect of a transaction entered into between the complainant and one M/s Nakodia Marketing Agency in term of bills dated 17.10.2022. The delivery of material by the complainant was also acknowledged.

6. It is in the above context that an inquiry has been initiated and the notices were issued to the petitioner by the police officials of police station at Gurugram, Haryana. Since a challenge has been raised to the jurisdiction of this Court to hear the present case, it would be beneficial to briefly



discuss the law governing the determination of jurisdiction by the High Court while hearing a writ petition. Article 226 of the Constitution is the source of the power of High Courts to issue writs. A combined reading of Clause (1) and (2) of Article 226 would show that the a High Court has territorial jurisdiction to issue writs under two situations: one, where the person/authority to whom the writ is to be issued is situated within the territory over which the High Court exercises jurisdiction i.e. '*jurisdiction by virtue of situs*' , and two, where the cause of action, wholly or in part, arises for issuance of a writ within such territory i.e. '*jurisdiction by virtue of cause of action*'.

7. To satisfy the ingredients of Article 226(2), it is not required that the entire cause of action must take place within the Jurisdiction of a High Court. Even if a part of it arises within the jurisdiction of a High Court, that will be sufficient to clothe that High Court with the jurisdiction to deal with the matter. However, while it may be sufficient, the same would not be a determinative factor which would by itself be sufficient to compel the High Court to decide the matter on merit. Writ Jurisdiction of a High Court is a discretionary jurisdiction. When there are two or more forums where a part of the cause of action arises, the doctrine of *Forum conveniens* comes into play.

8. Discussing the concept of *forum conveniens*, a Co-ordinate Bench of this Court in the case of Amit Sharma v. CBI, reported as **2019 SCC OnLine Del 10129**, held as under:-

9. ...Insofar as the principle of forum conveniens is concerned, the said principle has to be applied keeping in view the place where the substantial cause has arisen and where the substantial evidence for adjudicating the cause is available.



10. *The Supreme Court, in the case of Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254, has held as under:*

“Forum conveniens-

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. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney, AIR 1941 Cal 670, Madanlal Jalan v. Madanlal, AIR 1949 Cal 495, Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd., 1997 CWN 122, S.S. Jain & Co. v. Union of India, (1994) 1 CHN 445 and New Horizons Ltd. v. Union of India, AIR 1994 Del 126]”

11. In the present case, bulk of the events forming a part of the allegations are stated to have occurred at Dimapur and therefore, the principle of forum conveniens would not come to the petitioner's aid. On the contrary, the principle of forum conveniens requires this Court to refrain from exercising its jurisdiction given that the said FIR is registered in Imphal. And, concededly, the trial in this case is required to be conducted within the jurisdiction of another High Court.

9. Another aspect which needs to be considered is that the concept of cause of action cannot be blindly relied upon while dealing with criminal law. There are fundamental difference in how a criminal case and a civil proceedings are initiated and pursued. Crime is local by nature and once committed, gets tied to the local police station which has to undertake the process of investigation. While in a civil suit, since the burden of filing and proving their case lies with the plaintiff, in a criminal case this responsibility



lies with the State.

10. The Supreme Court in the case of Dashrath Rupsingh Rathod v. State of Maharashtra, reported as **(2014) 9 SCC 129**, while discussing the concept of ‘cause of action’ and its application in criminal law, discussed as follows:-

Civil law concepts not strictly applicable

16. We have already cautioned against the extrapolation of civil law concepts such as “cause of action” onto criminal law. Section 177 CrPC unambiguously states that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. “Offence”, by virtue of the definition ascribed to the word by Section 2(n) CrPC means any act or omission made punishable by any law. Halsbury states that the venue for the trial of a crime is confined to the place of its occurrence. Blackstone opines that crime is local and jurisdiction over it vests in the court and country where the crime is committed. This is obviously the *raison d'être* for CrPC making a departure from CPC in not making the “cause of action” routinely relevant for the determination of territoriality of criminal courts. The word “action” has traditionally been understood to be synonymous to “suit”, or as ordinary proceedings in a court of justice for enforcement or protection of the rights of the initiator of the proceedings. “Action”, generally means a litigation in a civil court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown. (*Bradlaugh v. Clarke* [(1883) LR 8 AC 354 : (1881-85) All ER Rep Ext 1582 (HL)] , AC p. 361):

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.



11. Further, the doctrine of *Forum conveniens* is a manifestation of the discretionary nature of writ jurisdiction. Merely because a writ petition may be maintainable, that by itself will not make it entertainable. The Difference between ‘maintainability’ and ‘entertainability’ of a writ petition was elucidated by the Supreme Court recently in the case of Godrej Sara Lee Ltd. v. E&TOCAA, reported as **(2023) SCC OnLine SC 95** where it was held as under:-

Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest.

12. As such, in view of the aforementioned judgements, the facts of the case as well as considering that only notices of joining inquiry has been issued by the concerned police officer, no cause of action has arisen within the jurisdiction of the State of Delhi, I find no ground to entertain the present petition. Consequently, the present petition is dismissed alongwith the pending application.

MANOJ KUMAR OHRI, J

OCTOBER 7, 2024/da