

PETITIONER:
C.B.I.ANTI CORRUPTION BRANCH, MUMBAI

Vs.

RESPONDENT:
NARAYAN DIWAKAR

DATE OF JUDGMENT: 07/05/1999

BENCH:
D.P.MOHAPATRA, P.P. SETHI.

JUDGMENT:

MOHAPATRA, J.

Leave granted.

We have heard learned counsel for the parties. The main question that arises for consideration in this case is whether, on the facts and in circumstances of the case, the Gauhati High Court had jurisdiction to entertain and decide the writ petition filed by the respondent. Another question which also arises is whether on the facts and in the circumstances of the case, the High Court was right in quashing the First Information Reports lodged against the respondent.

The factual backdrop of the case relevant for the present proceedings may be stated thus ;

The respondent who is an officer of the Indian Administrative Service was officiating as Collector, Daman, as the regular incumbent was on leave and he continued as In-charge Collector from October, 1992 to April 1993. He was transferred to Arunachal Pradesh in March, 1994. Prior to the transfer of the respondent, three First Information Reports were lodged with the Central Bureau of Investigation (CBI) on 29.9.1993 which were numbered as RC 64(A)/93-BOM, RC 65(A)/93-BOM and RC 66(A)/93-BOM containing allegations, inter alia, that the respondent and one Tapas Neogi, Architect and Town Planner, Government of Daman, entered into a criminal conspiracy with the accused land owners and prepared or caused to be prepared a forged map of Daman and increased or reduced the area of industry zone. It was further alleged that some land owners of Bimapore village of Daman named in the First Information Reports were benefited thereby.

After receipt of the First Information Reports, a wireless message was sent by the Superintendent of Police, CBI, ACB, Bombay to the Chief Secretary, Arunachal Pradesh, Itanagar with a request to advise the respondent to meet Shri A.K. Asthana, Inspector of Police, CBI, ACB, Bombay in connection with investigation of RC 64(A)/93-BOM in PWD Guest House at 10.30 AM on 27.4.1994. It was stated in the message that the matter was most urgent. On being informed about the wireless message, the respondent filed the writ petition in the High Court of Gauhati with the prayer, inter alia, to quash the First Information Reports and for other

consequential benefits.

An objection was raised on behalf of the respondents in the writ petition against the maintainability of the case. A Single Judge of the High Court allowed the writ petition holding that the Court had jurisdiction to entertain the writ petition and that the case is a fit one for quashing of the First Information Reports. On the question of jurisdiction, the learned Single Judge held that the communication of the wireless message to the respondent at Itanagar, Arunachal Pradesh was a part of the cause of action for filing the writ petition and, therefore, the writ petition filed in the Gauhati High Court was maintainable under Article 226(2) of the Constitution. On merits of the case, the learned Single Judge relied on the averments, in the writ petition. As noted earlier, the writ petition was allowed. The appeal filed by the appellant before the Division Bench was dismissed at the motion stage. Therefore, the present appeal by the C.B.I.

The thrust of the submissions made by Ms. K. Amareshwari, the learned Senior Counsel appearing for the appellant was that the High Court of Gauhati had no jurisdiction to entertain and decide the writ petition since no part of the cause of action for filing the case arose within the territorial jurisdiction of the court. Referring to the wireless message, the learned Counsel submitted that it cannot be said to provide any cause of action to the respondent to file the writ petition seeking quashing of the First Information Report for the simple reason that the wireless message does not even state that the First Information Report contains certain allegations against the respondent and does not give any indication about the nature of the allegations made against him. According to the learned counsel all that the wireless message contains is a request to

the respondent to meet the Inspector, CBI, ACB, Bombay on the day, place and time mentioned in the message, in connection with the investigation of case No.RC64(A) 93-BOM.

Shri Mahendra Anand, learned Senior Counsel for the respondent strenuously urged that the High Court was right in holding that it had jurisdiction to entertain and decide the writ petition. However, in course of his arguments, Shri Anand, on instructions from the respondent who was present in Court stated before us that the respondent has no objection if the impugned judgment is quashed leaving it open to the respondent to approach the competent Court for redress of his grievance at appropriate stage and sought for an observation that if the First Information Reports and the proceedings started on the basis of the same are challenged by the respondent, the Court will decide the case without being influenced by the observations and findings recorded in the impugned judgment of the Gauhati High Court.

In view of what has been fairly stated by the learned Counsel for the respondent, it is not necessary for us to enter into merits of the case, suffice it to say that on the facts and circumstances of the case and the material on record, we have no hesitation to hold that the Gauhati High Court was clearly in error in deciding the question of jurisdiction in favour of the respondent. In our considered view, the writ petition filed by the respondent in the

Gauhati High Court was not maintainable.

Accordingly, the appeal is allowed. The judgment of the learned Single Judge and the judgment of the Division Bench confirming the same are quashed. It goes without saying that in any proceeding in which the First Information Report or the criminal proceedings is challenged by the respondent, the case will be decided by the Court without being influenced by the observations and findings in the impugned judgment of the High Court.

JUDIS