

CASE NO.:
Appeal (crl.) 1534 of 2006

PETITIONER:
Asit Bhattacharjee

RESPONDENT:
M/s. Hanuman Prasad Ojha & Ors

DATE OF JUDGMENT: 15/05/2007

BENCH:
S.B. Sinha & C.K. Thakker

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

1. Appellant herein was awarded contracts for exporting wheat, rice etc. upon purchasing the same from Food Corporation of India as also from open market, by the State Trading Corporation of India, Chennai and Kolkata as also West Bengal Essential Commodities Supply Corporation Limited. Respondent Nos. 1 and 2 herein allegedly approached him for appointment as its agent to arrange and supply foodgrains i.e. wheat and rice of the Food Corporation of India and send the same to different destinations in West Bengal on commission basis. Pursuant to or in furtherance of the said agreement, Respondent No. 1 under the direction of Respondent No. 2 used to make arrangement of railway rakes at different railway stations in the State of Uttar Pradesh, Rajasthan, Uttaranchal, Madhya Pradesh and Haryana for export of rice and wheat from Food Corporation of India to Bangladesh for and on behalf of the appellant. Allegedly, in course of rendition such services, respondents committed various acts of breach of trust, cheating, forgery and criminal conspiracy. One of their employees was also assaulted. A complaint petition was filed by the Appellant Company before the Chief Metropolitan Magistrate, Kolkata purported to be under Section 156(3) of the Code of Criminal Procedure, 1973 on or about 15.10.2004 inter alia alleging that a criminal conspiracy was entered into by and between accused No. 2 with accused Nos. 3 to 12 with a view to cheat the complainant Company and/or dishonestly misappropriate a huge amount of Rs. 1,62,32,837.00 by making forged and false documents, fraudulently preparing its letter heads and seals and using the same, committed breach of trust and withdrew the refund amount of Rs. 1,55,07,928.00

2. It is not in dispute that the said purported acts were committed outside the State of West Bengal and principally in the State of Uttar Pradesh.

3. The bankers of the appellant company issued a draft of Rs. 1,63,536.00 in favour of District Manager, Food Corporation of India, Sitapur which was also allegedly misappropriated by the concerned respondents.

4. One of the indent receipts out of the 30 indents amounting to Rs. 4,50,000.00 was lost by an employee of the appellant while travelling and the accused No. 6 representing accused Nos. 1 and 2 withdrew the amount in question by using forged indemnity bond and letter head of the Company and, thus, a sum of Rs. 4,50,000.00 was misappropriated by the accused persons. The said offence was also allegedly committed at Iradatgunj in the State of U.P. On behalf of the appellant, accused No. 2 allegedly deposited indent money in respect of 40 indents at Hardoi, out of which also some amount was misappropriated by the accused persons. Hardoi is also in the State of Uttar Pradesh. Demand draft issued by the

bankers of the appellant viz. Union Bank of India and Punjab National Bank in favour of the District Manager, Food Corporation of India had also allegedly been misappropriated.

5. Various other alleged criminal misconducts on the part of the accused persons were said to have been committed in the State of Uttar Pradesh.

6. We may at this juncture notice some of the allegations made in the said complaint petition.

"8. According to Railway procedure, for allotment of railway rake, the party concerned shall have to pay Rs. 15,000.00 as indent money for registration of rake, for which Railway issue Money Receipt. Allotment of rake is made accordingly after the announcement of quota from the Railway Headquarters. The indenter is free to withdraw the indent money any time after ten days from the date of indenting, without any liability. Accordingly, Accused No. 2 collected total Rs. 4,91,39,748.00 out of which Rs. 1,55,07,928.00 was paid by Demand Draft favoring the concerned Railway authority and balance amount of Rs. 3,36,31,820.00 paid to Accused No. Hanuman Prasad Ojha. All the Demand Draft in favour of the Railway Authorities were issued for your petitioner's Company."

7. Paragraph 16 of the complaint petition deals with assault and criminal intimidation of an employee of the appellant viz. Subodh Singh, at Kanpur.

8. Paragraph 17 of the complaint petition reads as under:-

"17. It appears that under the leadership of Accused No. 2 all the Accused Persons committed serious crimes viz. preparing forged documents by printing Letter Pad and forging the Seal of your petitioner's company and forged authorization letters and collected refund amount from the Railway to the tune of Rs. 1,55,07,928.00 from the Railway Authorities of different Railway Station and fraudulently and dishonestly misappropriated Rs. 1,63,536.00 for which Demand Draft was handed over to Accused No. 2 to deposit to the District Manager, Food Corporation of India, Sitapur for cost of the materials exported by your petitioner's company on behalf of the State Trading Corporation Ltd., Chennai. But the Accused No. 2 dishonestly deposited the said draft in the account of Nafed India Ltd. with Food Corporation of India and also the Accused Persons fraudulently and dishonestly utilized indent money of your petitioner's company amounting to Rs. 3,57,810.00 for the payment of the railway freight of AK Industries and Lavi Industries. Accused persons fraudulently and dishonestly misappropriated the amount of Rs. 22,03,563.00 of your petitioner's Company by depositing demand draft to District Manager, Food Corporation of India, Jhansi in the account of WBECSC Limited instead of depositing in the account of The State Trading Corporation of India Ltd., Chennai towards cost of material. As such all the Accused Persons have misappropriated and/or cheated the complainant company for a sum of Rs. 1,62,32,837.00."

9. Appellant in the said complaint petition further stated;

"18. Thus the Accused Persons in collusion and connivance with each other, committed forgery, cheating, criminal breach of trust, dishonest misappropriation etc. etc. and are liable to be prosecuted under section 120B/420/406/465/467/468/471 of the Indian Penal Code.

19. That this Ld. Court has got jurisdiction to try this case as the representation of accused No. 2 was made within the jurisdiction of this Ld. Court and the accused persons were to account for at this office of the complainant's company which is also within the jurisdiction of this Ld. Court."

10. The learned Chief Metropolitan Magistrate upon consideration of the said complaint directed the Officer-in-Charge of Shakespeare Sarani Police Station, Kolkata to make an investigation into the allegations contained therein. Pursuant to or in furtherance of the said direction, investigations had been carried out. As the respondents did not appear before the Court, warrants of arrest had also been issued by the Chief Metropolitan Magistrate, Kolkata.

11. Respondents herein filed a criminal writ petition before the High Court of Judicature at Allahabad on or about 1.3.2005 praying inter alia for the following reliefs:-

"i. Issue a writ, order or direction in the nature of certiorari quashing the WR in Case No. 381 dated 18.10.2004 G.R. No. 2711/04 under Section 120B, 420, 406, 465, 468, 471 I.P.C. P.S. Shakespeare Sarani, Kolkata & Orders dated 15.10.2004 and 11.2.2005 passed by respondent no. 5.

ii. issue a writ, order or direction in the nature of mandamus commanding the respondents not to arrest the petitioners on the basis of the FIR dated 18.10.2004.

iii. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to transfer the Case No. 381 under Section 120B, 420, 406, 465, 468, 471 IPC to State of U.P.

iv. issue any other writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the present case.

v. Award costs to the petitioners from the contesting respondents."

12. By reason of the impugned Judgment, a Division Bench of the Allahabad High Court allowed the said Writ Petition in part. While declining to quash the First Information Report, the High Court opined:- "Therefore, in totality of the matter, we are of the view and accordingly direct that F.I.R. in case No. 381 dated 18th October, 2004 G.R. No. 2711/04 under Section 120B, 420, 406, 465, 468, 471 I.P.S., P.S. Shakespeare Sarani, Kolkata be transmitted to the appropriate Police Station of Uttar Pradesh through the Secretary Home, State of West Bengal and the Secretary, Home, State of Uttar Pradesh within a period of fortnight from the date of communication of this order. The concerned Investigating Officer will

make all efforts to conclude the investigation preferably within a period of three months from the date of receipts of transmitted F.I.R., The petitioners will not be arrested in respect of the said crime number till the submission of chargesheet/final report, if any. The petitioners are directed to co-operate with the Investigating Officer in all possible manner. However, no order is passed in respect of quashing of the first information report."

13. Appellant is, thus, before us.

14. Mr. Sunil Kumar, learned senior counsel appearing on behalf of the appellant in support of this appeal urged:-

i) The High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration the effect and purport of sub-section (4) of Section 181 of the Code of Criminal Procedure which categorically provides that a Court within whose local jurisdiction the property was to be accounted for by the accused persons will also have jurisdiction to try the case which was introduced pursuant to the recommendations of the Law Commission in its 41st Report, but despite the same, the High Court wrongly relied upon on a decision of the Bombay High Court in *Re Jivandas Savchand* [A.I.R. 1930 Bom. 490], which was rendered prior thereto.

(ii) The Chief Metropolitan Magistrate having exercised its judicial power not only by issuing a direction in terms of sub-section (3) of Section 156 of the Code of Criminal Procedure but also issuing a non-bailable warrant of arrest, the Allahabad High Court had no territorial jurisdiction to interfere therewith, as the said Court was not under its supervisory jurisdiction. Strong reliance in this behalf has been placed on *Surya Dev Rai v Ram Chander Rai and Others* [(2003) 6 SCC 675 and *Mosaraf Hossain Khan v Bhagheeratha Engg. Ltd. and Others* [(2006) 3 SCC 618].

(iii) Only because a part of cause of action has arisen within the State of Uttar Pradesh, the same by itself would not entitle the respondents to pray for transfer of investigation from one State to the other

(iv) The High Court had no jurisdiction to transfer the investigation of a criminal case from one statutory authority to another in exercise of its jurisdiction under Article 226 of the Constitution of India or otherwise.

(v) Respondents having made false representations at Calcutta, a part of the offence must be held to have been committed within the jurisdiction of the learned Metropolitan Magistrate. As the respondents were to account for of the amount received by them in Calcutta, the Chief Metropolitan Magistrate had jurisdiction in the matter to entertain a complaint petition under Section 156(3) of the Code of Criminal Procedure.

15. Mr. Rakesh Dwivedi, learned counsel appearing on behalf of the accused/respondents, on the other hand, submitted:

(i) Representations made by the accused person, if any, for the purpose of entering into an arrangement do not indicate that the same were fraudulent one or were made from the very beginning so as to attract the provisions of Section 420 of the Indian Penal Code.

(ii) The complaint petition does not disclose as to which part of the cause of action arose within the jurisdiction of the Court of Chief Metropolitan Magistrate and taking into consideration the totality of circumstances, the said Court had no jurisdiction to direct

investigation by the Police in terms of Section 156(3) of the Code of Criminal Procedure.

(iii) Assuming that sub-section (4) of Section 181 of the Code of Criminal Procedure is attracted in the instant case, the principal ingredient therefor being "required to be" which would mean that such requirement must arise either by law or contract and in absence of any averment made in the complaint petition in that behalf, the same cannot be taken recourse to.

(iv) In any event as the major part of the cause of action arose within the territorial jurisdiction of the Allahabad High Court, it could direct transfer of investigation from one investigating agency to another.

(v) Direction to lodge a First Information Report being not a judicial order as the said power has been exercised at the pre-investigation stage and having regard to the provisions contained in sub-section (1) of Section 156 of the Code of Criminal Procedure, determination of the jurisdiction of the two courts must be held to be referable to Section 177 and 181 of the Code of Criminal Procedure.

(vi) In any event as the complaint petition was filed only to harass the respondents, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India and/or issue requisite direction itself even if be held that the High Court of Allahabad had no jurisdiction in this behalf.

16. Mr. Ratnakar Dash, learned senior counsel appearing on behalf of the State of Uttar Pradesh supported Mr. Dwivedi. Mr. Avijit Bhattacharjee, learned counsel appearing on behalf of the State of West Bengal supported Mr. Sunil Kumar.

17. Appellant herein did not file any complaint petition within the meaning of Section 200 of the Code of Criminal Procedure. It filed an application in terms of sub-section (3) of Section 156 thereof.

18. Sub-section (1) of Section 156 empowers the in-charge of a Police Station to investigate any cognizable offence which Court having jurisdiction over the local area within its limit or to try under the provisions of Chapter XIII, the power of the Magistrate to order such an investigation is vested in him who can take cognizance of the offence under Section 190 of the Code of Criminal Procedure.

19. Chapter XIII provides for jurisdiction of the Criminal Courts in inquiries and trials. Section 177 provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 provides for place of inquiry or trial. It provides:

- (a) when it is uncertain in which of several local areas an offence was committed; or
- (b) where an offence is committed partly in one local area and partly in another; or
- (c) when an offence is a continuing one and continues to be committed in more local areas than one; or
- (d) where it consists of several acts done in different local areas, that it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

20. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the Court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation.

21. The provisions referred to hereinbefore clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) of the Code of Criminal Procedure will have the jurisdiction to make investigation.

22. The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under Clause (2) of Article 226 of the Constitution of India but its definition stricto sensu may not be applicable for the purpose of bringing home a charge of criminal offence. The application filed by the appellant under Section 156(3) of the Code of Criminal Procedure disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant-Company was committed within the jurisdiction of the said Court, the High Court of Allahabad should not have interfered in the matter. Respondents themselves have referred to the Minutes of Meeting held on 18.05.2000 between the representatives of the appellant and Mr. Hanuman Prasad Ojha at the registered office of the appellant wherein inter alia it was agreed: "After reconciliation of the purchase and dispatch of the above mentioned 10 rakes and also dispatch of 1211 MT by road and considering dispatch and transaction till date in respect of payment, short receipt of bags and also quality claim it has been agreed by Mr. Hanuman Prasad Ojha and the representative of PKS Ltd. that the A/c. is finally treated as settled and closed and there will be no claim on either side on payment of Rs. 17,25,398.15 by M/s PKS Ltd. for which the D/Ds are to be issued in favour of Hanuman Prasad Ojha, payable at Kanpur.

Further, Mr. Hanuman Prasad Ojha has confirmed being taken all legal formalities in respect of purchase and dispatch of the above mentioned 10 rakes and 1211 MT by road for export to Bangladesh with the Govt. of U.P. and further confirmed that if anything has not yet been complied with, the same will be done by him as may be necessary by the Govt. of U.P. and in case of any deficiency he will be solely responsible for the same."

23. Yet again in respect of another account, it was agreed: "After reconciliation of the purchase and dispatch till 10.05.2000 of the above quantity in respect of payment, it has been agreed by Mr. Hanuman Prasad Ojha and the representative of PKS Ltd. that the A/c. is finally treated as settled and closed and there will be no claim on either side on payment of Rs. 40,73,860.24 by M/s. PKS Ltd. for which the D/Ds are to be issued in the following manner.

Shree Shyamji Udyog \026 Rs. 32,00,000/- payable at Golagokarnath
Shree Shyamji Rice will \026 Rs. 5,24,861.94 \026 do-
-do-
Hanuman Prasad Ojha \026 Rs. 3,48,998.30 payable at Kanpur. "

24. If there had been a fraudulent misrepresentation by some of the respondents at Calcutta and a conspiracy was hatched to commit offences of cheating or misappropriation, indisputably a part of cause of action arose within the jurisdiction of the learned Metropolitan Magistrate.

25. The complainant has alleged that the respondents have committed offences under Section 120B, 420, 406, 465, 468, 471, 478 and 481 of the Indian Penal Code.

26. Although referred to in the complaint petition, but as no investigation was sought to be prayed for in respect of the assault on Subodh Singh at Kanpur Railway Station, it may not be necessary for us to address thereupon.

27. Respondents were appointed as their agents by the appellants. There, thus, existed a relationship of principal and agent. What were the terms and conditions of the contract of agency and how criminal misconducts have been committed while purporting to perform their part of the terms of the said contract of agency, would be a matter of detailed investigation.

28. Fraudulent representation being one of the essential ingredients in respect of commission of an offence under Section 420 of the Indian Penal Code, a place where such fraudulent misrepresentation has been made would, thus, give rise to a cause of action for prosecuting the accused. Similarly, having regard to the ingredients of an offence under Section 406 where the entrustments were made as also the situs where the offence was completed in the sense that the amount entrusted had not been accounted for by the agent to the principal will also have a nexus so as to enable to the Court concerned to exercise its jurisdiction of taking cognizance. Furthermore, whether the offence forgery of some documents committed or some other criminal misconducts are said to have been committed in furtherance of the commission of the principal offence of cheating and misappropriation wherefor the respondents are said to have entered into a criminal conspiracy; are required to be investigated. The Chief Metropolitan Magistrate, thus, had jurisdiction in the matter in terms of Section 178 read with Section 181(4) of the Code of Criminal Procedure.

29. The High Court has placed strong reliance upon a decision of this Court in Navinchandra N. Majithia v State of Maharashtra and Others [(2000) 7 SCC 640], wherein this Court held, while considering a contention that the High Court of Bombay was not correct in not entertaining the application for quashing of a complaint petition filed by the complainant in Shillong, went into the merit of the matter and instead of remitting the matter back to the High Court directed:

"29. 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 J.B. Holdings Ltd. should be made by the Mumbai Police."

30. This Court arrived at the finding that the High Court should have issued a Writ of Mandamus directing the State of Meghalaya to transfer the investigation to the Mumbai Police taking note of the averments made in the writ petition that the complaint petition filed at Shillong was malafide.

31. No such explicit prayer was made by the respondents in their writ petition, although a prayer for issuance of a writ in the nature of mandamus, directing the State of West Bengal to transfer Case No. 381 to the State of U.P., had been made. The question of State of West Bengal's having a legal duty in that behalf did not arise. Only in the event an Investigating Officer, having regard to the provisions contained in Section 154, 162, 177 and 178

of the Code of Criminal Procedure had arrived at a finding that the alleged crime was not committed within his territorial jurisdiction, could forward the First Information Report to the Police having jurisdiction in the matter.

32. Stricto sensu therefore, the High Court should not have issued such a direction. Assuming, however, that the High Court could mould the relief, in our opinion, it was not a case where on the face of the allegations made in the complaint petition, the same could be said to be malafide. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever.

33. We may notice that this Court in *Mosaraf Hossain Khan v Bhagheeratha Engg. Ltd. and Others* [(2006) 3 SCC 658], distinguished *Navinchandra N. Majithia* (supra), in the following terms:-

"33. In this case, the averments made in the writ petition filed by the respondent herein even if given face value and taken to be correct in their entirety would not confer any jurisdiction upon the Kerala High Court. The agreement was entered into within the jurisdiction of the Calcutta High Court. The project for which the supply of stone chips and transportation was being carried out was also within the State of West Bengal. Payments were obviously required to be made within the jurisdiction of the said Court where either the contract had been entered into or where payment was to be made.

34. The appellant did not deny or dispute any of the averments made in the complaint petition. In the writ petition it merely wanted some time to make the payment. It is now well known that the object of the provision of Section 138 of the Act is that for proper and smooth functioning of business transaction in particular, use of cheques as negotiable instruments would primarily depend upon the integrity and honesty of the parties. It was noticed that cheques used to be issued as a device inter alia for defrauding the creditors and stalling the payments. It was also noticed in a number of decisions of this Court that dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. It was also found that the remedy available in a civil court is a long-drawn process and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

[See *Goa Plast (P) Ltd. v Chico Ursula D'Souza* and *Monaben Ketanbhai Shah v State of Gujarat*.

36. For the purpose of providing the aforementioned ingredients of the offence under Section 138 of the Act, the complainant appellant was required to prove the facts constituting the cause of action therefor none of which arose within the jurisdiction of the Kerala High Court. It is apt to mention that in *Prem Chand Vijay Kumar* this Court held that cause of action within the meaning of Section 142(b) of the Act can arise only once."

34. It was furthermore held that ordinarily the High Court should not

interfere with an order taking cognizance passed by a competent court except in appropriate cases.

35. However, the order passed by the High Court of Judicature at Allahabad has been complied with, as would appear from the counter affidavit filed on behalf of the State of West Bengal. It was necessary, with a view to arrive at the bottom of the matter to conduct investigation into the allegations contained in the complaint petition by a competent investigating officer of the State of Uttar Pradesh. Some offences at various places situated within the State of Uttar Pradesh had been committed. The High Court had not issued any direction as to which Investigating Officer attached to which Police Station of Uttar Pradesh will have jurisdiction in the matter.

36. The direction of the High Court, in that way is vague and indefinite. Investigating Officer attached to one Police Station may feel handicapped in carrying out the investigation within the entire State. In this case, it may be necessary for the Investigating Officer to make investigation even in other States including Rajasthan, Madhya Pradesh, West Bengal etc. for the aforementioned purpose.

37. We, therefore, are of the opinion that interest of justice would be subserved if this appeal is disposed of with the following directions.

(i) Further investigation shall be carried out by C.B.C.I.D. of the State of Uttar Pradesh.

(ii) Accused/respondents shall surrender before the Chief Judicial Magistrate, Allahabad and their applications for grant of bail, if any, may be considered by the said court on its own merits.

(iii) The accused/respondent shall render all cooperation with the Investigating Officer. They shall appear before the Investigating Officer as and when directed, if released on bail.

(iv) Investigation shall be carried out inter alia on the premise that the jurisdiction to make investigation shall be subject to the ultimate decision of the Court of the Chief Metropolitan Magistrate, Calcutta as if investigations are being carried out by the C.B.C.I.D. of the State of Uttar Pradesh in continuation of the investigation made by the Officer-in-charge of the Shakespeare Sarani Police Station. The Chief Metropolitan Magistrate, Allahabad shall be entitled to pass appropriate orders from time to time in this behalf.

(v) The Report on completion of the investigation shall be forwarded to the Chief Metropolitan Magistrate, Calcutta who shall determine the question of his own jurisdiction at an appropriate stage.

(vi) This order, it is made clear, is being passed in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India. All concerned authorities are directed to carry out these directions.

38. For the views we have taken, it is not necessary for us to embark upon the question as to whether directions issued by the Judicial Magistrate by an Order passed under sub-section (3) of Section 156 is a judicial order or an administrative order.

39. This appeal is disposed of with the aforementioned directions.