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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 2736/2024, CRL.M.A. 26883/2024, CRL.M.A.
26884/2024

JAYANT KARNAD

.....Petitioner

Through: Mr. Apurb Lal and Mr. Ashish Lal,
Advocates.

versus

UNION OF INDIA DEPARTMENT OF REVENUE MINISTRY OF
FINANCE & ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, Mr. Kaushal
Jeet Kait and Ms. Hridyanshi Sharma,
Govt. Pleader for UOI.
Mr. Zoheb Hossain, Special Counsel
for ED with Mr. Vivek Gurnani,
Panel Counsel, Mr. Kartik Sabharwal
and Mr. Kanishk Maurya, Advocates
for respondent Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **17.09.2024**

1. By way of present writ petition, the petitioner seeks following prayer

:-

“Quash the Case No. ECIR/RNZO/18/2022 qua the Petitioner and the impugned summons dated 22/08/2024 issued by Respondent No.2 Under Section 50 (2) and (3) Of Prevention Of Money Laundering Act, 2002 being Violative of Article 14 And 21 of the Constitution of India.”

2. At the outset, learned counsel for respondent Nos. 2 and 3/Directorate of Enforcement (‘ED’) has raised questions regarding the maintainability of



the present petition.

3. Learned Counsel for Respondent Nos.2 and 3, submits that in the present case, the FIR No. 141/2022 pertaining to the commission of the Scheduled Offence is registered under Sections 420/462/471 at P.S. Bariatu, Ranchi, Jharkhand. He further states that the property in relation to which the forged documents were made is also located in Ranchi. Learned counsel submits that the Case No. ECIR/RNZO/18/2022 also came to be registered at the Ranchi Zonal Office of the ED and consequently, even the impugned summons dated 22.08.2024 were issued under Sections 50(2) and 52(3) of the PMLA by the Ranchi Zonal Office of the ED. Therefore, he submits that since no part of the cause of action has arisen within the territorial jurisdiction of this Court, the petition must go on that count alone.

Learned counsel for the respondent Nos.2 and 3 contends that the only reason that the petitioner has approached this Court is because the head office of the Enforcement Directorate is located in Delhi. He submits that mere approval of the ECIR registration by the Directorate of Enforcement and the fact that the Nodal Ministry is situated in Delhi do not automatically make Delhi the place for challenging the proceedings registered in the state of Jharkhand.

4. Learned counsel for the petitioner while rebutting the abovementioned contention of the respondent submits that since the approval for registration of the ECIR was given by the Director of Directorate of Enforcement and the Nodal Ministry is also situated in Delhi, a part of cause of action had arisen within the territorial jurisdiction of this court and therefore, the present writ petition is maintainable.

5. I have heard the learned counsel for the parties and the gone through



the material placed on record.

6. 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. Facts placed on record reveal that the FIR in predicate offence being FIR No. 141/2022 was registered at Police Station Bariatu, Ranchi, Jharkhand and the subject ECIR was also recorded at Ranchi Zonal Office of the respondent Nos. 2 and 3. The respondents have filed the prosecution complaint on 12.06.2023 against the co-accused in the concerned court at Ranchi. Insofar as the present petitioner is concerned, neither any prosecution complaint has been filed nor he has been summoned by the concerned court and at this stage only investigation is stated to be pending. The petitioner has been summoned by the concerned Zonal Office of the respondent No. 2 at Ranchi. The petitioner in the prayer seeks quashing of the ECIR registered against him and the also the summons dated 22.08.2024 which have been issued by the respondent No.2. Both the registration of ECIR and the issuance of said summons has been done by the Ranchi Zonal Office of Respondent No.2. It need not be stated that this Court does not



have territorial jurisdiction over Ranchi and thus, ‘*jurisdiction by virtue of situs*’ does not exist in the present case. Now, the exercise which needs to be undertaken by this Court is to decide whether ‘*jurisdiction by virtue of cause of action*’ arises in the present case.

8. 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 sliver of the cause of action 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.

Forum conveniens means “convenient or appropriate forum.” When two or more Courts may have jurisdiction over a matter, the more appropriate forum should be the one to adjudicate upon it. Deciding which forum is more appropriate would require an analysis of the factual matrix of the matter as pleaded in the petition. This analysis is required to find out at the location where substantial cause arises and where the evidence required for adjudication is available. The location where the bulk of allegations are stated to occur would be a strong indicator of where the material cause arises.

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. Therefore, the convenience of the victim would not dictate the forum for adjudication, but rather the place where the crime was committed and where investigation has taken place.

10. 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. There is a very elementary difference between the two concepts. Maintainability is the very substratum upon which a petition is built. If found lacking in maintainability, a petition falls there and then, not unlike a house of cards. No further analysis or reasoning is required once a negative finding is arrived at with respect to maintainability. Entertainability, however is a reflection of the discretion available with a High Court while dealing with writ jurisdiction. A writ petition may very well be maintainable, but the High Court may refuse to decide it on merits for a variety of reasons. Thus a High Court will be well within its rights in refusing to entertain a petition for the adjudication of which it feels that it is the *Forum non conveniens*.

11. It may be beneficial for us to now look at some decisions of the Supreme Court and this Court relevant to the legal issues which arise herein.

12. 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.”

Thus, the *forum conveniens* has to be decided keeping in mind the place where substantial cause has arisen and just because a small part of the cause of action lies within the territorial jurisdiction of a particular High Court, that by itself will not clothe that High Court with the jurisdiction to



deal with the case. In a case where minimal part of the cause of action arises in the jurisdiction of the High Court, *forum conveniens* rather than helping the petitioner would work against him and would require such High Court to exercise restraint.

13. 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.”

Thus, the concept of ‘cause of action’ cannot be blindly imported to criminal law and it would have to be seen where the events central to the investigation have taken place. It is also evident that the convenience of the complainant/victim while relevant in civil law would not be a factor to be taken into account while determining the jurisdiction of the Court. Jurisdiction will only be determined by the place where the substantial cause of action arises.

14. 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.”



15. While dealing with a case where a student, being enrolled in a school in Ghaziabad, Uttar Pradesh had pursued litigation against the CBSE in the Courts of Delhi, a Co-ordinate Bench of this Court in the case of Riddhima Singh v. Central Board of Secondary Education, reported as **2021 SCC OnLine Del 3649** held as under:-

“7. Mr. Singh's next submission is that the judgment under review is in error in holding that the ground upon which the jurisdiction of this Court was invoked, is that the head office of the Central Board of Secondary Education [“CBSE”] is situated in New Delhi. According to Mr. Singh, the cause of action also arose in New Delhi. In support of this contention, he submits that the byelaws, regulations etc., framed by the CBSE were framed at its head office in New Delhi.

8. The submission to this effect is also untenable. The framing of byelaws, regulations etc., at the head office of the CBSE does not confer a right upon the parties in any part of the country to approach this Court for the ventilation of its grievances. As noted in the judgment under review, the petitioner is a resident of Ghaziabad, Uttar Pradesh, and the school is also located there. The judgment therefore proceeds on the ground that a different court is a more appropriate court for agitation of those grievances, and the point raised by Mr. Singh is not dispositive of that finding.”

Thus, the mere location of the headquarters of a statutory authority in Delhi, especially if the authority one which is carrying on its affairs nationwide, would not by itself clothe this Court with the jurisdiction to act in a case where no substantial cause of action arises in Delhi.

16. The facts of the present case make abundantly clear the position that the substantial cause of action in the present case has arisen in the State of Jharkhand. The mere approval of registration of the ECIR and the factum of the Nodal Ministry of respondent No.2 is not sufficient for sustaining this



petition here and this Court feels that it is the *forum non conveniens* to deal with the present case.

17. Therefore, considering that the scheduled offence is alleged to have occurred in Jharkhand, the consequent FIR and ECIR is also registered in Jharkhand, and since no substantial cause of action can be said to have arisen in Delhi, and in light of the catena of judgements discussed hereinabove, I find no ground to entertain the present petition. Consequently, the present petition is dismissed alongwith the pending applications

MANOJ KUMAR OHRI, J

SEPTEMBER 17, 2024

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