
(2012) 10 AHC CK 0055

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 14978 of 2012

Brahm Pal Panchal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 11 ADJ 777

Hon'ble Judges : Anurag Kumar, J;Amar Saran, J

Bench : Division Bench

Advocate : Awdhesh Kumar Mishra, Brijesh Upadhyay and Dharampal Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Anurag Kumar, J.—This writ petition by petitioner, Brahma Pal Panchal, is filed for quashing the impugned detention order dated 25.1.2012 passed by respondent No. 2, namely, Principal Secretary (Appeals and Security), Home Department, Government of Maharashtra and Detenue Authority Mantralaya, Mumbai, Maharashtra. At the very outset, learned AGA raised a preliminary objection regarding the maintainability of this petition in this High Court, contending that this Court has no jurisdiction to hear the case, as the cause of action arose in the Maharashtra and the petitioner's son has already approached the Bombay High Court, but has failed.

2. According to the petitioner, this Court has full jurisdiction to entertain this writ petition as he is the permanent resident of Ghaziabad, U.P., and his office is at Ghaziabad and his all business activities are transacted here. His business premises at Ghaziabad were also searched and the seizure panchnama was also prepared at Ghaziabad. On these grounds, learned counsel for the petitioner asserted that this Court has jurisdiction to hear and decide this petition.

Before entering into the main controversy, we feel it necessary that the

preliminary objection raised by the learned AGA regarding jurisdiction may be considered first and decided upon.

3. The factual matrix of the case is that prior to 21.10.2010, approximately 6500 second-hand cranes were imported at Bombay Port by approximately 600 importers during the last five years. The Director of Revenue Intelligence, Mumbai Zonal, gathered an information that several syndicates of crane importers were involved in the evasion of customs duty by undervaluing the said imports. Based on the said intelligence, dated 21.10.2010, several simultaneous search operations were conducted by the Director, Revenue Intelligence, Mumbai Zone, Union of India, at different places, including the business premises and workshops of the petitioner at Ghaziabad.

Thereafter, summonses were issued to the petitioner and proceedings under the Customs Act initiated. Ultimately, the impugned detention order was passed on 25.1.2012.

After issuance of the impugned detention order, the petitioner's son, Pradeep Panchal, filed a petition, being Crl. W.P. No. 1368 of 2012, before the Bombay High Court. In the said petition, various orders were passed but the arrest of the petitioner was not stayed. On 7.9.2012, the Bombay High Court passed an order directing the learned counsel for the petitioner of that case to name the detenu himself as the petitioner. As the necessary amendments have not been carried, the said writ petition has been dismissed for non-prosecution.

4. Learned counsel for the petitioner submitted that this Court has jurisdiction to entertain this writ petition, and in this regard has relied upon the Full Bench decision of the Rajasthan High Court, as in *Umed Mal Vs. Union of India (UOI) and Others*, . He also submitted that the cause of action is a bundle of facts. Part of cause of action or any portion of the cause of action can give rise to the petitioner's right to file a petition in this High Court. The cause of action is to be seen from the pleadings of the parties. When from the pleadings of the petitioner, any part of the cause of action is within the jurisdiction of this Court, then this Court has every and full jurisdiction to entertain the writ petition. The learned counsel has also relied on *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, .

5. Learned AGA submitted that the cause of action in the present case arose within the jurisdiction of the Bombay High Court and the petitioner has approached the said Hon'ble Court; but when he did not succeed in obtaining any relief therefrom, he has approached this Court. In view of this, it is not open to the petitioner to approach this Court once he has failed to get relief from the Bombay High Court, having jurisdiction in the matter. The petitioner cannot create the jurisdiction of this Court by merely asserting on the residence or the search operations in Ghaziabad. It is true that the cause of action is a bundle of facts, which means every fact, which is important for any cause of action and in the absence of such fact, the cause of action comes to an end. In support of his

submission, learned AGA has relied on *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, .

6. After considering the arguments of both the sides, now we consider the factum of jurisdiction of this Court.

Before entering into the controversy in the present case, we may examine the legal position regarding the jurisdiction. In *Black's Law Dictionary*, Ninth edition, at page 251, the phrase "cause of action" is defined as "... (1) A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person....

According to Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 170 (2d ed. 1899):

What is a cause of action? Jurists have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. This state of facts may be - (a) a primary right of the plaintiff actually violated by the defendant; or (b) the threatened violation of such right, which violation the plaintiff is entitled to restrain or prevent, as in case of actions or suits or injunction; or (c) it may be that there are doubts as to some duty or right, or the right beclouded by some apparent adverse right or claim, which the plaintiff is entitled to have cleared up, that he may safely perform his duty, or enjoy his property.

7. Article 226 of the Constitution of India, as originally it stood, had two-fold limitations on the jurisdiction of a High Court with regard to its territorial jurisdiction. Firstly, the power could be exercised by it throughout the territories in relation to which it exercises jurisdiction, i.e. the writs issued by the Court could not reach beyond the territory subject to its jurisdiction. Secondly, the person or the authority, to whom the High Court is empowered to issue such writs, must be "within those territories" which clearly implies that this must be within its jurisdiction, either by residence or location of his jurisdictional territories. However, by the Constitution (42nd) Amendment Act, 1976, it has been provided that the High Court within the territorial jurisdiction of which a cause of action, wholly or in part arises, shall exercise the power conferred by clause (1) of Article 226, irrespective of whether the State, a Government, or an authority to which the writ be issued or the residences of the persons claiming relief is constituted within the territories of that High Court or No. A bare reading of Article 226 shows that the jurisdiction of the High Court depends upon the accrual of the cause of action, wholly or in part, within the territorial jurisdiction of the Court.

8. In *Umed Mal (supra)*, the Full Bench of the Rajasthan High Court laid down that if the service of the detention order is within the territories of the State of Rajasthan, the Rajasthan High Court will have the territorial jurisdiction to entertain the writ petition. Hon'ble the Supreme Court in *Alchemist Ltd. (supra)*, relying on the *State of Rajasthan v. M/s. Swaika Properties*, AIR 1995 SC 1285

[in which it was held that mere service of notice on the petitioner at Calcutta under the Rajasthan Urban Employment Act, 1959, could not give rise to a cause of action unless such notice was integral to the cause of action]. In this case, the facts are that the appellant-company had its registered office at Chandigarh. Negotiations took place at Chandigarh. Letter of proposal and acceptance, and also its rejection thereafter, was communicated at Chandigarh. But the proposal of the appellant-company was not accepted by the State Government at Sikkim it was held that the grounds on which the petitioner claiming the jurisdiction at Punjab and Haryana High Court, is not an integral part or material facts so as to constitute the part of action within the meaning of Article 226 of the Constitution.

9. In *Om Prakash (supra)*, Hon"ble Apex Court says that if High Court refuses to consider writ petition by merely observing that though it may have jurisdiction but another High Court deal with the matter more effectively was not a correct way to deal with the writ petition it should hold that no part of the cause of action arose within its territorial jurisdiction.

10. In the present case also, the notice to detain was issued by the authorities of Maharashtra Government from Mumbai and the cause of action to issue the notice also arose at Mumbai where the cranes regarding which the notices were being issued, were imported, i.e. at Mumbai port. The contention of the petitioner that he is residing at Ghaziabad and his premises were also searched at Ghaziabad and the detention order was also issued against him and served upon him at Ghaziabad. In our view, these are not the integral parts of the cause of action.

11. The cause of action is only at Bombay, where the cranes arrived from the outside, regarding which it is alleged that they were undervalued and not paid the proper custom duty and was guilty under the COFEPOSA Act, 1974. Any person can have houses and offices at different States. Because a person carries out the business at Ghaziabad, would not create a jurisdiction of this Court. This should not be treated as an integral part of the cause of action. Therefore, the jurisdiction lies only with the Bombay High Court, within whose jurisdiction the cause of action arose and lies. In view of the aforesaid, we find no force in the submissions of the petitioner"s learned counsel.

Here it is also important to reiterate that the petitioner"s son has already approached the Bombay High Court regarding the detention order, where he did not succeed. Only thereafter, the petitioner has approached this Court.

Rule 7 of the Allahabad High Court Rules, 1952, is crystal-clear which says that second writ petition on the same facts would be barred. The Apex Court in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, Andheri and Others, , was pleased to rule that the orders dismissing the first writ petition operates as *res judicata* between the parties and no second petition on the same facts is maintainable.

In the result, we find that this Court has no jurisdiction to entertain this petition

which is hereby dismissed on the ground of jurisdiction alone at the preliminary stage.