(2003) 03 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition No. 2047 of 2003

Centre for Public Interest Litigation APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Citation : (2003) CriLJ 4244 : (2003) 104 DLT 913 : (2003) 69 DRJ 242 : (2003) 1 ILR Delhi 253 : (2003) 264 ITR 703

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Prashant Bhushan and Vishal Gupta, for the Appellant; Sanjay Jain and Richa Chandiwala, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—Centre for Public Interest Litigation, through its Secretary having its office at 05, Lawyers Chamber Supreme Court, New Delhi, has filed this petition, inter alia, praying to direct respondents 3 and 4, namely, the Chief Vigilance Commission and the Central Bureau of Investigation (hereinafter referred as CBI) to register First Information Report (for short, FIR) in respect of offences mentioned in the petition, investigate and prosecute respondents 5 and 6 who are residents of Mumbai being a Commissioner of Income Tax and Executive Director of Security and Exchange Board of India, Mumbai, respectively under the provisions contained in the Prevention of Corruption Act,1988 and also the Indian Penal Code. Petitioner has also prayed that respondents 1 and 2 should initiate disciplinary proceedings against respondents 5 and 6 for irregularities.

Union of India, Central Vigilance Commission (though mistakenly shown as "Chief Vigilance Commission") and CBI are joined as respondents 1, 3 and 4 and rest of the respondents 2, 5 and 6 are from Mumbai. Learned counsel has fairly stated that cause of action has arisen in Mumbai. However, according to him head office of CBI is situated at Delhi and Therefore this Court will have jurisdiction. He further submitted that office of Vigilance Commission is also situated at Delhi and, Therefore, this Court will have jurisdiction.

3. Respondents 5 and 6 were working at the relevant time at Mumbai. It is alleged that while working as officers of Government, they took advantage of their position and obtained pecuniary benefit either for themselves or for others. It is submitted that though flats were available, one of the respondents, namely respondent No. 5, did not occupy the available flat but he took a flat in a posh locality for Rs. 15,000/- per month as rent plus a fixed deposit of Rs. 2 crores without any interest. Later on, the landlord agreed to pay interest @ 6% and thus the State exchequer has suffered a lot. Allegations are made with regard to respondent No. 6 stating that Comptroller and Auditor General has also made report in this behalf. The CBI investigated the matter. From the record it transpires that the matter was under investigation by anti-corruption branch of CBI situated at Mumbai (Annexure P10). With regard to the flat, there is correspondence by the Govt of India to Dr Bhagwati, Joint Secretary, Ministry of Finance. At page 26, there is a report of CBI (Bank Securities and Fraud Cell), Mumbai.

4. Therefore, it transpires that properties are situated at Mumbai, the officers were, at the relevant time, residing at Mumbai and the wrong which is alleged to have been committed by them was at Mumbai and, Therefore, essentially, cause of action has arisen in Mumbai. We put a question to the learned counsel: "in case, the matter is investigated, where would the charge-sheet be filed ?" He fairly stated that the charge-sheet will have to be filed in Mumbai Court.

5. About respondent No. 6, there is a scam alleged in the petition. That also took place at Mumbai. We need not discuss in detail the manner in which the wrong was committed, as alleged, but suffice it to say that the acts of omission and/or commission which are attributed or alleged, have been so omitted and/or committed at Mumbai.

6. In a petition under Article 226 as filed, really speaking, the Court has to see where the cause of action had arisen. This Court will have to consider other aspects as well, such as parties residing at Mumbai who are alleged to have been involved in the illegal act. It is also required to be seen that the entire original records are available in Mumbai and no part of the records are in Delhi; the properties are situated at Mumbai and, Therefore police will have to take action at Mumbai. In any event, when the entire cause of action has arisen at Mumbai, we think it most appropriate to relegate the petitioner to the appropriate forum in Mumbai for making a grievance.

7. In this connection, we may also note the decision of the Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, wherein, while considering the question of territorial jurisdiction of the High Court, the Supreme Court observed as under:-

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court''s territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.".

8. In the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , the question of territorial jurisdiction came to be considered by the Apex Court. In that case, in response to advertisement inviting tenders at Delhi for works to be executed in Gujarat, the petitioner sent its tender to Delhi from Calcutta. He made representations from Calcutta against non-consideration of its offer. Court pointed out that such averments in the petition did not disclose that even a part of the cause of action arose within the territorial jurisdiction of Calcutta High Court.

9. The Apex Court in the said case considered the case of Subodh Kumar Gupta Vs. Shrikant Gupta and Others, . We reproduce para 9 of the Apex Court judgment in case of ONGC (supra) :

"In Subodh Kumar Gupta case, the facts revealed that he had instituted a suit in the Court of Senior Judge, Chandigarh, for dissolution of the firm in which he as partner had 20% share along with his father, brothers and one another. The head office of the firm was situate in Mumbai where the firm was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff-petitioner was also residing in Mandsaur till 1974 when he shifted to Chandigarh. He, however, visited Mandsaur often in connection with the business of the firm. The case. Pleaded by him was that after he shifted to Chandigarh he used to call for and received the statements of account of the business carried on at Mandsaur. He had got letterheads printed indicating that the branch office of the firm was at Chandigarh and he claimed that he also booked orders for the firm at Chandigarh. It was also pleaded that certain disputes had arisen regarding the management of the partnership firm and in regard to the correctness of the accounts which were discussed at the meeting in Bhilai at the end whereof an agreement was drawn up for the dissolution of the partnership and for distribution of assets amongst the partners to which the plaintiff was a signatory.

The suit filed in the Chandigarh court was resisted on the preliminary contention that no part of the cause of action had arisen at Chandigarh and Therefore that court had no jurisdiction. The Chandigarh court upheld the contention and this Court affirmed the said view. While dealing with the averment that the plaintiff was carrying on business of the firm from Chandigarh where the branch office of the firm was situate this court held that there is no averment that the branch at Chandigarh was started with the consent of the other partners and intimation thereof was given to the Registrar of Firms as required by Section 61 of the Partnership Act; the mere printing of stationery was neither here nor there and Therefore no part of the cause of action could be said to have arisen within the territorial jurisdiction of the Chandigarh Court."

10. Thus it is very clear that the High Court at Delhi will have no jurisdiction where cause of action has arisen outside the territorial limits of Delhi and within the territorial limits of other State, namely in the instant case, State of Maharashtra. The Apex Court deeply regretted and deprecated the practice of exercising jurisdiction and passing interlocutory orders in the matters where it lacked territorial jurisdiction and while allowing the appeal preferred by ONGC directed NICCO to pay the cost of Rs. 50,000/-.

11. In the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, , the Apex Court was also required to considered the same question. The Apex Court in para 21 considered the decision of the Apex Court in case of ONGC (supra) and after referring Article 226(2), the court pointed out :

"On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories.."

12. The Apex Court in the case of Navin Chandra N. Majithia (supra) pointed out in para 22 as under in so far as the territorial jurisdiction with reference to the criminal offence is concerned:

" 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."

13. In para 41 in the case of Navin Chandra N. Majithia (supra), the Apex Court considered the case of State of Rajasthan and Others Vs. Swaika Properties and Another, in the case of ONGC (supra) the observations are made as under:

"It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favor. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations. (SCC p.722 para 12)

"If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

14. In para 43, in the case of Navin Chandra N. Majithia (supra), the Court pointed out as under:

"43. We make it clear that 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 are we to be understood 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."

15. The Court pointed out that large number of events have taken place at Mumbai in respect of allegations contained in FIR registered at Shilong. If the averments in the writ petition are correct then major portion of the facts which led to registering of FIR have taken place at Mumbai. Ultimately, the court held that it is almost impossible to hold that not even a part of the cause of action has arisen in Mumbai so as to deprive the High Court of Mumbai of total jurisdiction to entertain the writ petition filed by the petitioner.

16. In the instant case, it is clear from the petition itself that CBI, Mumbai was investigating, the properties are situated at Mumbai, the acts are alleged to have been committed by the private respondents at Mumbai and Therefore this Court

will have no jurisdiction to entertain the petition.

17. In the case of Union of India and Others Vs. Adani Exports Ltd. and Another, , passbook was issued at Chennai by designated authority at Chennai and transaction concerning the said passbook were made from Chennai port. In that case, the respondent carried on their business of export and import from Ahmedabad. Their orders of export and import were placed from and were executed at Ahmedabad; documents of export and import were sent/made at Ahmedabad; credit of duty claimed in respect of exports were handled from Ahmedabad ; non-granting and denial of utilisation of the credit in the passbook will affect the respondent''s business at Ahmedabad; the respondents executed bank guarantee through their bankers at Ahmedabad as well as a bond at Ahmedabad, where the grounds taken for having jurisdiction over the subject in Gujarat State. Thus, it is very clear that where cause of action arose is required to be seen. At least, part of the cause of action must have arisen within the territorial limits where the court is required to take cognizance of the matter.

18. As indicated in the petition itself, it is very clear that cause of action against private respondents arose within territorial limits of the State of Mahrashtra. We are not discussing in detail about the manner in which private respondents are alleged ton have committed an act which may amount to an offence. Suffice it to say that as no cause of action has arisen in the state of Delhi and even charge-sheet, if required is to be filed in the court at Mumbai, this Court cannot entertain the petition in view of the provisions contained in the Constitution and the law laid down by the Apex Court in the aforesaid cases. In the result, the petition is dismissed for want of jurisdiction.

19. It may not be understood that we have considered the petition on merits at all.

