
(2013) 07 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition (Cr.) No. 132 of 2012

Amit Agrawal and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 164, 173(8), 406
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 409, 420

Citation : (2013) 07 CHH CK 0003

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Chetan Sharma, Mr. Gurpreet Ahluwalia and Mr. Ankit Singhal, for the Appellant; Kishore Bhaduri, Additional Advocate General for the State, Shri Manish Sharma, Advocate for the respondent No. 2 and Shri Manish Datt, Ms. Hamida Siddiqui and Shri Yogesh Soni, Advocates for the respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioners seek quashment of the First Information Report (for short "the FIR"), being MECR 08 of 2012 (Annexure - P/1), registered at Police Station MRA, Mumbai for the offence under Sections 406, 465, 467, 466, 471 & 420 read with Section 34 of the Indian Penal Code (for short "the IPC"), further holding the said FIR in contravention to the principle of law. The petitioners also seek for transferring the investigation in the FIR i.e. MECR 08 of 2012 to the State of Chhattisgarh. The petitioners also seek quashment of the order dated 29.06.2012 (Annexure - P/2) passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai (for short "the ACMM"). The indisputable facts, as projected by the petitioners, in brief, are that the petitioners No. 1 & 3 are the Directors of Hira Steel Limited (for short "Hira"), petitioner No. 2 was the former Director of Hira and he retired w.e.f. 03.07.2012. The petitioner No. 4 is the Chief Operating Officer of Hira. The

officers/agent and Prasanna V Ghotage (for short "Prasanna"), partner of Coastal Mines & Minerals (for short "Costal") approached the officers of Hira and offer them to supply iron ore fines. The said officers also informed that the Fe contents of the iron ore fines was to be 52%. It was further informed that Geo Chem Laboratories Pvt. Ltd. (respondent No. 3 herein) (for short "Geo Chem") was appointed to issue the certificate in respect of quality and quantity. On the basis of the aforesaid discussion, an agreement was executed on 07.05.2011 (Annexure - P/3) for sale and purchase of 1,10,000 WMT of iron ore fines. The said agreement specifically stipulated that the Fe content of the iron ore fines was to be 52%. Thereafter, the cargo i.e. only 41,253 WMT of iron ore was loaded in the ship MV Everbright on 09.06.2011 whereas Hira paid an amount of Rs. 26,50,00,000/-.

2. Subsequently, the ship MV Everbright sailed from the port at Goa on 09.06.2011 and a quality certificate dated 28.6.2011 (Annexure - P/5) was issued by Geo Chem certifying that the Fe content of the said iron ore was 53.69%. Hira also conducted the quality test of the material through Intertek India Pvt. Ltd. (for short "Intertek") for testing of iron ore fines, who certified that the Fe content of the iron ore was 45.94%, which can be seen from the e-mail dated 31.05.2011 (Annexure - P/6).

3. On receiving the information from Intertek, the officers of Hira contacted Prasanna through e-mail and informed about the quality as well as the Fe contents of the iron ore, on which Prasanna orally informed that the iron ore supplied was of the quality stipulated in the agreement. Even on 21.06.2011 (Annexure - P/7), Coastal gave an undertaking that they shall take full responsibility of entire loss incurred during the sale of material. After obtaining the undertaking from Coastal, Hira entered into sale and purchase agreement on the High Seas bearing Contract No. NR/HSL/IRON/070101 dated 01.07.2011 with one Mr. Niraj Shrivastava (for short "Niraj"), Proprietor of NR Resources, for sale of the iron ore fines to the end buyer at China. Thereafter, when the cargo reached China and was inspected by inspecting authority of the Chinese Government, it was found that the Fe content in the said iron ore was only 41.18%. Consequently, the buyer cancelled the contract and returned the documents to the banker of Niraj.

4. When the petitioners came to know about the cancellation of contract by the buyer at China on account of inferior quality of iron ore fines, they filed a written complaint dated 06.01.2012 (Annexure - P/9) before the Deputy Inspector General of Police & Senior Superintendent of Police, Raipur stating that Prasanna in complicity with Mr. K. Jagannatha Rao (for short "Rao") and the Directors of Geo Chem had duped and defrauded Hira by supplying iron ore fines of inferior quality on the basis of forged and fabricated quality certificates. Pursuant the said complaint, the police registered FIR at Police Station Civil Lines, Raipur, bearing FIR No. 179 of 2012 dated 2.5.2012 (Annexure - P/10) for offence under Sections 420, 467, 468, 471 & 120-B read with Section 34 of the IPC.

5. Subsequently, Hira entered into another agreement dated 16.01.2012 with Niraj for sale of Iron ore fines lying at the port in China to another Chinese buyer. In the said agreement, it has been specifically mentioned that the Niraj shall sell the goods to the new buyer at China only after obtaining the consent of Hira. However, Niraj sold the iron ore fines lying at the port in China at a throwaway price without informing and without obtaining the consent of Hira. No payment was made by Niraj to Hira and the entire amount received by him was siphoned off by him alone for which the petitioners filed a complaint dated 13.02.2012 (Annexure - P/11) against Niraj. Pursuant to which FIR bearing No. 57 of 2012 dated 15.02.2012 (Annexure - P/12) was registered against Niraj in Police Station, Civil Lines, Raipur for offence under Sections 420 & 409 of the IPC.

6. In the meanwhile, Geo Chem (respondent No. 3 herein) filed a complaint dated 15.05.2012 (Annexure - P/13) before the Senior Inspector of Police MRA Marg, Police Station, Mumbai, against its Branch Manager namely; Rao. In the said complaint, there is no allegation against Hira and its Directors. When no action was taken by the Mumbai police on the complaint of Geo Chem, they filed another complaint dated 24.05.2012 (Annexure - P/14) before the same police station and requested the police to register the case against their ex-employee i.e. Rao, Prasanna & Hira.

7. On 31.05.2012 (Annexure - P/15) the Directors of Geo Chem filed an application u/s 438 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.) in respect of FIR No. 179 of 2012. During pendency of the said bail application, on 08.06.2012 (Annexure - P/16) Geo Chem filed an application u/s 156(3) of the Cr.P.C. before the Court of ACMM against their ex-employee Rao, Prasanna, Hira and others without there being any alleged cause of action within the territorial jurisdiction of that Court.

8. On 13.06.2012 (Annexure - P/17) the First Additional Sessions Judge, Raipur dismissed the bail application filed by the Directors of Geo Chem. Thereagainst, they preferred an application u/s 438 of Cr.P.C. before this Court, being M.Cr.C. (A) No. 537 of 2012 (Annexure - P/18). On 19.06.2012, the Court of ACMM, on the application of Geo Chem u/s 156(3) of Cr.P.C. issued directions for registration of FIR. In the said case the FIR was registered, being No. MECR No. 08 of 2012 at Police Station MRA, Mumbai. In the said FIR, there is no allegation against Hira. Mr. Rao, gave his statement in respect of the FIR No. 179 of 2012 (Annexure - P/19). Subsequently, the bail application preferred by the Directors of Geo Chem i.e. M.Cr.C. (A) No. 537 of 2012 was rejected by this Court by order dated 09.07.2012 (Annexure - P/20). On 09.08.2012 (Annexure - P/21), the Investigating Officer filed charge-sheet against the accused persons and sought permission u/s 173(8) of the Cr.P.C. for further investigation before the concerned Court and the Court was pleased to take cognizance of the said charge-sheet.

9. The case of the petitioners is that the directors of Geo Chem had played a major role in the conspiracy hatched out to defraud Hira, warrants for the arrest

of the Directors of Geo Chem have been issued by the Chief Judicial Magistrate, Raipur on 01.08.2012 (Annexure - P/22). On 23.10.2012 (Annexure - P/23), the petitioners received notices u/s 161 & 91 of the Cr.P.C. from the Inspector of Police, MRA Marg alleging their involvement in the crime i.e. MECR No. 08 of 2012.

10. On 01.11.2012, the petitioners filed petitions before High Court of Judicature at Bombay u/s 482 of the Cr.P.C. for quashing of FIR, however, the said petitions were withdrawn from the said High Court. Thereafter, the petitioners filed anticipatory bail applications before the Sessions Court at Mumbai and the said Court granted anticipatory bail to the petitioners up to 27.12.2012.

11. Shri Chetan Sharma, learned senior counsel appearing with Shri Gurpreet Ahluwalia & Shri Ankit Singhal, learned Advocates for the petitioners, would submit that the FIR No. 179 of 2012 was lodged at Police Station, Civil Lines, Raipur on 02.05.2012 in which the investigation was conducted, charge-sheet was filed and the matter is pending for trial. Therefore, on the same transaction a subsequent/counter FIR was registered in Court of no jurisdiction. Second FIR/counter blast bearing No. MECR 08 of 2012 lodged at Police Station MRA, Mumbai i.e. ipso facto barred.

12. Shri Sharma would further submit that no allegations were made against the petitioners in the first FIR lodged by Geo Chem, however, having come to know about the inculpatory and damaging statement eluding the forgery to be on the direct instructions of the directors of Geo Chem an improvement was made by roping in Hira and its directors with a view to influencing the on going investigation/case at Raipur.

13. Shri Sharma would also submit that the Senior Superintendent of Police, Raipur vide his letter dated 18.11.2012 has in categorical terms stated at that the offence complained in the police station at Mumbai and the complaint at Raipur is the same. Mr. Rao, in his statement recorded u/s 164 of the Cr.P.C. stated that the Directors of the Geo Chem were having the knowledge of the issuance of the forged certificate and they were acting in connivance of the same.

14. Shri Sharma would next submit that the mala fide of the investigating agency of Mumbai is evident from the fact that the ACMM Mumbai, directed for conducting investigation only, but the Mumbai police lodged the FIR even after knowing the fact that the FIR is already registered at police station, Raipur, further respondent No. 2 irrespective of the interim order passed by this Court has filed the application praying for production warrant of the accused Prasanna and Rao.

15. Shri Sharma would lastly submit that no allegations made against the petitioners and the petitioners cannot be held vicarious liable. Registration of impugned FIR amounts to registration of second FIR and the same is not maintainable and is not at all sustainable in the eyes of law. Second complaint is afterthought and improved version of the earlier complaint dated 15.05.2012 as

in the first complaint there are no allegations against Hira. The FIR registered with a mala fide intention just to falsely implicate the petitioners in the present case.

16. On the other hand, Shri Kishore Bhaduri, learned Additional Advocate General appearing for the State, would submit that on the complaint of Hira FIR No. 179 of 2012 was registered at Police Station, Civil Lines, Raipur on 02.05.2012 and the police is investigating the matter. During investigation pursuant to the said FIR, raids were conducted at Goa office of Geo Chem and from where the computers, printers & various papers were seized. The office staff of Geo Chem namely; Amit Kulkarni, Suresh Pawar, Madhav Murthy, Ms. Vidya Devi and Ms. Shufala Eravi were interrogated and their statements were recorded. They specifically stated that the directors of Geo Chem are in the habit of issuance of forged certificates.

17. Shri Bhaduri would further submit that during investigation the accused persons namely; Rao & Prasanna were arrested in respect of FIR No. 179 of 2012 and they are in judicial custody till date. Accused Rao has given his statement u/s 164 of the Cr.P.C. stating that the forged certificate for shipping the vessel MV Everbright was issued on the instructions of the directors of Geo Chem.

18. Shri Bhaduri would also submit that the Directors of Geo Chem are absconding and are declared proclaimed offender in the FIR No. 179 of 2012. The FIR i.e. MECR No. 08 of 2012 registered at Police Station, MRA Mumbai is nothing but a cross case which is clearly impermissible in the eyes of law. Shri Bhaduri would next submit that the investigation is still going on in the State of Chhattisgarh and by continuation of the investigation at Mumbai would amount to reinvestigation overlapping each other, which also no at all sustainable in the eyes of law. It is an admitted case that the forged certificate is issued by Geo Chem and whether it was issued in the connivance of the directors of Geo Chem is under investigation, as the directors are not joining the investigation and are trying to over reach the process of the court. The State of Chhattisgarh is investigating the matter properly and as per the guidelines. All the documents are already seized by the investigating agency and are pending trial before the learned CJM, Raipur. Thus, fresh investigation on the said documents would amount to re-investigation which is not at all permissible in the eyes of law.

19. Shri Manish Sharma, learned counsel appearing for the respondent No. 2, would submit that the petitioners have no locus standi to challenge the jurisdiction of the Mumbai police and seek quashing/transfer of MECR No. 08 of 2012 during the pendency of their anticipatory bail application before the learned Sessions Court at Mumbai at the time of filing the present petition. The anticipatory bail applications of the petitioners qua MECR No. 08 of 2012 were filed on 20.12.2012 & 21.12.2012 before the Sessions Court at Mumbai and the present petition was filed by the petitioners on 24.12.2012 before this Court. The petitioners have filed the present petition during the pendency of their anticipatory bail applications before the learned Sessions Court at Mumbai. It is

evident from the aforesaid conduct of the petitioners that after admittedly subjecting themselves to the jurisdiction of the Sessions Court in Mumbai, the petitioners have chosen to file the present petition before this Court.

20. Shri Manish Sharma would further submit that this Court does not have jurisdiction to quash or transfer the MECR No. 08 of 2013 registered in Mumbai, Maharashtra to Raipur, Chhattisgarh as the cause of action, qua the complainant therein, upon which the MECR No. 08 of 2013 is registered has occurred in Mumbai within the jurisdiction of the MRA Marg Police Station. The involvement of the petitioners is under investigation in MECR No. 08 of 2012 and, as such, the petitioners cannot challenge the MECR No. 08 of 2012, however, the investigation of MECR No. 08 of 2012 can only be challenged before the High Court of Judicature at Bombay and not before this Court, as has already been done by the petitioners. The facts and offences on the basis of which FIR 179 of 2012 is registered at Raipur is different and distinct from the facts and offences on the basis of which MECR 08 of 2012 is registered at Mumbai.

21. Shri Manish Sharma would also submit that the MECR No. 08 of 2012 has been registered by MRA Marg Police Station as per the directions of the ACMM. MRA Marg Police Station, Mumbai has got jurisdiction to investigate the complaint against the petitioners as the cause of action has arisen in Mumbai.

22. Shri Manish Datt, learned senior counsel appearing with Ms. Hamida Siddiqui and Shri Yogesh Soni, learned Advocates for the respondent No. 3, would submit that the petitioners by their act of filing petition for quashing at Mumbai and also application for anticipatory bail have waived their right to file a petition before this Court under Article 226/227 of the Constitution of India. In fact, no FIR was lodged against the petitioners, therefore, filing of the instant petition under Article 226 of the Constitution of India for quashment of the FIR and investigation thereto, would be premature. The ACMM has passed the order u/s 156(3) of the Cr.P.C., the police has registered the FIR and the matter has taken it for the purpose of investigation only. The ACMM was well within the competence to have directed for investigation within the purview of Section 156 (3) of the Cr.P.C.

23. Shri Datt, would further submit that after registration of the FIR, another FIR in the form of directions issued u/s 156(3) of the Cr.P.C. can be recorded and the Court would not interfere for quashing on the aspect of second FIR. Shri Datt, would also submit that the Court considering the petition for quashment under Article 226 of the Constitution of India, cannot go beyond the documents and the FIR which is sought to be quashed nor any defence can be seen nor any excess material can be relied upon by the petitioners for the purpose of quashment of the FIR.

24. Shri Datt, would also submit that the petitioners had filed a petition which was registered as Criminal Application No. 1270/2012 seeking quashment of the FIR vide MECR No. 08 of 2012 registered at the MRA Police Station, Mumbai. In

the said petition interim relief was also prayed on behalf of the petitioner. The said application was rejected. Thereafter, the petitioners again admitted to the jurisdiction of Mumbai seeking benefit of anticipatory bail u/s 438 of the Code of Criminal Procedure which was withdrawn. The writ petition is not maintainable before the High Court in respect of the same subject-matter since earlier writ petition has been withdrawn without permission to file a fresh petition.

25. Shri Datt, would lastly submit that this Court may not pass an order for recalling the case which is not within the territorial jurisdiction. This Court has the power to transfer the case registered at the Police Station, Civil Lines, Raipur to another place of its jurisdiction but may not call for an investigation, which is in progress in some other State to this Court, as it is beyond the power and jurisdiction of this Court. The accused has no right or say anything during the course of investigation and it is the exclusive right of the investigating agency as to how the matter should be investigated. The aspect of sameness arising from series of act at the stage of investigation is to be seen by the investigating office and not by this Court. This aspect can be dealt with only after the charge-sheet is filed within the territorial jurisdiction of the High Court, however, not during course of investigation.

26. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

27. Indisputably, on 2.5.2012 an FIR bearing No. 179/2012 (Annexure - P/10) was lodged by one officer of Hira namely; Arun Poddar against Prasanna, K.J.V. Sharma, Jayesh, Smt. Viviya, Hasan & Imran Sheikh. Investigation was initiated and challan has also been filed before the competent Court at Raipur, which is pending consideration. Thereafter, on 15.2.2012 one more FIR No. 57/2012 (Annexure - P/12) was lodged by the same officer of Hira i.e. Arun Poddar against Niraj. In respect of the said FIR also investigation was initiated.

28. Geo Chem having its office at Geo-Chem House, 294, Shahid Bhagat Singh Road, Fort, Mumbai, filed a complaint on 15.5.2012 (Annexure - P/13) before the Senior Inspector of Police, MRA Marg, Mumbai, against its ex-employee namely; Rao, Manager Operations, Vasco Da Gama, Goa Branch. In the said complaint, there was no allegation against Hira. When the MRA Marg Police did not initiate any action, one more complaint was filed by Geo Chem on 24.5.2012 (Annexure - P/14) requesting registration of FIR against its ex-employee namely; Rao, Manager Operations, Vasco Da Gama, Goa Branch, Prasanna and also against Hira.

29. Thereafter, the Directors of Geo Chem filed an application u/s 438 of the Cr.P.C. for grant of anticipator bail, in respect of FIR No. 179/2012. The said application was dismissed by the Court of First Additional Sessions Judge, Raipur, by order dated 13.6.2012 (Annexure - P/17). Thereagainst, they preferred an application u/s 438 of Cr.P.C. before this Court, being M.Cr.C. (A) No. 537 of 2012 (Annexure - P/18), which was also dismissed by order dated 9.7.2012

(Annexure - P/20).

30. When no action was taken by the police on the complaints dated 15.5.2012 & 24.5.2012 filed by Geo Chem, they filed an application before the ACMM. The ACMM by order dated 29.6.2012 (Annexure - P/2) send the compliant to the Senior Inspector of Police, MRA Marg Police Station, Mumbai, u/s 156(3) of the Cr.P.C. holding that prima faice case has been made out and, as such, investigation be initiated by the police, which is also sought to be impugned herein.

Jurisdiction of the Court:

31. Writ petitions were filed in the High Court of Bombay at Goa, being Criminal Writ Petition No. 78 of 2012 (Geo-Chem Laboratories Private Limited & Others v. The State of Goa & Others) and Criminal Writ Petition No. 79 of 2012 (Mr. Rajiv Sunderlal Bahi v. The State of Goa & Others), wherein seeking quashment of FIR No. 179/2012 dated 2.5.2012 registered by the respondents No. 3 & 4 therein i.e. The Officer-in-charge, Thana Civil Lines Police Station, Raipur & Investigating Officer, Special Investigation Cell, Thana Civil Lines Police Station, Raipur. Further a direction was sought to transfer the investigation of the aforesaid FIR to the State of Goa. Both the writ petitions were dismissed by the learned Division Bench of the High Court of Bombay at Goa on the ground that the Chhattisgarh High Court may alone consider FIR lodged in Raipur, not Goa.

32. Several parties, including Hira, filed criminal application (APL) Nos. 1270, 1271, 1272 & 1273 of 2012 before the High Court of Judicature at Bombay, for the same reliefs, sought to be impugned in the instant petition, which read as under:

a) Quash and set aside the order dated 29.6.2012, passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai in C.C. No. 13/SW/2012 filed by non-applicant No. 3;

b) Quash and set aside FIR No. (MECR No. 8 of 2012) registered at MRA Marg Police Station in pursuance of the order dated 29.6.2012;

c) Quash and set aside notice dated 23.10.2012 issued u/s. 161 and 91 of the Cod by non-applicant No. 2 to applicants No. 2 and 3;

d) pending the hearing and final disposal of the present application direct non-applicant No. 2, Sr. Police Inspector, MRA Marg Police Station be refrained from taking any coercive action against the applicants and not to arrest the applicants until the present application is decided;

e) pending the hearing and final disposal of the present application, the proceedings in C.C. No. 13/SW/2012 pending in the Court of Hon''ble Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, be stayed.

f) ad interim reliefs in terms of prayer clause (d) (e);

g) allow the application;

h) pass any other suitable order as this Hon"ble Court deem fit.

33. Learned Division Bench of the High Court of Judicature at Bombay took cognizance of the aforestated applications and granted interim relief, but subsequently the said applications were withdrawn by order dated 21.12.2012. Thus, the petitioners availed the protection of non-arrest in the above-stated cases wherein there was a specific challenge of quashment of FIR i.e. MECR No. 08 of 2012 as well as the order dated 29.6.2012. The same are under challenge in this Court in the case on hand. The High Court of Judicature at Bombay by order dated 18.12.2012 (page 255 of paper book) directed that the concerned applicants shall not be arrested till 21.12.2012 to enable them to appropriate remedy. Finally, the petitioners withdrew the cases by order dated 21.12.2012 (page 256 of paper book) without any liberty to take recourse to any other forum including the High Court of Chhattisgarh.

34. It is well settled principle of law that filing of a case against the same cause of action after withdrawal of the petition (application) is prohibited, not on the ground of res judicata, but on the ground of public policy, as it was observed by the Supreme Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, that "it is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition." It is indisputable that if the petition is dismissed as withdrawn it may not be a bar to a subsequent petition under Article 32 of the Constitution of India, as withdrawal does not amount to res judicata. However, in view of the public policy, withdrawal of the petition without liberty tantamounts to relinquishment or abandonment of the remedy.

35. In the case on hand, the petitioners along with other persons belonging to Hira filed several criminal applications, as aforestated, before the High Court of Judicature of Bombay at Mumbai. The High Court took cognizance of the matter and granted interim relief in favour of the petitioners therein. Ultimately, the said applications were withdrawn by the petitioners without seeking liberty to file fresh petitions seeking for the same relief before other Court exercising its jurisdiction under Article 226 of the Constitution of India. Thus, this petition under Article 226/227 seeking for the same relief is not maintainable, as it is against the public policy. The petitioners having availed the remedy of approaching the High Court at Mumbai cannot do bench hunting in other High Court when the cause of action arose in both the High Courts.

36. Reliance of the petitioners upon the decision of the Supreme Court in

Navinchandra N. Majithia Vs. State of Maharashtra and Others, , is not applicable to the facts of the present case, as the facts in the said case were that two members after forming another company JBHL at Shillong committed default in making payment of the balance purchase price and thereafter, made a complaint against IFPL. Subsequently, the petition was filed by IFPL before the High Court of Bombay. The High Court dismissed the petition holding that the cause of action arose in the State of Meghalaya and, as such, the High Court of Bombay has no jurisdiction to entertain the petition. The Supreme Court while considering the matter against the order passed by the High Court of Bombay held that a part of the cause of action arises in the State of Maharashtra, but the High Court of Bombay has not considered that issue while dismissing the petition and, as such, held that even the High Court of Bombay cannot decline to entertain the writ petition. Accordingly, the appeal was allowed, set aside the judgment of the High Court of Bombay and directed transfer of the investigation from Shillong to Mumbai police for further investigation.

37. The decision of the Supreme Court in Navinchandra N. Majithia (supra) is not relevant to the facts of the case on hand, as no writ petition was filed in the Gauhati High Court, having territorial jurisdiction seeking quashment of FIR or investigation at Shillong. Secondly, admittedly a part of cause of action arose in the State of Maharashtra as well as in the State of Chhattisgarh, but the petitioners have preferred criminal applications before the High Court of Judicature at Bombay, which was taken cognizance and interim relief was also granted. Thereafter, the applications were withdrawn without liberty abandoning the remedy and, as such, the instant writ petition is not maintainable in this Court, on the ground of public policy.

38. In view of foregoing, I do not propose to go into the merits of the case, as the same was also under the judicial gaze of the High Court of Judicature at Bombay, which was subsequently relinquished, by withdrawal.

Transfer of investigation:

39. Geo Chem filed a writ petition in the Supreme Court of India under Article 32 of the Constitution of India seeking reliefs, inter alia, consolidation of all the cases pending in different States and for a direction to conduct fresh investigation outside the State of Chhattisgarh. In the said matter all the parties appeared. The Supreme Court by order dated 5.4.2013 (Annexure - D/2) observed as under:

Petitioners have raised various grievances before us by way of this petition under Article 32 of the Constitution, which in our view cannot be resolved exercising the Court's power under that Article.

Director General of the concerned States, however, would see that the investigation is conducted fairly and without any external influence whatsoever and in accordance with law.

The writ petition is, therefore, not entertained and is dismissed.

40. Thus, the issue of transfer from one State to another State was considered and the Supreme Court directed that the Director Generals of the concerned States would see that the investigation is conducted fairly and without any external influence whatsoever and in accordance with law.

41. Section 406 of the Cr.P.C. provides that Supreme Court alone has power to transfer the case or appeal from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

42. In the case on hand, the investigation and lodging of FIR was pursuant to the order dated 29.6.2012 (Annexure - P/2) passed by the ACMM u/s 156(3) of the Cr.P.C. The petitioners have challenged the said order before the High Court of Judicature at Bombay in the above-stated criminal applications, which were subsequently abandoned by withdrawing the applications. Even otherwise, this Court has no jurisdiction to call a judicial matter, by giving colour of transfer, arising from the order passed by the ACMM, Mumbai, other police station or subordinate Court, to this Court.

43. In *Dr. Ram Chander Singh Sagar and another v. State of T.N. and another* Transfer Petn. (Cr.) No. 40 of 1977 (23.1.1978), the Supreme Court has taken a view that the Supreme Court while exercising the power u/s 406 of the Cr.P.C. cannot clothe the Court with the power of transfer the investigations from one police station to another in the country simply because the FIR or remand report is forwarded to a Court. Thus, this Court has no jurisdiction to transfer the investigation from the Police Station, MRA Marg, Mumbai (Maharashtra) to the Police Station at Raipur (Chhattisgarh). As a sequel, the writ petition is dismissed. No order as to costs.