
(2006) 11 OHC CK 0033
In the Orissa High Court

Aditya Sponge and Power Pvt. Limited and Another and Braja Kishore ' Braja Samal APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 160, 177, 178, 179, 180
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 465, 468

Citation : (2007) CLT 278 (Suppl CrI) : (2007) 1 OLR 64

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Judgement

L. Mohapatra, J.—Relief claimed in both the writ applications being same, both cases were heard together.

2. In W.P.(CRL) No. 267 of 2006, the petitioner No. 1 is a Private Limited Company and petitioner No. 2 is the Managing Director of the said company. In W.P.(CRL) No. 268 of 2006, the petitioner is an employee of the petitioner No. 1 - company in W.P.(CRL) No. 267 of 2006. Both the writ applications have been filed for the following reliefs:

(i) F.I.R. No. 101/2006 dated 20.5.2006 registered in Nahan Police Station in the district of Sirmour in the State of Himachal Pradesh be quashed;

(ii) A declaration be made that Nahan Police Station has no territorial jurisdiction to register and investigate into the F.I.R. lodged by one Rajkumar Saini, Managing Director, M/s. Saboo Ispat Pvt. Limited-opp Party No. 6; and

(iii) To restrain Nahan Police Station in the State of Himachal Pradesh from investigating into the F.I.R. and also for quashing the notice in Annexure-6 sent by the In-charge Detective Wing, Nahan Police Station at Bhubaneswar dated 16.6.2006 u/s 160 of the Code of Criminal Procedure.

3. The petitioner in W.P.(CRL) No. 267 of 2006 is a Private Limited Company

having its registered office at Bhubaneswar and factory at Dubalpal, Telkoi in the district of Keonjhar within the State of Orissa. The company is engaged in manufacturing sponge iron. The company supplies sponge iron to different firms within and outside the State of Orissa. It had supplied 2310.66 M.T. of sponge iron to M/s. Saboo Ispat Pvt. Limited and its sister concerns in the State of Himachal Pradesh. The said supply was made in between 17.4.2006 to 1.5.2006. The supplies were made through rail link. It is the case of the petitioners that before the materials in question were dispatched, they were subjected to chemical test and after being satisfied with the required quality, dispatch was made. The materials were transported from the factory premises at Telkoi to Rourkela by truck and thereafter in the goods train to the destination. The supplies were made through a Trading Firm in the name and style of "Nava Bharat" located in Calcutta. After the supplies were made, the petitioners received a letter on 18.5.2006 from the Managing Director of the informant-company in which some earlier letters dated 11.5.2006 and 15.5.2006 were enclosed. In the letter it was alleged that the sponge iron supplied were not up to the required standard. According to the informant, the materials were tested at National Institute of Secondary Steel Technology and the test report shows that the materials supplied were having average Fe (m) of 64.31% and metalisation was 74.48 and accordingly, it was opined that the quality of the materials supplied to the petitioners were poor and sub-standard. On receipt of the said letter, a reply was given to the effect that one Bikram Saboo, who happens to be the Director of M/s. Saboo Ispat Private Limited and Janardan Sharma, who happens to be the Manager of the said Company had inspected the factory premises of the petitioners and the products thereof. Only after inspection, the goods were sold "as is where is basis". It was also stated in the reply that the Managing Director of the informant-company had supervised the despatch of the entire materials and accordingly, the petitioners denied the allegations made in the letter. After receipt of the reply, the Managing Director of the informant-company lodged a first information report with Nahan Police Station in the district of Himachal Pradesh on 20.5.2006 alleging supply of sub-standard materials to him by the petitioners. On receipt of the F.I.R., the In-charge Detective Wing, Nahan Police Station registered the same as F.I.R. No. 101 of 2006 for commission of offences under Sections 420/465/468/471/120-B of the I.P.C. In said F.I.R. not only the company but also the Managing Director and another employee have been implicated as accused persons who are petitioners in both the writ applications. After registration of the F.I.R., investigation was taken up and the In-charge Detective Wing came to Bhubaneswar in the third week of June, 2006 and issued a notice to the petitioner No. 2 in W.P.(CRL) No. 267 of 2006 requiring him to appear before the Nahan Police Station on 23.6.2006. This notice has been sent u/s 160 Cr.P.C. According to the petitioners, in both the cases the entire cause of action arose within the State of Orissa and no part of cause of action arose within the State of Himachal Pradesh. It is stated by the petitioners that the so-called sub-standard materials were despatched from the factory premises located in the district of

Keonjhar and the materials were also despatched from Rourkela. No part of cause of action having been arisen within the State of Himachal Pradesh, according to the petitioners, the Nahan Police Station had no territorial jurisdiction to either register the F.I.R. or take up investigation. It is further stated that the F.I.R. has been registered with Nahan Police Station for the purpose of harassing the petitioners and if the proceeding is allowed to continue in Himachal Pradesh, the same shall amount to abuse of process of law. Apart from above, it was also contended by the learned Counsel for the petitioners that entire reading of the F.I.R. would clearly indicate that the dispute is of civil nature and none of the ingredients of the offences alleged to have been committed are available for the purpose of initiating a criminal proceeding.

4. A counter affidavit has been filed by the informant alleging supply of sub-standard materials by the petitioners and it is the case of the informant that the informant has been cheated. It is also the case of the informant that the materials were delivered in the factory premises of the informant located within the State of Himachal Pradesh and, therefore, the cause of action arose within the State of Himachal Pradesh. The learned Counsel appearing for the informant at the time of hearing also submitted that this Court has no jurisdiction to entertain the writ applications for the purpose of quashing the proceeding initiated in the State of Himachal Pradesh.

5. Considering the allegations and counter allegations and with reference to the prayer made in the writ applications, only three questions arise for consideration by this Court.

(i) Whether this Court has territorial jurisdiction to entertain the writ applications for the purpose of quashing the F.I.R. and the criminal proceeding initiated in the State of Himachal Pradesh on the basis of the F.I.R.

(ii) Whether any cause of action arose within the State of Himachal Pradesh for the purpose of registering the F.I.R. and initiating a criminal proceeding.

(iii) Whether the dispute is of civil nature or not.

6. So far as first ground is concerned, admittedly the factory of the petitioner-company is located in the district of Keonjhar i.e. State of Orissa. Admittedly the materials were supplied from the factory premises by truck to Rourkela and were despatched to the destination from Rourkela by train. Admittedly also the investigation was conducted within the State of Orissa and notice u/s 160 Cr.P.C. was issued by the In-charge Detective Wing, Nahan Police Station in Bhubaneswar. In view of the above, there cannot be any doubt in mind that this Court has jurisdiction to entertain the writ applications, a major part of cause of action having arisen within the State of Orissa and investigation of the said case having also been done within the State of Orissa. In this connection, two decisions of the Apex Court are relevant. In the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, the petitioner therein was the Managing Director of a Company having its registered office at Bombay who had entered

into an agreement for sale of shares of his company with the complainant. Certain shares were transferred to the complainant. The petitioner alleged that at no point of time the complainant offered to make the balance payment or to take delivery of the remaining shares. The said agreement therefore stood terminated and the earnest money stood forfeited as stipulated in the agreement. The complainant thereupon 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 practice, which eventually failed. Having failed to achieve the purpose by such means the complainant filed a 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 share reversed. The petitioner therein also stated 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 C.I.D., Shillong in entertaining the said complaint and in taking up investigation on the basis of the same is clearly oppressive, discriminatory and mala fide. A writ petition seeking, inter alia, relief of quashing of F.I.R. was filed in Bombay High Court. The High Court dismissed it on ground of want of territorial jurisdiction. The Apex Court on consideration of such facts was of the view that the decision of the Bombay High Court that F.I.R. having been filed in the State of Meghalaya, it did not have territorial jurisdiction to entertain the writ application is unsustainable.

The Court further proceeded to say that the power conferred on the High Court under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court.

In the present case admittedly major part of cause of action arose within the State of Orissa. If the ratio laid down by the Apex Court in the aforesaid case is taken into consideration, merely because the F.I.R. has been lodged in the State of Himachal Pradesh, it cannot be said that this Court does not have jurisdiction to entertain the writ application on the ground of territorial jurisdiction. More or less a similar view has been expressed by Apex Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, .

In view of what has been decided in the aforesaid case and on consideration of the submissions made by the learned Counsel appearing for both the parties referring to the transactions leading to filing of F.I.R., I am of the view that this Court has the territorial jurisdiction to entertain the writ application, a major part of the cause of action having arisen within the State of Orissa.

7. The second question that arises for consideration in this case is as to whether any cause of action arose within the State of Himachal Pradesh for the purpose of registering the F.I.R. and initiating a criminal proceeding. In this connection, it

is necessary to refer to the F.I.R. It is interesting to note that instead of filing the F.I.R. in Nahan Police Station, the F.I.R. was directly received by the Superintendent of Police, Sirmour in the State of Himachal Pradesh. It is alleged in the F.I.R. that M/s. Saboo Ispat Pvt. Limited of which the complainant is the Managing Director is indulged in manufacturing of MS Iron, Ingot. It is alleged in the FIR that the complainant is in business activities with one Randheer Singh Saini, Proprietor Ambay Agro in the State of Haryana and Vikash Saboo, a resident of Barbil in the district of Keonjhar within the State of Orissa. It was suggested by those two persons to the complainant to get sponge iron transported through railway rather than road transport which will be cheaper by Rs. 1000-1210 per MT. Those two persons entered into a deal with the complainant and the associate firms for supply of sponge iron whose quality was required to be 80+Fem for consideration of Rs. 1,1400/- per MT and the said sponge iron was to be supplied by the petitioner-company after receiving 100% payment in advance. According to the complainant, 100% payment was made to the petitioner-company before movement of the sponge iron. It is further alleged that the said Randheer Singh and Vikash Saboo continued to confirm the complainant about loading of the materials. Approximately after one month the complainant sent its Manager Mr. Janardan Sharma to Rourkela to find out about dispatch status of the materials. After receipt of the materials/sponge iron in the complainant's factory premises, it was found that the iron ore content in the sponge iron was much lower than the requirement. Accordingly, samples were sent to the laboratory and the quality of product was found to be much below the standard. It is also alleged that despite repeated contacts with the petitioner-company, the complainant did not receive any response and, therefore, the FIR was lodged alleging commission of offence u/s 420/465/468/471/120-B of the I.P.C.

8. The learned Counsel appearing for the petitioners submitted that even accepting the allegations made in the FIR to be true, no part of cause of action arose within the State of Himachal Pradesh and, therefore, the Superintendent of Police, Sirmour had no territorial jurisdiction either to accept the FIR or initiate a criminal proceeding on the basis of the FIR. According to the learned Counsel for the petitioners, no part of cause of action arose within the State of Himachal Pradesh and, therefore, the FIR could not have been entertained by S.P., Sirmour. It was contended by the learned Counsel for the petitioners that there was no agreement between the complainant and the petitioners. Admittedly the complainant had entered into an agreement with Randheer Singh and Vikash Saboo. The said Randheer Singh and Vikash Saboo contacted the petitioner-company for supply of the required sponge iron. After receipt of the entire consideration money in advance, supply of sponge iron was made from the factory premises of the petitioner-company through trucks and the materials were unloaded into the railway wagons at Rourkela. The aforesaid two persons received the materials and despatched the same from Rourkela to a place at Punjab i.e. Govindpur from where the same were carried to the factory premises

of the complainant. It was submitted on behalf of the petitioners that so far as the petitioners are concerned, the responsibility under the contract with the aforesaid two persons ceased to exist after the materials were supplied at Rourkela for being dispatched to the destination. Therefore, so far as petitioners are concerned, no part of cause of action arose within the State of Himachal Pradesh. The learned Counsel appearing for the complainant and the learned Counsel appearing for the State representing the Himachal Pradesh police submitted that though there was no direct contract between the complainant and the petitioners, payment made by the complainant was directly received by the petitioners and the materials supplied by the petitioners were ultimately transported to the factory premises of the complainant situated within the State of Himachal Pradesh and, therefore, a part of the cause of action also arose within the State of Himachal Pradesh. The learned Counsel for the complainant as well as the State also referred to Sections 177, 182 and 188 of the Cr.P.C. in support of their contentions. The learned Counsel for the complainant placed reliance upon a decision of the Apex Court in the case of *K. Satwant Singh Vs. The State of Punjab*, . In the said reported case the accused was charged for cheating in the year 1942. The allegation was that misrepresentation was made at Simlaland the accused paid the money at Lahore. The cheques were posted at Kolhapur (the then a Native State). Referring to Section 188 of the 1898 Code, the Apex Court held that mere posting of cheque at Kolhapur cannot be considered as delivery of the cheque to the accused at Kolhapur and no part of cheating was committed outside British India. Referring to Sections 179 and 180 and 188 of the 1898 Code, the Apex Court further held that if misrepresentation is made by A at X and property delivered at Y, A can be tried for offence of cheating either at X or at Y. So far as this case is concerned, the learned Counsel appearing for the parties relied upon Sections 182 of the Code of Criminal Procedure Section 188 of the Code of Criminal Procedure has no application to the facts of the present case since no offence has been committed outside India. Referring to Section 182 of the Code of Criminal Procedure, it was contended by the learned Counsel for the petitioners that the entire money having been paid at Bhubaneswar, the cause of action arose only in Bhubaneswar and, therefore, Himachal Pradesh police has no jurisdiction to investigate a criminal proceeding. Chapter-13 of the Cr.P.C. 1973 deals with jurisdiction of the Criminal Courts in inquires and trials. Section 177 of the Code provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. In case of offence being committed at several places, Section 178 has application. Section 178 of the Code provides that when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. If this provision is pressed into service, in the present case it will be clear that the cause of action not only partly arose within the State of Orissa but also within the State of Himachal Pradesh. Undisputedly, the materials supplied by the petitioner-company had been dispatched to Govindgarh in the State of Punjab

from Rourkela by train. From Govmdagarh the materials were sent to the factory premises of the complainant-opposite party No. 6 at Sirmour. The said materials were used in the factory premises and when the materials were subjected to test, it was found to be of poor quality as alleged by the complainant. In view of such admitted position, the materials having been supplied from the State of Orissa and having ultimately been received in the State of Himachal Pradesh for the purpose of use in the factory premises of the complainant, it cannot be said that no part of cause of action arose within the State of Himachal Pradesh. Accordingly, I am of the view that the Court in Himachal Pradesh as well as State of Orissa have jurisdiction to entertain the case in terms of Section 178 of the Code of Criminal Procedure.

9. The third question to be determined is as to whether even accepting the entire allegations made in the FIR to be correct, the dispute can be said to be civil nature or not.

It was contended by the learned Counsel appearing for the petitioners that in the FIR there is no allegation whatsoever to the effect that the complainant induced dishonestly by the petitioners to deliver the money. The learned Counsel referred to the letters dated 11.5.2006, 15.5.2006 and 18.5.2006 written by the complainant in which a request was made for replacement of the materials and settle the dispute. According to the learned Counsel appearing for the petitioners the allegation of the complainant may at best amount to breach of contract and mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. Nowhere in the case it is stated that at the very inception, there was any intention on part of the petitioners to cheat, that being condition precedent for an offence u/s 420 of the Penal Code. It was also contended that there is growing tendency in business circles to covert purely civil dispute into criminal proceeding and there is also an impression that if a person could somehow be entangled in a criminal prosecution, there may be possibility of an early settlement. The learned Counsel for the petitioners relied on some decisions in this regard. The learned Counsel for the complainant as well as the learned Counsel for the State submitted that whether there was intention at the inception of the transaction or not is to be gathered from the conduct of the accused and it need not be expressly stated in the FIR. According to the learned Counsel appearing for the said opposite parties, the materials available on record would clearly indicate that the intention to cheat was there from the beginning and, therefore, prima facie offence u/s 420 of the Penal Code is made out. In order to appreciate the contention of the learned Counsel for the parties, it is again necessary to go into the nature of transaction between the parties. The petitioner-company had supplied 2310.66 M.T. of sponge iron to M/s. Saboo Ispat Pvt. Limited and its sister concerns. The said supply was made in between 17.4.2006 to 1.5.2006 and such supplies were made through rail link. It is the case of the petitioners that before the materials in question were despatched, they had been subjected to chemical test and after being satisfied with regard to

quality, it had been despatched. It is also the case of the petitioners that the supplies were made through a Trading Firm in the name and style of "Nava Bharat" located in Calcutta. The only allegation of the complainant is that the sponge iron supplied to it were not up to the required standard. Annexure-1 series are the certificate issued by the Chief Chemist of the petitioner's company relating to sponge iron supplied in each of the trucks. The test report indicates presence of Fe (Metal) % 91.90 and Fe (Total)% 86.42. Similarly, another test report shows that Fe (Metal) content 78.89% and Fe (Total) 91.79%. All the test results annexed as Annexure-1 series more or less indicate similar contents of Fe (Metal) and Fe (Total). Annexure-B series furnished by the informant-company shows the test result done by the National Institute of Secondary Steel Technology. The said report indicates that the total Fe percentage was between 82 to 89% out of which metallic iron percentage was between 55 to 69% and degree of metalisation was between 63 to 79%. Another report dated 10.5.2006 given by the said Institute indicates total iron content in between 85 to 80%, metallic iron content in between 73 to 76% and degree of metalisation from 74 to 89%. Undisputedly there is variation in between the test reports submitted by the Chief Chemist of the petitioners and the test report submitted by the National Institute of Secondary Steel Technology. But the margin of difference between the test reports is not to such an extent that intention to cheat can be gathered therefrom. From the letters written by the informant also it appears that they had never thought of being cheated and only requested the petitioners either to replace the materials or settle the dispute. Under these circumstances, I agree with the learned Counsel for the petitioners that the dispute is of civil nature and it may at best be termed as breach of contract.

In the case of Hari Prasad Chamaria v. Bishun Kumar Surekha and Ors. reported in AIR 1975 SC 301 the Apex Court held as follows:

Even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution. There was nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with the money nor did the complaint indicate that the respondent had induced the appellant to pay them the amount parted with. The appellant also did not allege the respondents making any representation to him for parting with the money. Mere fact that they did not abide by their commitment as to starting of the business in complainant's name as agreed to would not fasten them with criminal liability.

In the case of Hotline Teletubes and Components Ltd. and Ors. v. State of Bihar and Anr. reported in (2005) 32 OCR 789 (SC) , the Supreme Court observed that:

Allegation of intention to cheat and of refusal by appellants to pay price for goods received from complainant and no allegation in complaint however, that at very inception of the contract between the parties, there was any intention to cheat. No criminal offence is disclosed, much less under Sections 406 and 420 and the

case is one purely of civil liability. Not quashing prosecution of the appellants on such a complaint would amount to an abuse of process of Court. Hence appeal allowed and prosecution quashed.

In the case of Anil Mahajan v. Bhor Industries Ltd. and Anr. reported in (2005) 10 SCC 228 Apex Court observed that:

Fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction. Mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out. Mere use of words cheating in the complaint would not be sufficient. Substance of the complaint has to be seen to find out as to whether the allegation pertain to a civil case of breach of contract or a criminal case of offence of cheating. It depends upon the intention of the accused at the time of inducement made and the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

10. If the complaint is examined in the light of the aforesaid three decisions, it will be found that there is no allegation whatsoever in the complaint to show that the petitioners had any intention at the beginning of the transaction to cheat. Apart from above, it is also clear from the complaint that there was a contract for supply of sponge iron between the complainant and Randheer Singh and Bikash Saboo. There was no contract between the petitioners and the complainant though money was received by the petitioners from the complainant. Merely because in the subsequent laboratory test, the sponge iron was found to be not up to the required standard cannot lead to a conclusion that there was dishonest intention at the inception of the contract. There is also no allegation whatsoever in the complaint to substantiate the offence alleged u/s 120-B of the IPC. So far as other offences are concerned, it also appears that the materials supplied were tested in the laboratory of the petitioners and the Chief Chemist had given a certificate. There is no element of forgery therein. After receipt of the materials, the complainant sent it for laboratory test and it was found that the materials supplied were not up to the required standard. Under these circumstances and on consideration of all these allegations, it cannot be said that prima facie materials are available in support of the offences alleged to have been committed under Sections 465, 468 and 471 of the Penal Code. The materials collected till today during investigation may at best amount to a breach of contract and the dispute is of purely civil nature. In absence of any allegation with regard to presence of dishonest intention at the beginning of the transaction and in absence of any material with regard to other offences as discussed earlier, I am of the view that on the existing evidence, continuance of a criminal proceeding would amount to abuse of process of the Court. Since the investigation is still in progress and has not been completed, it will not be appropriate on the part of this Court to quash the proceeding at this stage. However, considering the materials available and discussions made earlier, since I am of the view that the

materials collected so far may at best lead to a case of civil nature involving breach of contract, I direct that the Investigating Officer before submission of Final Form shall keep in mind the observations made by the Apex Court in the decisions referred to above. I am also of the view that since the materials collected till today during investigation lead to a civil dispute and I hardly find any scope for a criminal proceeding, it is also directed that till submission of Final Form, no coercive action shall be taken against the petitioners.

Both the W.P. (CRLs) are disposed of accordingly.