
(2006) 04 AP CK 0095

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1000 of 2005

Cavim Realty (P) Ltd. and Others

APPELLANT

Vs

Station House Officer and Another

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(2), 156(3), 168

Penal Code, 1860 (IPC) — Section 420, 446, 447

Citation : (2006) 2 ALD(Cri) 719 : (2008) 6 ALT 401

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; G.P. for Home for Respondent No. 1 and M. Surinder Rao, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioners, who are accused in Crime No. 74 of 2004 on the file of 1 Town Police Station, Adoni, have invoked the extraordinary jurisdiction of his Court under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus or any appropriate writ or direction declaring the action of the 1st respondent in having registered the said crime, as illegal, arbitrary and one without jurisdiction and to quash the same and pass such further or other orders as the Hon'ble Court deems fit and proper in the facts and circumstances of the case.

2. The petitioners state that respondent No. 2, namely M/s. Sree Rayalaseema Paper Mills Limited, a company registered under the provisions of the Companies Act, 1956, is having its Head Office at Adoni. It acquired several properties at different places in the country, and one such property is situated in Mumbai, where it established its Regional Office. On respondent No. 2 becoming sick, it closed down its operations as also its Regional Office at Mumbai. After closure of its Regional Office at Mumbai, the company leased out the property for a period

of five years vide lease agreement dated 4-3-1991 to M/s. Sanghvi Builders, represented by its proprietor Sri. Ramanlal M. Shah and Pratap Suppliers, represented by its proprietor Sri. P. Nagesh, who in turn sub-leased the same to one M/s. Merzario Shipping Agencies Private Limited, which was in occupation of the same till 15-10-1994.

3. While so, the petitioners state that respondent No. 2 lodged a private complaint on 9-12-2003 on the file of the Judicial Magistrate of First Class, Adoni, stating that the petitioners with a view to trespass and grab their property in Mumbai illegally, hatched a plan, and in pursuance thereof, fabricated a Memorandum of Understanding dated 21-10-1994, showing as if M/s. Pratap Suppliers, represented by G. Rangaiah and M/s. Sree Rayalaseema Paper Mills, represented by Sri. T.G. Sreekanth, being a consenting party, had entered into a Memorandum of Understanding, and put the petitioners in possession thereof. It is stated that Sri. G. Rangaiah, who signed the Memorandum of Understanding on behalf of M/s. Pratap Suppliers is not concerned with the affairs of M/s. Pratap Suppliers and that the signature of Sri. T.G. Sreekanth, was forged on the Memorandum of Understanding. The said complaint was forwarded by the Magistrate to the respondent No. 1-1 Town Police Station, Adoni, who registered the same as Crime No. 74 of 2004 for the offences punishable u/s 420, 447 and Section 446 I.P.C. It is to quash this crime, as stated supra, the petitioners filed the present writ petition.

4. The learned Counsel for the petitioners submitted that the allegations made by respondent No. 2 in the complaint lodged against the petitioners, are in respect of the property situated and transactions taken place in Mumbai, and as such, the Court of the Judicial Magistrate of First Class at Mumbai in Maharashtra alone, and not the Court of the Judicial Magistrate of First Class, Adoni in Andhra Pradesh, has the jurisdiction to entertain the private complaint u/s 200 of the Code of Criminal Procedure, 1973, and in this context, he relied upon the definition of "local jurisdiction" defined in Section 2(j) read with Section 177 and 179 of the Code of Criminal Procedure, 1973. In support of his submission that the Magistrate in whose local jurisdiction, the offence is said to have been committed, shall alone entertain the complaint, and such place alone, shall be the place of trial, placed reliance on the judgments of the apex Court in Gajjan Singh Vs. State of Madhya Pradesh, , Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, , Navinchandra N. Majithia v. State of Maharashtra 2000 (5) ALT 50 (SC) : 2000 ALT (Cri.) 325 (SC) : (2007) 7 SCC 640, and Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, . He submitted that the Court within whose local jurisdiction the offence has been committed, only has the jurisdiction to entertain the complaint, and as no part of cause of action has arisen within the local jurisdiction of the Court at Adoni, the Judicial Magistrate of First Class at Adoni, has no jurisdiction to entertain the private complaint, and none of the clauses of Section 178 of the Code of Criminal Procedure, 1973 is applicable to the case on hand, and more so when the alleged offence is not committed in more than one or several local jurisdictions of Courts. He submitted

that the Court of the Judicial Magistrate of First Class, before entertaining the private complaint u/s 200 of the Code of Criminal Procedure, 1973, is required to consider whether it has jurisdiction to entertain the complaint, but in the instant case, the Court below without considering whether it had jurisdiction or not, had entertained the complaint in respect of an offence which had taken place outside its local jurisdiction, and as such, the private complaint and consequently the crime registered against the petitioners, cannot be sustained, and prayed for its quashing. The learned Counsel relied upon the decisions of the apex Court in *Navinchandra v. Majithia v. State of Maharashtra* 2000 (5) ALT 50 (SC) : 2000 ALT (Cri.) 325 (SC) : (2007) 7 SCC 640 and *Shri Mahavir Prashad Gupta and Another Vs. State of National Capital Territory of Delhi and Others*, to contend that a petition under Article 226 of the Constitution of India, to quash on FIR is maintainable. In support of his submission that when it is uncertain in which of the local areas the offence was committed, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas, he placed reliance on the judgment of the apex Court in *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, . He relied on several decisions of the apex Court as well as this Court in *Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee*, , *State of Madhya Pradesh v. Suresh Kaushal* 2002 (1) ALT (Cri.) 1 (SC) : 2001 (2) ALD (Cri.) 330 (SC), *M. Sridhar Reddy v. State of A.P.* 1996 (2) ALT (Cri.) 724 (AP), *State of Andhra Pradesh v. Gooconda Linga Swamy* AIR 2004 SCW 4329 , *Girish Sarwate v. State of A.P.* 2005 (1) ALT (Cri.) 1 (F.B.) : 2005 (1) ALD (Cri.) 150 (AP) (FB), *Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., , Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, , *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, and *Suresh Chand Jain v. State of Madhya Pradesh* 2001 (1) ALT (Cri.) 284 (SC) : 2001 (1) ALD (Cri.) 367 (SC), in support of his various submissions.

5. The learned Counsel for respondent No. 2 contended that no doubt the property of respondent No. 2, for whose illegal occupation and grabbing, the Memorandum of Understanding, was fabricated by the petitioners, is situated in Mumbai, but having regard to the fact that one of the signatories to the forged Memorandum of Understanding, namely Sri. G. Rangaiah, who had impersonated himself to be the proprietor of M/s. Pratap Suppliers, is a resident of Adoni, and the same having been fabricated at Adoni, the Court of the Judicial Magistrate of First Class at Adoni, has jurisdiction to entertain the private complaint, and no exception can be taken to the action of the Court at Adoni in entertaining the private complaint, and more so when the private complaint lodged by respondent No. 2 had made out a prima facie involvement of the petitioners in the crime. He submitted that one Sri. T. Sreekanth, who signed the Memorandum of Understanding as a consenting party on behalf of respondent No. 2, was never its Director. He submitted that the police upon investigating into the private complaint forwarded by the Court of Judicial Magistrate of First Class, prepared a charge-sheet, which prima facie, discloses involvement of the petitioners in the

crime. Pointing to the bail order dated 24-1-2005, granted by this Court in the bail application in CrI.M.P.No. 61 of 2005, filed by the petitioners, he submitted that the question as to whether the petitioners are involved in the crime and whether the Court of the Judicial Magistrate of First Class, has jurisdiction to entertain the private complaint and try it, can be decided only after full-dressed trial. He submitted that if the petitioners are not involved in the crime, they can as well seek their discharge by filling discharge petition u/s 239 of the Code of Criminal Procedure, 1973, but certainly they cannot seek to quash the crime on the premise that the Court of Judicial Magistrate of First Class, Adoni, has no jurisdiction to entertain the private complaint. In support of his various submissions, the learned Counsel for respondent No. 2, relied upon the decision of the apex Court in *State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , and Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, ,* and of this Court in *T. Venkaeshwarlu and others Vs. State of A.P. and others, , M. Shashikala Vs. Station House Officer and Others, , P. Kumar v. Public Prosecutor, High Court of A.P. 2002 (2) ALT (Cri.) 193 (A.P.) : 2002 (1) ALD (Cri.) 661 (AP) and Dilawar Khan v. State of A.P. 2002 (1) (Cri.) 663 (AP)*. He thus prayed that the writ petition be dismissed.

6. The law is well settled that the High Court has to exercise its power to quash criminal proceedings sparingly in rarest of rare cases, and it cannot and should not ordinarily interfere with a criminal proceeding at the stage of investigation of an offence, for it would tantamount to interfering with the power of the police to investigate the offence. No doubt, it can do so only when the continuance of the criminal investigation or proceedings, would amount to abuse of process of the Court. The High Court shall not examine the truth or otherwise of the allegations made inter alia in the FIR or complaint. If the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis whereof no prudent person can reach a just conclusion that there is sufficient ground for proceeding against the accused, then the F.I.R. or complaint can be quashed. The High Court can issue a writ of Mandamus, only in extreme cases where allegations made inter alia therein ex facie do not constitute any cognizable offence, or where the act alleged is fraught with mala fides or where the law under which criminal prosecution is launched, has been declared unconstitutional. The Court may interfere only where it results in manifest injustice. But it cannot issue a writ of Mandamus directing the police to close a case before the investigation is completed. The High Court shall not conduct parallel trial on the basis of the material collected during the course of investigation, for it is the job of the trial Court to examine whether on the basis of evidence collected by the prosecution at the trial, the accused can be convicted of the offence.

7. What should be the basis for quashing criminal proceedings, the apex Court in *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, restated the legal position, as under:

The legal position is well settled that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the Court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power u/s 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per set; it has no jurisdiction to examine the correctness or otherwise of the allegations.

8. The power of the High Court to quash criminal proceedings when thus restricted to the rarest of rare cases, and in situations, stated above, let us examine whether criminal proceedings, on the ground that the Magistrate concerned has no jurisdiction to entertain the complaint, can be quashed.

9. Respondent No. 2, which is a company, is having its registered office at Adoni. It also owns a property in Mumbai, at premises bearing No. 1410, 14th Floor, Dalamal Tower, Nariman Point, Mumbai, in which it had housed its Regional Office. It is the case of respondent No. 2 that after it became sick, it had leased the said property jointly to one M/s. Sanghvi Builders, represented by its proprietor Sri. Ramanal M. Shah and M/s. Pratap Suppliers, represented by its proprietor Sri. P. Nagesh, who later had entered into a sub-lease agreement with M/s. Merzario Shipping Agencies (P) Ltd., which upon carrying on business for some time, vacated the premises on 15-10-1994. While so, it is the case of respondent No. 2 that taking advantage of the fact that it is under the verge of closure and proceedings for its rehabilitation are pending before BIFR, with a view to grab the property, the petitioners in connivance with one Sri. G. Rangaiah, impersonated himself as the proprietor of M/s. Pratap Suppliers, and forged the signature of Sri. T.G. Sreekanth, purported to have given his consent on behalf of respondent No. 2 to the arrangement made in the fabricated Memorandum of Understanding.

10. Though the petitioners contend that since the property is situated in Mumbai and the alleged transactions also took place in Mumbai, the Magistrate at Mumbai, in whose jurisdiction the property is situated, is alone competent to entertain the complaint, the fact remains, it is the specific case of respondent No. 2 that Sri. G. Rangaiah, who is a resident of Adoni, who had impersonated himself to be the proprietor of M/s. Pratap Suppliers, and executed the Memorandum of Understanding, is in no way concerned with the affairs of M/s. Pratap Suppliers, and this apart, it is their specific case that Sri. G. Rangaiah along with the petitioners, forged the signature of Sri. T.G. Sreekanth, as if he had given his consent on behalf of respondent No. 2, to the arrangement made in the fabricated Memorandum of Understanding.

11. Be that as it may, when the private complaint was placed by the complainant

before the Magistrate at Adoni on 10-2-2004, he had taken an objection "as to how the Court has got jurisdiction to try the case, should be explained". In response thereto, respondent No. 2 replied that the document, namely Memorandum of Understanding, was fabricated at Adoni, and hence, the Hon"ble Court at Adoni, is having jurisdiction. Based on this reply of the complainant, the learned Magistrate, by means of an order dated 5-5-2004, passed u/s 156(3) of the Code of Criminal Procedure, forwarded the complaint to the Station House Officer, I Town Police Station, for investigation and report. Thereafter, the police having investigated the complaint, filed the charge sheet. The investigation done by the police reveals that the Memorandum of Understanding has been forged at Adoni. A reading of the charge-sheet, prepared by the police after investigation, would disclose that the Investigating Officer recorded the statements of the witnesses, and based on the statements of L.Ws. 2, 3 and 4, namely T.G. Vasantha Gupta, Ramanlal M. Shah and Sri P. Nagesh, proprietor of M/s. Pratap Suppliers, came to a prima facie conclusion that A-2 and A-3 in connivance with A-4, namely Sri. G. Rangaiah, who is a resident of Adoni, had conspired to cheat and grab the property of respondent No. 2 by exploiting its poor financial state of affairs and accordingly hatched a plan, and with such a criminal intention and plan, they fabricated the Memorandum of Understanding dated 21-9-1994, and trespassed into the said property of respondent No. 2.

12. Though the property is situated in Mumbai, the investigation reveals that one of the accused, namely Sri. G. Rangaiah, who is alleged to have impersonated himself as proprietor of M/s. Pratap Suppliers, is a resident of Adoni, and it is the specific case of respondent No. 2 that the petitioners in connivance with Sri. G. Rangaiah, who is a resident of Adoni, fabricated the Memorandum of Understanding dated 21-9-1994, at Adoni, with an ulterior motive to grab their property. From the factual matrix of the instant case, it is obvious that as the investigation done by the police squarely revealed that the petitioners in connivance with Sri. G. Rangaiah, who is a resident of Adoni, who impersonated himself as the proprietor of M/s. Pratap Suppliers, are said to have fabricated the Memorandum of Understanding, by forging the signature of Sr. T.G. Sreekanth, showing as if he had consented to the arrangement therein, at Adoni, it cannot be said that the Judicial Magistrate of First Class at Adoni, has no jurisdiction to entertain the complaint.

13. Even otherwise, whether a Magistrate of the First Class has power to entertain a complaint or not when the question of jurisdiction is raised, was considered by the apex Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, . In the said case a similar contention, as is raised herein, was raised by the respondent therein, that the Judicial Magistrate of First Class, Gandhidham had no jurisdiction to entertain the complaint as the offence of cheating and forgery alleged against the company, is located at Indore, Madhya Pradesh. Rejecting this contention, the apex Court held as follows:

It is an erroneous view that the Magistrate taking cognizance of an offence must

necessarily have territorial jurisdiction to try the case as well. The provisions of Sections 177 and 179 Cr.P.C. do not trammel the powers of any court to take cognizance of the offence. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this chapter". Section 193 imposes a restriction on the Court of Session to take cognizance of any offence as a court of original jurisdiction. But "any" Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not. There is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason. It is, therefore, impermissible to deprive such a Magistrate of the power to take cognizance of an offence - of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts.

(emphasis supplied)

14. The apex Court further held that jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. Therefore, it is not correct to say that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence, and that if he is a Magistrate of First Class, his power to take cognizance of the offence is not impaired by territorial restrictions, and that after taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.

15. From the above, it is clear that any Magistrate of the First Class has the power to take cognizance of any offence, no matter whether the offence was committed within his jurisdiction or not. Therefore, the contention of the petitioners that the Magistrate at Adoni, had no territorial jurisdiction to take cognizance of the complaint and try the case in respect of a property situated in Mumbai, for the illegal grabbing of which, the petitioners are said to have fabricated the Memorandum of Understanding, cannot be countenanced.

16. In *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi)* and Another, , the apex Court held that the Police have statutory authority u/s 156 Cr.P.C. to investigate any cognizable case for which an FIR is lodged, that at the stage of investigation, there is no question of interference u/s 482 Cr.P.C. on the ground that the investigating officer has no territorial jurisdiction, and that after investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly u/s 170 Cr.P.C. and to forward the case to the Magistrate empowered to take cognizance of the offence.

17. The apex Court upon considering the power of the police to investigate into a cognizable offence under the provisions of the Code of Criminal Procedure, 1973 held:

It is true that territorial jurisdiction also is prescribed under Sub-section (1) of Section 156 to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, Sub-section (2) of Section 156 makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forward to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it.

18. Be that as it may, when a complaint is filed before the Magistrate, and when the Magistrate is inclined to forward the complaint to the police for investigation, he does it at a pre-cognizance stage, and at that stage, the Magistrate cannot adjudicate the question of jurisdiction as preliminary issue before forwarding the complaint for investigation to the police. It is only after submission of Investigation report by the Police, the Magistrate concerned, after perusing the complaint, shall either entertain if he has territorial jurisdiction or to return it if he has no territorial jurisdiction, after giving opportunity to the complainant to file his or her objections.

19. So far as the dispute with respect to jurisdiction is concerned, if the facts stated in the complaint, clearly disclose the place of commission of offence, then there is no impediment for the Magistrate to assume jurisdiction, but in the event the facts stated in the complaint, are uncertain and do not disclose as to in which of several territorial jurisdictions, the offence was committed, or where the offence was committed partly in one territorial jurisdiction and partly in another territorial jurisdiction or where different acts were done within the territorial jurisdictions of different Magistrates, then in such cases, the Magistrate cannot throw the complaint out holding that he has no territorial jurisdiction to entertain such a complaint.

20. But when it is uncertain in which of several local areas an offence has been committed; or where an offence is committed partly in one local area and partly in another; or where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done

in different local areas, it may be enquired into or tried by a Court having jurisdiction over any of such local areas, as can be seen from Section 178 of the Code of Criminal Procedure. Similarly, where an act has been done in one area and the consequence ensued in a different area, the Magistrate can take cognizance in either one of these two areas on the principle of "cause and effect", as enjoined u/s 179 of the Code of Criminal Procedure. As per Section 180 of the Code of Criminal Procedure, if an act is an offence by reason of its relation to any other act which is also an offence, the first mentioned offence may be enquired into or tried by the Court within whose local jurisdiction either act was done. If the officers are to be tried in accordance with Sections 219, 220, 221 and 223 of the Code of Criminal Procedure, they can be tried by any competent Court to enquire into any of those offences, is the mandate contained in Section 184. In other words, three offences of same kind happened within one year may be charged together; where series of acts so connected are committed in the course of same transaction, they can be tried together; where it is doubtful what offence has been committed, for either of those offences the accused can be tried; and where there are several persons who partake in the crime, all of them can be tried together. These Sections in the Code of Criminal Procedure clearly indicate that the trial need not be confined to a particular Court. Ultimately it is a matter of convenience. One shall not be oblivious of the fact that the procedure is manmade. The provisions contained in the Code of Criminal Procedure are meant to facilitate the trial in a fair manner, but certainly they are not meant to defeat the justice. If an offence occurs, it is for the Courts to find out who the offender is. No offence shall be allowed to go untried on these flimsy grounds.

21. In the event, the Investigating Officer finds that the crime has not been committed within his territorial jurisdiction, he can forward the FIR to the police station concerned, but this would not mean that in a case which requires investigation, the Investigating Officer, can refuse to record the FIR and/or investigate it. In case the complainant files the complaint before the Magistrate having no territorial jurisdiction, at the most what the Magistrate can do, is to return the complaint to the complainant for presenting the same before the Magistrate having territorial jurisdiction as per Section 201 of the Code of Criminal Procedure. On the premise that the Magistrate concerned has no territorial jurisdiction to entertain the complaint, the complaint or the criminal proceedings, cannot be quashed. In that view of the matter, there is no necessity for this Court to deal with the several contentions advanced and the judgments relied on by the learned Counsel for the petitioner in support of such contentions.

22. In view of the above, it cannot be said that the Magistrate at Adoni has no territorial jurisdiction to entertain and try the case, and now that it has been held that the Magistrate at Adoni has territorial jurisdiction to entertain the complaint and try the case, the prayer of the petitioners for quashing of the FIR on the ground that the Magistrate at Adoni, lacks territorial jurisdiction to entertain the complaint and try the case, cannot be granted, and accordingly is rejected.

Whether or not the allegations made in the complaint constitute offences alleged, are matters of investigation. Be mere referring of the complaint by the Magistrate to the police for investigation, it cannot be said that the Magistrate has taken any view either on the point of territorial jurisdiction or on the merits of the case or about the offences alleged against the petitioners in the complaint. In the instant case, the investigating officer having investigated into the complaint, it is stated, has filed charge-sheet, and at this point of time, it would be improper for this Court to quash the proceedings, and more so for the grounds taken by the petitioners.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed.