

(1997) 08 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 12540 of 1997 P

C.P. George

APPELLANT

Vs

Consolidated Footwears Ltd. and Another

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226, 226(2), 227
Criminal Procedure Code, 1973 (CrPC) — Section 177, 181(4)
Land Acquisition Act, 1894 — Section 52(2)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1997) 2 KLJ 490

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P.P. Mathew and K.J. Antony, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The Petitioner has approached this Court seeking "to declare that the cognizance taken on the criminal complaint evidenced by Ext. P-4 and the order of summons issued thereon evidenced by Ext. P-5 and the steps taken in furtherance thereof are illegal, inoperative and void". The Petitioner also seek for a writ of prohibition restraining the Respondents from taking any steps in furtherance of the criminal complaint under Crime No. 3892/96 pending before the second Respondent. The second Respondent is the Chief Judicial Magistrate, Vadodara, Gujarat State. Ext. P-4 is the copy of a criminal complaint filed by the first Respondent before the second Respondent court and Ext. P-5 is the summons issued by the second Respondent to the Petitioner with regard to the trial of Ext. P-4.

2. The Petitioner submits that the first Respondent has not significantly stated anywhere in Ext. P-4 complaint that the offence alleged had been committed by the Petitioner within the local jurisdiction of the second Respondent court. So the second Respondent in taking cognizance of the offence and issuing summons to

the Petitioner has violated the mandatory provisions contained in Section 177 and Section 181(4) of the Code of Criminal Procedure. It is further submitted that the procedure adopted by the second Respondent in a complaint for offence not stated to have been committed within his local jurisdiction is neither just nor reasonable and hence it is in violation of the fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India depriving the Petitioner's "personal liberty not in accordance with the procedure established by law, as has been done in this case". Thus the Petitioner contends that the second Respondent has total lack of jurisdiction to entertain Ext. P-4 complaint and therefore there is "flagrant abuse of the process of the Court". He submits that summons Ext. P-5 was served on the Petitioner at Ernakulam and such service is "an integral part of the cause of action within the meaning of Article 226(2) of the Constitution". The Petitioner contends that the second Respondent, before entertaining Ext. P-4 and issuing Ext. P-5 summons, ought to have ascertained whether the cause of action had arisen within his jurisdiction and that the second Respondent had responsibility and duty before entertaining a private complaint "to find whether the concerned accused should be legally proceeded against for the offence charged". It is further contended that the offence alleged to have been committed by the Petitioner, if at all there was any, is at Ernakulam and not within the local jurisdiction of the second Respondent court. Therefore the summons issued is in violation of the provisions in Section 177 and Section 181(4) of the Criminal Procedure Code. There is total abuse of power by the second Respondent, the Petitioner submits. Therefore, the Petitioner seeks the relief's as aforementioned.

3. The petition is under Article 226 and not under Article 227, obviously because the second Respondent Magistrate is not within the supervisory control of this Court. The Petitioner has approached this Court with a specific contention that service of summons, from the court outside the jurisdiction of this Court, will confer jurisdiction to this Court to entertain a petition under Article 226. The Petitioner draws support to this contention from Article 226(2), which reads as follows:

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.

4. Admittedly the criminal complaint was filed by the first Respondent before the second Respondent Court situated outside the jurisdiction of this Court and it is pursuant to that complaint Ext. P-5 summons had been issued by that Magistrate Court. If it is accepted that the service of summons on the Petitioner at Ernakulam is a part of cause of action, this Court will get jurisdiction to interfere with it.

5. The first Respondent makes an allegation that the Petitioner had committed an offence against him and therefore he approached the second Respondent court. It is based on that complaint filed by the first Respondent before the second Respondent that Ext. P-5 summons had been issued. Therefore the cause of action alleged in this Original Petition over which the Petitioner is aggrieved is the entertaining of the complaint by the second Respondent court. It is because of such complaint that Ext. P-5 summons had been issued. Therefore service of summons will not form part of the cause of action complained by the Petitioner. In the decision reported in *Ravindran v. Dy. Inspector General of Police* 1991 (2) KLT 764 this Court held that:

Only if it is established that the cause of action arose at least partly within the jurisdiction of this Court that it can be held that this Court has jurisdiction to deal with the matter. Even if the contention of the Petitioner is accepted that he was served with the dismissal order while he has been residing within the jurisdiction of this Court, it cannot be held that it would amount to the arising of cause of action within the jurisdiction of this Court.

That was a case of dismissal which to some extent formed part of the cause of action. It was something which included in the bundle of facts forming cause of action. Even then this Court held that, that will not confer jurisdiction to this Court. In such case certainly service of summons issued by the Court outside the jurisdiction on the Petitioner will not confer jurisdiction of this Court. Equally, a summons issued by the second Respondent cannot be equated to the service of a detention order as dealt with in the decision in *Abdul Kareem v. Commissioner and Secretary to Government* 1994 (1) KLT 834. The service of summons does not form part of the bundle of facts constituting cause of action. In *Mohandas v. State of Tamil Nadu* 1993 (1) KLT 35 this Court held that:

Issuance of the notices cannot be construed as part of the cause of action arising in Kerala. It can only be understood that the fifth Respondent has issued Exts. P-4 to P-17 notices to the Petitioners to enable the first Respondent to realise the amounts due to it from the Petitioners. In a case where the instrumentality of a particular State wants the assistance of another State to realise amount due to it, aggrieved person cannot approach the High Court of the latter State under Article 226 only if the cause of action arose at least partly there.

6. In *State of Rajasthan and Others Vs. Swaika Properties and Another*, , the Supreme Court considered a question, whether service of notice u/s 52(2) of the Land Acquisition Act at the Registered Office of the Company at Calcutta was an integral part of cause of action to invest the Calcutta High Court with jurisdiction to entertain a petition under Article 226 challenging the notification of the State of Rajasthan. The Supreme Court answered in negative. Following that decision, a Division Bench of this Court also in *Thomaskutty v. Union of India* 1994 (2) KLT 258 held that:

mere service of notice cannot give rise to a cause of action unless the service of

such notice is an integral part of the cause of action.

As the notice issued by the 2nd Respondent Court is based on a petition filed before it, the summons does not form an integral part of cause of action.

7. Moreover "a writ cannot lie against Court acting in exercise of its judicial functions" as held by this Court in the judgment in Yesudasan Nadar v. Principal Munsiff 1991 (2) KLT S.N. 43 Page 33

8. In the decision reported in Abdul Azeez v. Union of India 1992 (1) KLT S.N. 29 Page 22 this Court had held as follows:

The points raised in the Original Petition are those which should and could be properly raised before the 4th Respondent before whom the criminal case is pending. The points raised are all matters touching upon the merits of the case and the alleged irregularity in the conduct of the proceedings and of the prosecution. If there is any irregularity or illegality as alleged by the Petitioner, that is a matter which could be agitated before the Magistrate himself in defence of the case. It is for the Petitioner to raise all these points before the 4th Respondent and seek discharge or acquittal as the case may be in case he is entitled to it. This Court should not embark upon an enquiry into these questions in a proceeding under Article 226, apart from the inability of this Court to do so with the materials available on record.

Going by this principle also the Petitioner has to appear before the second Respondent in obedience to Ext. P-5 and submit his case.

The decision in Gopal Vinayak Godse Vs. The Union of India and Others, cited by the Petitioner cannot be relied on to grant relief to the Petitioner. Moreover the facts which lead to that decision also differ much. The facts in the decision in Indmark Finance and Investment Co. Pvt. Ltd. and Anr. v. The Learned Metropolitan Magistrate, 28th Court, and Ors. 1992 (1) Crimes 973 (Calcutta High Court) disclose that, the criminal case instituted in Bombay for offence u/s 138 of the Negotiable Instrument Act was in respect of cheques "drawn by the Petitioners in favour of Respondent No. 2 on Vijaya Bank in Calcutta and the same were presented and dishonored in Calcutta." There was tangible evidence to prove this, unlike in this case.

In the aforesaid circumstances the Original Petition fails and is dismissed.