

(2001) 05 KL CK 0015
In the High Court Of Kerala
Case No : Criminal M.C. No. 2402 of 1997

Augustine

APPELLANT

Vs

Omprakash Nanakram

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226(2)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2001) 2 ALT(Cri) 109 : (2001) 3 RCR(Criminal) 764

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : Mathai M. Paikaday, Pauly Mathew Muricken and Anil George, for the Appellant; K.K. Dinesan and A.B. Moly, for the Respondent

Judgement

R. Rajendra Babu, J.—Petitioner, who is the accused in C.C. 1093/1997 before the Metropolitan Magistrate's Court No. 16, Ahmedabad, filed this petition invoking S. 482 Cr.P.C. for quashing the above complaint and the further prosecution proceedings thereon pending against the petitioner.

2. Respondent herein filed the complaint C.C. 1093/+8 before the Metropolitan Magistrate's Court, Ahmedabad, alleging the commission of offences under Ss. 406 and 420 IPC. The allegations in the complaint were that the complainant was doing wholesale business on cloth in Ahmedabad and the petitioner (accused) had purchased cloths on credit as per two bills dated 31.7.96 for Rs. 16,016.50 and Rs. 18,827.00. The goods covered by the above bills had been delivered by the complainant to the accused, the petitioner, who was doing textile business at Ernakulam. Petitioner had taken the goods on 30 days credit and the value of the goods had to be paid within a period of 30 days. The petitioner was purchasing cloth from other firms also and had not made payments and the complainant had come to know that the petitioner had lessened his business and had sold clothes at reduced price and had not returned the amount due to the claimant and thus the petitioner had committed offences under Ss. 420 and 406 IPC.

3. Heard the learned counsel for the petitioners and the respondent.

4. The main argument advanced by the learned counsel for the petitioner was that the allegations in the complaint do not make out any case against the petitioner and as such the proceedings on the above complaint would amount to an abuse of the process of the court and hence are liable to be quashed. The learned counsel appearing for the respondent submitted that the complaint was filed in a court at Ahmedabad beyond the jurisdiction of this Court and as such this petition is not maintainable before this Court. The learned counsel for the petitioner submitted that, as part of the cause of action had arisen within this State of Kerala at Kochi, this court has jurisdiction to entertain this petition and as such the above contention put forward by the respondent cannot be accepted. He placed reliance on the decision of the Supreme Court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, . That was a case where the Supreme Court had considered whether the Bombay High Court had got jurisdiction to quash an FIR registered at Shillong. There Supreme Court held:

"From the provision in clause (2) of Art. 226 it is clear that the maintainability or otherwise of the Writ Petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

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The mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor can it be said that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the Writ Petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case."

So far as the question of territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered is the place where the alleged offence was committed. If part of the cause of action had arisen within the jurisdiction of this Court i.e., at Ernakulam, naturally this court has jurisdiction to entertain this petition. Hence this court has to consider whether any part of the cause of action had arisen within the territory of this Court. For that it is relevant to consider the allegations in the complaint as well as in the petition.

5. The allegations in the complaint would reveal that the goods sold by the bills dated 31.7.96 had been delivered by the complainant to the accused at Ernakulam. The sale was on credit and the bill amount i.e., price of the goods had to be paid to the complainant within a period of 30 days. So the commission

of any offence can be alleged only if payment is not made within 30 days. Thus part of the cause of action would arise within the jurisdiction of this court at Ernakulam when payment is not made. Thus this court has jurisdiction to entertain this petition. Hence the contention put forward by the respondent that this Court has no jurisdiction to entertain this petition, cannot be accepted.

6. The learned counsel for the petitioner submitted that the allegations in the complaint do not make out any case against the petitioner and the prosecution on the basis of such a complaint would amount to an abuse of the process of the court and the complaint is liable to be quashed. Even the allegations in the complaint would reveal that the goods were sold on credit on condition that the amount should be paid within a period of 30 days from the date of transaction. In fact, the sale was complete and the liability of the petitioner was to pay the value of the goods within 30 days and there was no entrustment and misappropriation of any property in order to attract an offence under S. 406. Likewise, there were no allegations in the complaint that at the time of sale of the goods the petitioner had the required intention to deceive the complainant. In fact the allegations do not make out a case that the petitioner had the required intention to deceive at the time of sale of the goods for attracting an offence under S. 420 IPC. The Supreme Court in *M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others*, held that the intention to deceive should be there even at the time of making the promise for attracting the offences under S. 420 IPC. As there was no such allegation in the complaint, an offence under S. 420 also cannot be attracted. In fact, there was a promise to pay price of goods within a period of 30 days from the date of sale and the sale of goods was on credit. If the price was not paid within the agreed time, then there was only a breach of promise or agreement for which a civil liability alone would lie.

7. It is settled law that the complaint can be quashed when the allegations in the complaint do not disclose any offence. *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . In *Hridaya Ranjan Prasad Verma v. State of Bihar* (2000) 4 SCC 168 the Supreme Court held that when the continuation of the proceedings would amount to an abuse of the process of the court, the prosecution proceedings has to be quashed. As the allegations in the complaint do not make out offences under Ss. 406 and 420 IPC and the further prosecution proceedings would amount to an abuse of the process of the court, the complaint is liable to be quashed.

In the result C.C. 1092/97 pending before the Metropolitan Magistrate's Court, No. 16, Ahmedabad shall stand quashed.