

SUPREME COURT OF INDIA

Navinchandra N. Majithia

Versus

State of Maharashtra

(K.T. Thomas and D.P. Mohapatra, JJ.)

Criminal Appeal No. 744 of 2000 (Arising out of S.L.P. (Crl.) No. 1097 of 1999).

04.09.2000

JUDGEMENT

D.P. Mohapatra, J. - Leave granted.

15. This appeal filed by the writ petitioner is directed against the judgment dated 23.3.1999 of the Bombay High Court summarily dismissing W.P. No. 1683/88 Naveenchandra N. Majithia v. State of Maharashtra and others on the ground of want of jurisdiction.

16. The appellant filed the writ petition against the State of Maharashtra, the State of Meghalaya, the Special Superintendent of Police, CID, Shillong and Mr. Malerkode Subramaniam Jayaram praying *inter alia*, (a) to quash the complaint lodged by M/s. J.B. Holdings Ltd. or in the alternative to issue a writ of mandamus directing the State of Meghalaya to transfer the investigation being conducted by the officers of the CID at Shillong to the Economic Offences Wing, General Branch of the CID, Mumbai or any other investigating agency of the Mumbai Police, and (b) to issue a writ of prohibition or any other order or direction restraining the Special S.P. Police, CID, Shillong and/or and investigating agency of the Meghalaya Police from taking any further step in respect of the complaint lodged by the M/s. J.B. Holdings Ltd. with the Police authorities at Shillong. For the sake of convenience the appellant will be referred as the petitioner while narrating the facts of the case.

17. The relevant facts of the case as stated in the writ petition may be shortly stated thus : The petitioner is the Managing Director of the Company, M/s. India Farmers Pvt. Ltd. (IFPL for short), registered under the Companies Act, having its registered office at Mumbai. Out of the 2500 shares of IFPL the petitioner, his family members and friends together hold 2430 shares; the balance 70 shares have remained unallotted till date. In the year 1950 the then Government of Bombay put IFPL in possession of 300 acres of land at Saka, Marve, Malvani at Malad, Bombay. Thereafter in 1956 the State Government granted a lease in favour on IFPL for 114 acres out of the 300 acres for a period of 999 years. The agreement for the balance area of 186 acres is yet to be executed by the Government.

On 7th July, 1994, a company known as Chinar Export Ltd. entered into an agreement with the petitioner for purchase of the entire lot of 2430 shares of IFPL at

a total price of Rs. 58 crores. A sum of Rs. 2 crores was paid by M/s. Chinar Export Ltd. as earnest money and a further sum of Rs. 25,00,000/- was paid subsequently. The balance of the purchase price was to be paid on or before 31st October, 1995. However, Chinar Export Ltd. was unable to fulfil its commitment as to payment of the balance purchase price, and therefore, the petitioner terminated the agreement.

M/s Chinar Export Limited filed Suit No. 178/95 against the petitioner in the High Court of Bombay for specific performance of the agreement, dated 7.7.94. Two share-holders of M/s. Chinar Export Ltd., Mr. Jayaram and Mr. Bareh, took over the management and control of the company. Thereafter they formed another company M/s. J.B. Holdings Ltd. at Shillong. On the request of Mr. Jayaram and Mr. Bareh who were the directors in both the companies M/s. J.B. Holdings Ltd. and M/s. Chinar Export Ltd. the suit was withdrawn upon the petitioner's returning the amount paid by M/s. Chinar Export Limited which was earlier forfeited by the petitioner. This fact was recorded in the consent terms filed in the suit in September, 1995.

18. In pursuance of the agreement M/s. J.B. Holdings Ltd. paid a sum of Rs. 6,75,63,000/- towards purchase price of 170 shares of IFPL and a sum of Rs. 1,50,33,000/- as earnest money for the purchase of the balance shares. On 13.10.1995 M/s. J.B. Holdings Ltd. paid the petitioner a further sum of Rs. 1 crore. On 31.10.1995 yet another issue of Rs. 1.24 crores was paid by M/s. J.B. Holdings Ltd. From the amount received from M/s. J.B. Holdings Ltd. the petitioner paid a sum of Rs. 2.25 crores by way of refund of the forfeited amount to M/s. Chinar Export Ltd. as per the terms of the settlement in Suit No. 178/95 filed in the Bombay High Court. Against the payment made by M/s. J.B. Holdings Ltd. the petitioner delivered 170 shares of IFPL which were duly transferred in the name of M/s. J.B. Holdings Ltd. and delivered to them at Mumbai.

19. The petitioner alleged that at no point of time M/s. J.B. Holdings Ltd. offered to make the balance payment or to take delivery of the remaining shares. As M/s. J.B. Holdings Ltd. had committed default in making the balance payment and thereby committed breach of the agreement dated 18.9.1995 the said agreement stood terminated and the earnest money stood forfeited as stipulated in the agreement.

20. It was further alleged in the Writ Petition that after some correspondence between the parties M/s. J.B. Holdings Ltd. had tried to pressurise the petitioner to reverse the transaction of sale of shares and recover the money paid in respect thereof by employing strong arm tactics, which eventually failed. Having failed to achieve the purpose by such means M/s. J.B. Holdings Ltd. filed a false complaint against the petitioner at Shillong in the State of Meghalaya. The petitioner asserted that the complaint is false and it has been deliberately filed at Shillong with the *mala fide* intention of exerting pressure and causing harassment to him so as to get the transaction relating to transfer of shares reversed. According to the petitioner since the entire transaction upon which the complaint is purportedly based had taken place at Mumbai and not at any other place outside Mumbai much less at Shillong or any other place in the State of Meghalaya the complaint could not/ought not to have been entertained by the police at Shillong. It was further averred in the Writ Petition that the jurisdiction, if any, to investigate/inquire into the contents of the complaint is with the Police/Courts in Mumbai and the action taken by the Special S.P. Police,

CID, Shillong in entertaining the said complaint and in taking up investigation on the basis of the same is clearly oppressive, discriminatory and *mala fide*. It was also stated in the writ petition that the petitioner was approaching the High Court under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code for the issuance of a writ of prohibition and mandamus quashing the complaint made by M/s. J.B. Holdings Ltd. on the grounds stated in the said paragraph.

21. According to the petitioner the conduct on the part of the Shillong Police in entertaining the complaint against him and in embarking upon an investigation was clearly in excess of the jurisdiction vested in under the provisions of the Code of Criminal Procedure. Indeed the Shillong Police had on their own requested the Mumbai Police (Malvani Police Station), to carry out an extensive investigation into the alleged offence which clearly indicates that Shillong Police authorities were very much aware that the entire transaction upon which the complaint is purportedly based had taken place in Mumbai. In such circumstances, according to the petitioner, the subsequent conduct of the Shillong Police in continuing with investigating of the case is clearly *mala fide* and without sanction of law and procedure.

In the writ petition it was contended that in the two letters dated 14.9.1998 and 16.9.1998 addressed by the Assistant Police Inspector, Malvani Police Station to the petitioner, it was stated that the complaint had been received in the Police Station at Malvani and the petitioner was requested to attend the said Police Station with documents. Thereafter, on 19.9.1998 the statement of the petitioner was recorded and certain documents were received from him at Malvani Police Station.

The petitioner also contended in the writ petition that the allegations made against him in the complaint do not make out any cognizable offence and the dispute, if any, is of civil nature.

22. Mr. Melarkode Subramanian Jayaram, who was arrayed as respondent No. 4 in the writ petition filed a counter-affidavit generally denying the averments made in the writ petition. The respondent referred to the writ petition filed by the complainant M/s. J.B. Holding Ltd. in Gauhati High Court challenging the action of the Government of Meghalaya refusing permission to the concerned Police Officers to go to Mumbai on the ground of paucity of funds. A learned single Judge by order dated 17.11.1997 directed the complainant to deposit the requisite amount to enable the senior police inspector concerned to proceed to Mumbai for investigation of the case. In appeal a Division Bench of the High Court confirmed the said order taking the view that since the case has been registered in the State of Meghalaya, it is for the police of that State to investigate into the matter.

23. The High Court as noted earlier, dismissed the writ petition holding that it could not entertain the writ petition since the petitioner has prayed for quashing the complaint which was lodged by the complainant at Shillong in the State of Meghalaya.

24. On the pleadings of the parties noticed in the foregoing paragraphs the moot question that arises for consideration is whether the Bombay High Court was right in

passing the order rejecting the writ petition on the ground that the Court could not entertain the writ petition as the petitioner had prayed for quashing the complaint filed against him by M/s. J.B. Holding Ltd. at Shillong.

25. 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 High Court shall have power, throughout the territory 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.

(3) xxxx xxxx xxxx

(4) xxx xxx xxx"

26. From the provisions in clause (2) of Articles 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

27. In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary)

28. In Stroud's Judicial Dictionary a 'cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

29. In 'Words and Phrases' (fourth edition) the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

A Bench of three learned Judges of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu and others, 1994(4) SCC 711 (supra), considered at length the question of territorial jurisdiction under Article 226(2) of the Constitution of India. Some of the relevant observations made in the judgment are extracted hereunder :

"Clause (1) of Article 226 begins with a *non obstante* clause - notwithstanding anything in article 32 - and provides that 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, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. *On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part-III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.* In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh*, Lord Watson said :

".....the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a 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. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.""

3.1993. The postal article remained unclaimed till 15.2.1993 and was then returned to the sender, S, with the endorsement "unclaimed". S filed a complaint on 4.3.1993 before the Court of the Judicial Magistrate First Class, Adoor (District Pathanamthitta) against B under Section 138 of the Negotiable Instruments Act, 1881. B denied that the court had territorial jurisdiction on the basis that the cheque had been dishonoured in Kayamkulam District.

32. This Court held that under Section 177 of the Criminal Procedure Code "every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed". The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. The offence under Section 138 of the Negotiable Instruments Act would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It cannot either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. This Court further held that section 178 of the Criminal Procedure Code suggests that if there is uncertainty as to whether, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in a case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon.

In the case of *Satvinder Kaur v. State (Govt. of NCT of Delhi) and another, 1999(8) SCC 728 : 1999(4) RCR (Criminal) 503 (SC)* the question of quashing of FIR on the ground of lack of territorial jurisdiction of the police to investigate the offence came up for consideration. Construing the provision of Sections 154, 162, 177 and 178 of the Criminal Procedure Code this court held that if Investigating Officer finds that the crime was not committed within his territorial jurisdiction he can forward the FIR to the police station concerned, but this would not mean that in a case which requires investigation the Police Officer can refuse to record the FIR and/or investigate it. Disapproving the order of the Delhi High Court quashing the FIR at the investigation stage on the ground of lack of territorial jurisdiction this Court observed :

"Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, *prima facie*, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying to examine the correctness or otherwise of the allegations."

33. In case of *H.V. Jayaram v. Industrial Credit and Investment Corporation of India, Ltd. and others, 2000(2) SCC 202 : 2000(1) RCR (Criminal) 315 (SC)* this Court considered the question where the offence under Section 113(2) of the Companies Act, 1956 is completed. Taking note of section 113 and section 207 of the said Act this Court held, *inter alia*, that the cause of action for default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates

can be posted and are usually posted.

34. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a *mala fide* move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of Bombay High Court.

35. The next question for consideration is regarding proper order to be passed in the case.

36. Considering the peculiar fact situation of the case we are of the view that setting aside the impugned judgment and remitting the case to the High Court for fresh disposal will cause further delay in investigation of the matter and may create other complications. Instead, it will be apt and proper to direct that further investigation relating to complaint filed by M/s. J.B. Holding Ltd. should be made by the Mumbai Police.

37. According, we allow the appeal, set aside the judgment under challenge and dispose of the writ petition with the direction that the complaint lodged by M/s. J.B. Holding Ltd. at Shillong which is presently being investigated by the Special Superintendent of Police, CID Shillong shall be transferred to the Mumbai Police for further investigation through its Economic Offences Wing, General Branch, CID, or any other branch as the competent authority of the Mumbai Police may decide in accordance with law.

Appeal allowed.