(2013) 12 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No''s. 12346 of 2012 and 29413 of 2012 (GM-POLICE)

Deepak Kumar P. Shenvi APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) ILR (Kar) 761 : (2014) 1 KCCR 722

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.S. Harish Kumar for Sri R.V. Jayaprakash, for the Appellant; S. Lakshminarayana, AGA for R1 to R3 and Sri Siddharth B. Muchandi, for R4, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—According to the petitioner, he being proprietor of the business concern M/s. Meghadoot Exim International, doing the business of purchase and sale of Iron Ore, gave an offer to one Srivatsava Sunkara, for sale of 50,000 tons of Iron Ore and in pursuance thereof, an agreement was entered into in the name of Sree Srinivasa Padmavathi Realtors Pvt. Ltd., for purchase of Iron Ore from the petitioner, by paying Rs. 15,00,000/- and thereafter, Srivatsava Sunkara approached him and informed that he himself is purchasing the Iron Ore and the amount will be directly credited by the purchaser to whom he has agreed to sell the same. According to the petitioner, the agreement holder did not purchase the Iron Ore, since the price of Iron Ore went up and he gave a written instruction to repay the advance amount and being a straight business, he agreed for the same. According to the petitioner, he received a sum of Rs. 6,72,00,000/- in his account, on different dates, from an entity called Sumitra Apartments. According to the petitioner, he transferred all the amount received by him to Sumitra Apartments and to various persons as per the direction of Srivatsava Sunkara in the first instance, but later, he transferred the amount by deducting some amount towards the Income Tax. According to the petitioner, since the Lokayukta of Karnataka filed a complaint against Metachem Manufacturing Co. Pvt. Ltd., - respondent No. 4, for illegal selling of Iron Ore, to avoid the case against Metachem Manufacturing Co. Pvt. Ltd., respondents 4 and 5 started pressurizing him to manipulate certain documents and also to reverse certain transaction and since he did not agree for the same, respondents 4 and 5 filed two separate criminal complaints in the Court situated at Pune with mala fide intention to extort money from him and also to transfer the criminal liability of the illegal business of iron ore by the complainants and that acting on the complaint filed by the respondent No. 4, Chatushrungi Police Station, registered FIR No. 118/2011 and thereafter, acting on the complaint lodged by the respondent No. 5, the said Police registered FIR No. 206/2011. Respondents 4 and 5 having jointly filed O.S. No. 1376/2010 in the Court of Civil Judge (Sr. Dn.), Pune, seeking recovery of the amount, petitioner filed the written statement and contested the suit. Alleging that the respondents 4 and 5 though have not got any cause of action to file the criminal complaints in Pune, have filed the said complaints, with frivolous allegations, purposely to harass him, these writ petitions were filed to transfer the said complaints, to Ankola Police Station or Karwar Police Station in Uttar Kannada District, Karnataka State and to prohibit the Inspector, Chatushrungi Police Station, Pune, from taking any steps in respect of the said complaints registered in FIR Nos. 118/2011, dated 05.03.2011 and 206/2011, dated 21.04.2011 and for grant of consequential reliefs. Metachem Manufacturing Co. Pvt. Ltd., respondent No. 4 herein, having filed a private complaint, registered as RCC No. 813/2011 in the Court of Judicial Magistrate First Class (Court No. 9), Pune, against Meghadoot Exim International, petitioner herein and Srivatsava Sunkara and seven others, learned Magistrate issued a direction under S. 156(3) of Code of Criminal Procedure, 1973, to Chatushrungi Police Station, for investigation and to submit report. Thereupon, investigation having commenced, FIR No. 118/2011 was registered, for the offences punishable under Ss. 406, 420, 467, 471, 472, 474, 425, 34 and 120(B) of IPC.

2. Mr. Akbar Sayyad Mohammad Arabian, respondent No. 5 herein, having filed a private complaint, registered as RCC No. 1387/2011 in the Court of Judicial Magistrate First Class (Court No. 9), Pune, against Meghadoot Exim International, petitioner herein and Srivatsava Sunkara and seven others, learned Magistrate issued a direction under S. 156(3) of Code of Criminal Procedure, 1973, to Chatushrungi Police Station, for investigation and to submit report. Thereupon, investigation having commenced, FIR No. 206/2011 was registered, for the offences punishable under Ss. 406, 420, 427, 34 and 120(B) of IPC.

3. Sri. M.S. Harish Kumar, learned advocate contended that all the transactions including the purchase and sale of goods was done in Karnataka by the complainants and there being no specific allegation in the complaints, as to where, how and when the cheating or forgery of documents was done and also that there being no allegation that it was done within the jurisdiction of the Court

of JMFC (Court No. 9), Pune, merely because the offices of the complainants are located in Pune, the Court or the Police in Pune, do not have jurisdiction to commence the investigation in the matter, as none of the offences are alleged to have been committed in Pune. He submitted that the complainants, using their political influence on the Police, have filed the private complaints in the Court at Pune, only to illegally extract money from the petitioner and thereby, the complainants have abused process of the Court and the Court at Pune has no jurisdiction to entertain the complaints. Learned counsel further submitted that the complainants had obtained the LC and cash credit facility from the Banks to do Iron Ore business in Belekeri and that the complainants had offices and plots in Belekeri and their company officials and supervisors were based in Belekeri during the period when the alleged crime had taken place and the complainants purchased the Iron Ore in Karnataka and sold it in Belekeri and at no point of time the Iron Ore was either transported or taken to Pune and the shipment of the Iron Ore was done from Belekeri Port by the complainants. He submitted that the petitioner received money in Syndicate Bank at Karwar and he reverted back the money from the same Bank and the petitioner had never been to Pune and never made any phone call to complainants and never met them before or during the period when the alleged crime had taken place and in the circumstances, the JMFC Court (Court No. 9), Pune and Chatushrungi Police have committed illegality in entertaining the complaints against the petitioner and in embarking upon an investigation which is clearly in excess of the jurisdiction vested in them under the provisions of the Cr.P.C. He submitted that, since entire transaction upon which the complaints are purportedly based had taken place in Karwar/ Belekeri in Ankola Taluk, Karnataka and not at any other place outside Karnataka much less at Pune or any other place in the State of Maharashtra, the complaints could not/ought not have been entertained by the JMFC Court in Pune, Maharashtra State. Learned counsel submitted that the jurisdiction, if any, to investigate into the contents of the complaints is with the Police and Courts in Karwar/Ankola and the action taken by the Police of Chatushrungi Station in Pune being clearly oppressive and malafide, sought allowing of the writ petitions, by placing reliance on the decision in the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, .

4. Sri. Siddharth B. Muchandi, learned advocate for respondent 4, on the other hand contended that, entering into of the contract being not in dispute and the payments having been made through Saraswat Co-operative Bank Ltd., SNE Branch, Pune, in the name of Meghadoot Exim International, to the extent of Rs. 6,72,00,000/- and the associate i.e., respondent No. 5 also having invested and paid jointly for self and on behalf of Metachem Manufacturing Co. Pvt. Ltd., there being collusion amongst the accused persons in the matter of transfer of the amount and fabrication of the records, the transaction having taken place in Pune, as detailed investigation is required, separate complaints were filed by the respondents 4 and 5 herein against the petitioner and eight others, for commission of various offences set out in the complaints. Learned counsel

submitted that, Srivatsava Sunkara had filed Criminal Writ Petition Nos. 3399 and 3400 of 2011, in the High Court of Judicature at Bombay, seeking quashing of FIR Nos. 118 and 206 of 2011, registered with Chatushrungi Police Station, Pune, on the ground that the cases involve essentially a civil dispute arising out of the contract of supply of Iron Ore and if there were to be any breach of the contract, once it was performed, then the criminal proceedings could not have been instituted. That too, after the complainants took delivery of the materials and thereafter the same was seized, then, all the more the criminal proceedings being abuse of process of the Court, the same are liable to be quashed. He submitted that the said writ petitions having been dismissed on 02.07.2013, the petitioner, is not entitled to any relief. He further submitted that the JMFC (Court No. 9), Pune having perused the complaint, considering the submissions made on behalf of the complainants and nature of allegations, being of the opinion that it is necessary to investigate the matter/s, therefore, directed the Police Inspector of Chatushrungi Police Station, to investigate into the matter as per S. 156(3) of the Cr.P.C., and the report having not been submitted, these writ petitions are untenable.

5. Perused the writ petition record.

6. The record shows that a contract was entered into in the matter of sale of Iron Ore, the supplies and the payments to be made in pursuance thereof. The respondents 4 and 5 have filed Regular Civil Suit No. 1376/2010, on 30.10.2010, against M/s. Meghadoot Exim International, represented by the petitioner and six others, in the Court of Civil Judge (Sr. Dn.), Pune, to render true and faithful account of the amounts received by them, directly or indirectly from the plaintiffs, towards the purchase of Iron Ore and the amount/s as may be found payable by the defendants to the plaintiffs that may be decreed to be paid by the defendants jointly and/or severally to the plaintiffs and for grant of consequential reliefs. The petitioner herein/defendant No. 1 in the said suit, has filed written statement dated 21.02.2011, seeking to dismiss the suit with exemplary costs.

7. Respondents 4 and 5 having filed separate criminal complaints in the Court of JMFC (Court No. 9), Pune, learned Magistrate issued directions under S. 156(3) of Cr.P.C. Thereupon, investigation having commenced, the complaint/s were registered in the Police Station. Srivatsava Sunkara, arrayed as accused No. 3 in both the said complaints, sought quashing of the said complaints by filing Criminal Writ Petition Nos. 3399 and 3400 of 2011, in the High Court of Judicature at Bombay. Considering the rival contentions, by an order dated 02.07.2013, it has been held as follows:-

In the present case, the Complainants have pointed out, by bringing in materials to show, as to how from inception a representation was given and they were induced to part with the sums. Secondly, the representation of some of the accused that they are Directors of the Company and that they are dealing in that capacity, was found to be false and even documents in relation thereto are found to be false. If these false documents have been prepared, is the allegation and based thereon, the amounts have been parted with and even prior thereto there is clear allegation of representation being made for inception, then, we have no doubt in our mind that the prosecution did not commit any error in proceeding to investigate the allegations. The complaints will have to be read as a whole and the ingredients of offence alleged are clearly spelled out.

The criminal writ petitions having been found to be devoid of merit were dismissed with an observation that merely because the civil suits are filed and are pending, does not mean that the criminal complaints were not maintainable and specially when they disclose commission of criminal offence.

8. In view of the rival contentions, the question, which arises for consideration is ''Whether a writ of prohibition can be issued against the Inspector, Chatushrungi Police Station, Pune, from taking any steps in respect of the complaints registered, as FIR Nos. 118/2011 and 206/2011, on a reference made by the MFC (Court No. 9), Pune?''

9. In the case of Navinchandra N. Majithia (supra), the material facts were that a contract was entered into by and between a company, M/s. Indian Farmers Pvt. Ltd., (IFPL) and M/s. Chinar Export Ltd., (CEL). The appellant therein was the Managing Director of IFPL. CEL entered into an agreement with IFPL for purchase of the entire shares of IFPL, for which it paid earnest money, but however, it failed to pay the balance payment within the specified time, IFPL terminated the agreement. Suit was filed by CEL in the High Court of Bombay, for specific performance of the said agreement. Two share holders of CEL took over the management and control of the company as the Directors and they formed another company named J.B. Holding Ltd., (JBHL) at Shillong, in the State of Meghalaya. Later, the said suit was withdrawn upon the appellant returning the amount paid by CEL, which was earlier forfeited by the appellant. Pursuant to the said agreement, JBHL made payments for purchase of shares of IFPL. But the appellant therein contended that, as JBHL committed default in making the balance payment, thereby committed breach of the agreement and the said agreement stood terminated and the earnest money stood forfeited as stipulated in the agreement. A complaint was filed by JBHL against the appellant at Shillong. Maintainability of the said complaint came to be questioned by Naveenchandra N. Majithia, by filing a writ petition in Bombay High Court, on the ground that entire transaction upon which the complaint was purportedly based had taken place at Mumbai and not at any other place, outside the said town, much less at Shillong, and therefore, the jurisdiction to investigate to the contents of the complaint was only with the Police/Courts in Mumbai. Complaint lodged by JBHL was sought to be quashed and in the alternate, to issue a writ of mandamus directing the State of Meghalaya, to transfer the investigation being conducted by its officers to the investigating agency at Mumbai and to issue a writ of prohibition restraining the investigation officer at Shillong, from taking any further steps in respect of the complaint lodged by JBHL with the Police Authorities at Shillong. The writ petition having been dismissed, the Apex Court

was approached for relief. After noticing, that the entire cause of action had arisen within the jurisdiction of the High Court of Bombay, the order passed by the Bombay High Court, reported in Navinchandra N. Majithia Vs. State of Maharashtra and Others, was reversed. The relevant finding can be found at para 43, which reads thus:

43. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurize the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court.

(emphasis supplied)

The decision has no application to the instant case, which stands on a different factual matrix altogether.

10. It is trite that, only a High Court within whose jurisdiction the order of subordinate Court has been questioned, would have the jurisdiction to entertain the writ petition under Articles 226 and 227 of the Constitution, unless it is established that earlier cause of action arose within the jurisdiction thereof. S. 177 of Cr.P.C., makes it clear that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. S. 178 provides for place of inquiry or trial.

11. Perusal of copies of the complaints filed by the respondents 4 and 5, vide Annexures - A and B, would clearly go to show that according to the complainants the entire cause of action arose within the jurisdiction of the JMFC at Pune. The complaints having been perused and after hearing the learned advocates for the complainants and considering the nature of the complaints and gravity of the offences and as well as magnitude of the fraud alleged, the investigation under S. 156(3) of Cr.P.C., was ordered to be conducted by the JMFC (Court 9) Pune, by the P.I. of P.S. Chaturshringi. Copy of the complaints together with documents were sent for investigation to the police station. The

investigation having commenced, the cases were registered in FIR Nos. 118 and 206 of 2011/RCC Nos. 0400813/2011 and 1387/2011.

12. In the case of Rasiklal Dalpatram Thakkar Vs. State of Gujarat and Others, , the appellant had taken loan from a Co-operative Bank, which had its business operations in the States of Gujarat and Maharashtra and other States. Bank filed criminal complaint against the appellant in Ahmedabad in the State of Gujarat. The Magistrate issued a direction under S. 156(3) of Cr.P.C., to the Economic Offences Wing, CID (Crime), Ahmedabad, to conduct an investigation against the appellant. The Police, however filed the report stating that the alleged offences were committed in the State of Maharashtra on the ground that the loan was taken by the appellant from a branch of a Co-operative Bank, which was situated and registered in Maharashtra and therefore, State of Gujarat did not have territorial jurisdiction to conduct the investigation and that the competent agency to conduct the investigation was Maharashtra Police. The said report having been rejected by the Magistrate, on the ground that it was not for the investigating agency to decide not to investigate the complaint forwarded under S. 156(3) of Cr.P.C., on the ground that the offences allegedly committed outside the territorial jurisdiction of the investigating agency, by a further order, the learned Magistrate directed the investigating agency to carry out a further investigation and report as to, whether alleged offence had been committed or not. Said order was challenged by the appellant/accused before the Sessions Court at Ahmedabad in revision and the same having been dismissed, a writ petition was filed and the said writ petition also having been dismissed, the Apex Court was approached for relief. Considering the rival contentions, the principle question raised was, whether in regard to an order passed under S. 156(3) Cr.P.C., the police authorities empowered under Sub-S. (1) of S. 156 can unilaterally decide not to conduct any investigation on the ground that there is no territorial jurisdiction to do so? After noticing the statutory provision, it has been held that S. 156(2) of Cr.P.C., ensures that once an investigation has commenced under S. 156(1), same is not interrupted on the ground that the Police Officer was not empowered under the section to investigate. It was further held that the direction for investigation given by the Magistrate under S. 156(3) of Cr.P.C., is not restricted by territorial limit laid down in S. 181(4) and therefore, a direction for investigation under S. 156(3) can be given by Magistrate, irrespective of territorial limit for enquiry or trial under S. 181(4) of Cr.P.C.

13. The complainants have lodged the complaints against the petitioner and others, alleging commission of offences punishable under Ss. 406, 420, 467, 471, 472, 474, 425, 34 and 120(B) of IPC and Ss. 402, 420, 427, 34 and 120(B) of IPC respectively. If there had been fraudulent misrepresentation by some of the accused persons at Pune and they have hatched conspiracy to commit offences of cheating etc., as part of cause of action arose within the jurisdiction of the JMFC at Pune, since payments were made through Saraswat Co-operative Bank Ltd., SNE Branch, Pune in the name of M/s. Meghadoot Exim International and an amount of Rs. 1,00,00,000/- paid on 02.02.2010 was realized by

Saraswat Bank towards advance and the goods consignment notes issued to Saraswat Co-operative Bank Ltd., were found to be forged and fabricated, thus, part of cause of action having arisen in Pune, the complaints filed have been directed, to be investigated by Chatushrungi Police. In view of the foregoing discussion, the direction sought in these writ petitions, to prohibit the Police Inspector of Chatushrungi Police Station from taking any steps being untenable, cannot be granted and the consequential prayer for transfer of FIR Nos. 118 and 206 of 2011 to Ankola Police Station or Karwar Police Station, cannot be entertained.

In the result, the writ petitions stand rejected with no order as to cost.