



alternatively, pray for a direction to transfer the

investigation of Lakhisarai Police Station case No. 255/2016 from the State of Bihar to the State of Assam.

4. At the very outset, it will be appropriate to say that in the affidavit filed by the respondent Nos. 3, 4 and 5 as well as in the affidavit filed by respondent No. 6, preliminary objection is taken with

regard to maintainability of the petition on the ground that this Court does not have territorial jurisdiction to entertain the petition. At the same time, arguments have also been advanced on the

merits of the case.

5. An ejahar was lodged by an employee of the respondent No. 6 with the allegation that in the year 2013, the petitioner No. 1, who is the partner of petitioner No. 2 herein, had placed an order

for two trucks of iron rod with the respondent No. 6. One truck of iron rod weighing 19.960 MT and valued at Rs. 7,09,144/- was transported to the godown of the petitioner No. 2 at Guwahati.

On request being made to make the payment, it is alleged that the petitioner No. 1 informed that he would make payment after receiving one more truck of iron rod and that the payment would

be made at a time. Consequently, one more truck of iron rod weighing 20.01 MT and valued at Rs. 7,10,920/- was despatched which was also delivered at the godown of petitioner No. 2 at

Guwahati. As per the bills raised, total value of the goods came to be Rs. 14,26,064/-. However, when payment was sought for, the petitioner No. 1 only assured to make payment but did not

make any payment. However, subsequently, a cheque dated 7.11.2013 for Rs. 2,00,000/- was issued which was encashed. Later on, some more cheques were issued by the petitioner No.1,

which, however, were not honoured on the ground that the cheques exceeded arrangement.

6. On receipt of the ejahar, a case was registered as Lakhisarai PS Case No 255/2016 under Section 406 IPC. It appears that, subsequently, the case was also registered under Section 420 IPC.

7. In the writ petition, categorical averments are made by the petitioners that the petitioners had business relationship with the respondent No. 6 from prior to 2010 and that over a long period of

time there had been many transactions of purchase and sale in between the

petitioners and the respondent No. 6 and payments were also made accordingly as would be demonstrated by the

ledger account maintained.

8. The respondent No. 6 did not deny the long standing business relationship in its affidavit.

9. By drawing attention of the Court to Section 181 of the Cr.P.C., Mr. Dubey submits theso called entrustment of the goods having taken place at the godown of the petitioners at Guwahati, part

of cause of action had arisen within the jurisdiction of this Court and therefore, the plea taken that this Court does not have territorial jurisdiction is misconceived.

In this connection, Mr. Dubey has placed reliance in the case of Navinchandra N. Majithia vs. State of Maharashtra & ors., reported in (2000) 7 SCC 640. He submits that although the

petitioners have made an alternative prayer, having regard to the allegations made in the ejahar, it is evident that the dispute between the purchaser and seller is an out and out a civil dispute and

that the ejahar was lodged only to arm-twist the petitioners. He submits that in respect of a sale, entrustment, which is envisaged under Section 406 IPC, does not come into play. In the same

vein he submits that the ejahar does not disclose the ingredients of offence under Sections 415 and 420 IPC and therefore, it is fit case for quashing the ejahar. Mr. Dubey places reliance in the

judgments of the Supreme Court in the case of State of Gujarat vs. Jaswantlal Nathalal, reported in AIR 1968 SC 700 and in the case of Suryalakshmi Cotton Mills Ltd vs Rajvir Industries Ltd.

& Ors, reported in (2008) 13 SCC 678.

10. Mr. Sarkar, on the other hand, submits that the fact that petitioner No. 1, after receiptof the first consignment of the goods, again placed order for one more truck of iron rod without having

sufficient funds will demonstrate that the petitioners had deceived the respondent No. 6 and had fraudulently and dishonestly received goods from respondent No.

6. Mr. Sarkar has placed reliance on the case of Asit Bhattacharjje vs. Hanuman Prasad Ojha & ors., reported in (2007) 5 SCC 786.

11. Mr. Dutta submits that during investigation, the ingredients of Section 415 IPC havingbeen found, Section 420 IPC was added.

12. I have heard the learned counsel for the parties and have perused the materials on records.

13. At the first instance, it will be appropriate to address the contention advanced by respondent Nos. 3, 4, 5 and 6 that this Court does not have territorial jurisdiction to entertain this writ petition.

14. A perusal of the ejahar itself demonstrates that the goods were delivered in the godown of the petitioner No. 2 at Guwahati. Section 181(4) of Cr.P.C. provides that any offence of criminal

misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject

of the offence was received or retained or was required to be returned or accounted for by the accused person. The Courts in Guwahati in that context have territorial jurisdiction to try the

offences.

15. Article 226 of the Constitution of India, as was originally enacted, had two-fold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could

be exercised by the High Court throughout the territories in relation to which it exercises jurisdiction. In other words, the first limitation imposed is that the writs issued by the High Court cannot

run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be within the territories in relation to which it

exercises jurisdiction. It implies that the person or authority must be amenable to the High Court's jurisdiction either by residence or location within its territories. There was no reference to

any cause of action. Cause of action was a concept alien to Article 226 of the Constitution of India.

16. Article 226 of the Constitution was amended by the Constitution (Fifteenth Amendment) Act, 1963 and after Clause 1, a new Clause, being Clause (1-A), was introduced. The same reads

as follows:

Article 226(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising

jurisdiction in relation to the territories within which the cause of action, wholly

or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or

the residence of such person is not within those territories.â??

17. Subsequently, by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was re-numbered as Article 226(2).

18. The expression â??cause of actionâ? is a bundle of facts which would be necessary for the plaintiff to prove before he can succeed. It is the bundle of facts which taken with the law

applicable to them gives the plaintiff a right to relief against the defendant.Â It refers entirely to the grounds set forth in the plaint as the cause of action. In common legal parlance, cause of

action is existence of those facts which give a party a right to judicial interference on his behalf.

19. In Navinchandra N. Majitha (supra), the Supreme Court had stated that the main factor to be considered when a question of territorial jurisdiction arises with reference to a criminal offence

is the place where the alleged offence was committed. It was also held that mere fact that the ejahar was registered in a particular State is not the sole criteria to decide that no cause of action

had arisen even partly within the territorial jurisdiction of another State.

20. In Asit Bhattacharjee (supra), upon which reliance is placed by Mr. Sarkar, it is observed that necessary ingredients of a criminal offence must exist in a complaint petition. It is further held

that having regard to the ingredients of an offence under Section 406 IPC where the entrustments were made as also the situs where the offence was completed will have nexus so as to enable

the Court concerned to exercise its territorial jurisdiction.

21. The crucial part of the allegations made in the ejahar is entrustment of property to the petitioners at Guwahati. This very fact of entrustment is a part of cause of action, which has arisen

within the territorial jurisdiction of this Court, and therefore, this Court has territorial jurisdiction to entertain this writ petition notwithstanding the fact that the ejahar was lodged in a different

State.

22. In Jaswantlal Nathalal (supra), it is stated as follows:

Â â??The term ""entrusted"" found in S. 405 IPC governs not only the words

""with the property"" immediately following it but also the words ""or with any dominion over the property"" occurring

thereafter. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the

owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment needs to conform to all the technicalities of the

law of trust.â??

23. The expression 'entrustment' thus carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner.

Further, the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. Viewed in that context, transaction of

sale cannot amount to an entrustment as after delivery, seller has neither any right nor dominion over the property.

24. The case set out in the ejahar was sale of iron rod and therefore, there was no entrustment within the meaning of Section 405 IPC. The ingredients of Section 405 IPC are palpably absent in

the ejahar.

25. Ingredients of cheating are:

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or

omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or

property.

26. In *Suryalakshmi Cotton Mills (supra)*, it is stated that fraudulent or dishonest inducement on the part of accused must be at the inception and not at a subsequent stage to attract Section 415

read with 420 IPC.

27. There is not even a whisper in the ejahar that there was any fraudulent and

dishonest inducement on the part of the accused which led to despatch of goods. It is also noticed from the ejahar

that order for two trucks of iron rod was placed at a time and the respondent No. 6 had initially despatched one truck and the second lot of iron rod was sent in another truck later on. It is not that

as submitted by Mr. Sarkar that after receipt of one truck of iron rod, order for another truck of iron rod was placed.

28. It is clear and apparent that the consignments were despatched in view of longstanding business association in between the petitioners and the respondent No. 6. The allegations, even if

accepted at their face value in their entirety, do not constitute any offence of cheating.

29. As the allegations made in the ejahar, prima facie, do not constitute any offence of Section 406/420 IPC against the petitioners, the ejahar, which is registered as Lakhisarai Police Station

Case No. 255/2016, is quashed.

30. The writ petition is allowed. No cost.