

SUPREME COURT OF INDIA

Rajiv Modi

Vs.

Sanjay Jain

CrI.A.No.1214 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

14.07.2009

JUDGMENT

H.L. Dattu, J.

1. This is an appeal for special leave arises from the judgment and order of the Patna High Court in Criminal Miscellaneous Case No. 17815 of 2002 dated 20.11.2007. We grant special leave and dispose of this appeal as hereunder.

2. By the judgment and the order impugned, the High Court in exercise of its power under Section 482 of the Code of Criminal Procedure has quashed the private complaint filed under Section 200 Cr.P.C., on the ground that the Judicial Magistrate, Patna did not have territorial jurisdiction to take cognizance of the offence alleged under Sections 406, 420 and 120-B of the Indian Penal Code.

3. The admitted facts are, that, on 1.4.1999 M/s. Dhriti Agro Farms Private Limited (DAFPL), a company owned by the appellant, had entered into an agreement with Rajasthan Breweries Limited (RBL), a company owned by respondent Nos. 1 and 2. The agreement provides for appointment of DAFPL as their C&F Agent for the State of Rajasthan. It also provides the payment that requires to be made by the appellant for supply of raw materials to the suppliers of the respondents on behalf of the respondents and the respondents would supply the finished goods to the appellant for sale in Rajasthan.

4. It is the case of the appellant that he had visited his in-laws in Patna in the month of February, 1998 and there the respondents had met him and had projected a lucrative picture of their business and assured the appellant the high returns for his investments. The appellant had agreed to become the C&F Agent of the respondent's company for State of Rajasthan. Subsequently, the respondents handed over the Letter of Appointment of the appellant at the residence of his in-laws at Patna. It is the case of the appellant, that, pursuant to the agreement it has made several payments for supply of raw materials to different suppliers of the respondent but the respondents have not made any payment of the same till date. It is its

further grievance that appellant though had made repeated requests to the respondent to return the money paid, the respondents have not acceded to the request so made.

5. In view of the inaction of the police authorities, the appellant was constrained to file a private complaint before the Chief Judicial Magistrate, inter alia alleging commission of the offences by the respondents under Sections 406 and 420 read with Section 120-B of the Indian Penal Code.

6. After recording the statements of the appellant and his witnesses and being convinced that a prima facie case has been made out against the respondents, for the offences, under Sections 420, 406 and 120(b) of the Indian Penal Code, the learned Magistrate has taken cognizance of the complaint and has issued summons to the respondents.

7. Aggrieved by the aforesaid order, the respondents had approached the High Court by filing a petition under Section 482 of the Cr.P.C., inter alia, requesting the court to quash the proceedings pending before the Judicial Magistrate, Patna.

8. Before the High Court, the learned Counsel for the respondents had submitted that, no part of cause of action arose within the territorial jurisdiction of Patna and as such the Judicial Magistrate, Patna could not have taken cognizance and passed the impugned order. It was further argued that the appellant had also filed a complaint before the Deputy Commissioner of Police, Economic Wing, Crime Branch, New Delhi and also before the Mehrauli Police Station, New Delhi, but when both the authorities did not respond to his complaint, he has filed the present complaint before the Judicial Magistrate, Patna, only to harass the respondents. It was also submitted that the complainant/appellant himself had approached the respondents for execution of the agreement and therefore, a Letter of Appointment was sent to him at his New Delhi address and, therefore, the learned Judicial Magistrate has erred in taking cognizance of the complaint and ordering issue of summons to the respondents.

9. The High Court by the impugned order has quashed the proceedings pending before the learned Magistrate primarily on the ground that no cause of action arose within the territorial jurisdiction of Chief Judicial Magistrate at Patna, and while elaborating on this issue, the Court has also observed that although there is an allegation that the respondents had induced the appellant to part with huge amount of money, but no such inducement was made at Patna or the appellant parted with any part of his money at Patna or the respondents were required to account for any property at Patna or any agreement was executed within the jurisdiction of Patna and even if it is accepted that the Letter of Appointment was handed over by the respondents to the appellant at Patna, it does not constitute any part of cause of action. Aggrieved by the said order, the appellant is before us in this appeal.

10. The issue before us is, whether the High Court under Section 482, Cr.P.C was justified in quashing the complaint on the ground that no cause of action has arisen in Patna in respect of the alleged offences under the provisions of IPC.

11. The Learned Counsel for the appellant would submit, that, the cognizance stage and the trial stage are two different aspects of criminal jurisprudence and under the Code, there is no territorial restriction for any Magistrate to take cognizance of an offence although at the stage of trial, the said issue may become relevant in view of the provisions of Chapter XIII of the Code. The Counsel would also assert that section 177 of the code relating to the jurisdiction of the criminal courts do not trammel the powers of any court to take cognizance of the offence and thus, would apply to section 190 and 200 as well. It is contended that a part of cause of action did arise in Patna as in the complaint filed by the complainant/appellant, it was specifically asserted that the appointment of the appellant's company as C&F Agent of the respondent's company was agreed upon in Patna. It was the respondents who approached the appellant for the said agreement on his short stay at his in-laws in Patna. Therefore, the High Court was not justified in holding that the Judicial Magistrate did not have the jurisdiction to take cognizance in the matter as no cause of action arose in Patna and has erred in quashing the proceedings pending before the Judicial Magistrate by exercising its inherent power under Section 482 of Cr.P.C.

12. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression "cause of action". This Court has laid down that the cause of action is a fundamental element to confer the jurisdiction upon any Court and which has to be proved by the plaintiff to support his right to a judgment of the court. It is relevant to take note of what was stated by this court in *State of Bombay v. Narottamdas Jethabhai*¹. In this case, it is observed, that, the jurisdiction of the courts depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters.

13. In the case of *State of Madras v. V.P. Agencies*² it was stated that:

"Now 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 grounds 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."

14. In the case of *Gurdit Singh v. Munsha Singh*³ this Court held that:

"The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit."

15. In the case of *State of Rajasthan v. Swaika Properties*⁴ it was observed that:

"The `cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

16. In the case of *ONGC v. Utpal Kumar Basu*⁵ this Court held that:

"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. 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." (Para 6)

17. In the case of *Bloom Dekor Ltd. v. Subhash Himatlal Desai*⁶ it was observed that:

"By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*⁷). In other words, cause of action is a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit." (Para 28)

18. In *Rajasthan High Court Advocates' Assn. v. Union of India*⁸ this Court stated that:

"The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises." (Para 17)

19. In the case of *Y. Abraham Ajith v. Inspector of Police*⁹ this Court said that:

"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 sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law 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. In Words and Phrases (4th Edn.), 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." (Para 17)

20. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

"Cause of action has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

21. This Court in the case of *Alchemist Ltd. v. State Bank of Sikkim*¹⁰ it was held that:

"From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant- petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that." (Para 37)

22. It is evident from the above decisions, that, to constitute the territorial jurisdiction, the whole or a part of "cause of action" must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts.

23. The next question is, whether a court can take cognizance of the offence after examining the complaint filed by the complainant wherein, prima facie whole or a part of cause of action seems to have arisen.

24. In *Union of India v. Adani Exports Ltd.*¹¹ this Court observed:

"It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus

or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned." (Para 17)

25. In the case of *Satvinder Kaur v. State (Govt. of NCT of Delhi)*¹² it is stated that:

"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 CrPC 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 the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations." (Para 4)

26. This Court in the case of *V.C. Shukla v. State through CBI*¹³ it was observed that :

"it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges."(Para 8)

27. Also in the case of *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*¹⁴ it was observed that:

"Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed." (Para 139)

"In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown." (Para 151)

28. In *Vijai Pratap Singh v. Dukh Haran Nath Singh*¹⁵ this Court held that:

"If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the statute, the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit." (Para 9)

29. In view of the above principles, the Court on basis of the averments made in the complaint, if it is prima facie of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact.

30. The only question, which remains to be considered, is, whether the Judicial Magistrate, Patna had the jurisdiction to take cognizance of the complaint?

31. It is argued that the appointment of the appellant's company as C&F Agent of the respondent's company was agreed upon in Patna and the Letter of Appointment was also delivered at the address of the in-laws house of the appellant in Patna and therefore, it can be said that part of cause of action prima facie appears to have arisen in Patna. Therefore, Judicial Magistrate, Patna was justified in taking cognizance complaint and issuing process to the respondents.

32. In view of the above, in our considered opinion, the High Court has erred by going into merits of the case and deciding doubtful or complicated questions of law and fact while invoking its powers under Section 482 of Cr.P.C. This is not the fit case where the High Court could have exercised its inherent powers under section 482 of the Code.

33. The cardinal principle's which requires to be kept in view while invoking powers under Section 482 of Cr.P.C. has been stated in the case of *State of H.P. v. Pirthi Chand*¹⁶ where in this Court has observed that:

"When the court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court." (Para 13)

"It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge- sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide

initiation of the proceedings to wreak private vengeance, the court may embark upon the consideration thereof and exercise the power." (Para 12)

34. In view of the above discussion, we allow this appeal and set aside the impugned order passed by the High Court. The trial court is directed to proceed with the complaint.

35. We make it clear that the observations made by us in the course of our judgment is only for the purpose of disposal of criminal appeal and the same need not be taken as any expression on the merits of the case.

¹1951 SCR 51

²AIR 1960 SC 1309

³(1977) 1 SCC 791

⁴(1985) 3 SCC 217

⁵(1994) 4 SCC 711

⁶(1994) 6 SCC 322

⁷(1873) 8 CP 107)

⁸(2001) 2 SCC 294

⁹(2004) 8 SCC 100

¹⁰(2007) 11 SCC 335

¹¹(2002) 1 SCC 567

¹²(1999) 8 SCC 728

¹³1980 Supp SCC 92

¹⁴(2004) 9 SCC 512

¹⁵1962 Supp.2 SCR 675

¹⁶(1996) 2 SCC 37