

(2023) 06 GAU CK 0028

In the Gauhati High Court

Case No : Criminal Revision Petition No. 383 Of 2022

Falcon Realty Pvt. Ltd.

APPELLANT

Vs

Dr. Rajendra Prasad Kakoti

RESPONDENT

Date of Decision : 05-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 177, 179, 200, 202, 397, 401, 482
Indian Penal Code, 1860 — Section 34, 406, 420
Negotiable Instruments Act, 1881 — Section 138

Citation : (2023) 06 GAU CK 0028

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : F Haque, J Das

Final Decision : Dismissed

Judgement

1. Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. A. K. Bhuyan, learned counsel for the respondent.

2. This is an application under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, for setting aside and quashing the C.R. Case No. 4452c/2019, pending before the Court of learned Judicial Magistrate First Class, Kamrup(M), Guwahati.

3. It is stated that the respondent preferred a complaint case before the Court of learned Judicial Magistrate First Class, Kamrup(M), Guwahati, which was accordingly registered as C.R. Case No. 4452c/2019 against the petitioner Company with some false and concocted allegation and also misled the concerned Court to take cognizance and issue summon to the petitioner Company. The petitioner Company, i.e. the Falcon Realty Private Limited, is associated with construction of flats in National Capital of Delhi and adjoining areas under "Akhil Bharatiya Aawas Yojna" having its registered Office at Global Eco City, New Delhi. The respondent booked a flat at New Delhi by making an application before the petitioner Company for allotment of an apartment under

"Akhil Bharatiya Aawas Yojna". Considering that application, the petitioner Company was pleased to allot apartment No. 511 on 5th floor at Tower No. 01 in ABAY Tower. Thereafter, the respondent entered into an agreement with the said Company where there was an Arbitration clause in paragraph No. 62 of the said agreement.

4. It is very clear in the agreement that both the parties entered into an agreement at New Delhi, but the respondent filed the complaint case before the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, who accordingly took the cognizance, vide order dated 18.01.2020, without having any jurisdiction to take up the matter or to take cognizance. The respondent mentioned a wrong local address which is also reflected in the order of the complaint case, though there is no Office of the petitioner in the given local address at Guwahati, i.e. at Dona Planet, G. S. road, Guwahati. If the Court does not have the territorial jurisdiction over the events or the persons concerned, the Court cannot take cognizance of the same. Section 177 of the Cr.P.C. lays down the general rule as to territorial jurisdiction for criminal enquiries and proceedings which provides that the area within which the offence is committed is relevant to determine the territorial jurisdiction of the Court. The Magistrate within whose jurisdiction the crime was allegedly committed has the jurisdiction to try the offence which is of course subjected to explanation contained in the subsequent sections.

5. More so, the petitioner Company has not committed any offence under Sections 406/420/34 of the Indian Penal Code and the entire matter is of documentary one which is civil in nature and as per the agreement, the jurisdiction lies only at New Delhi and not in Guwahati, Assam. The allegation that the petitioner Company has its Office at Dona Planet, G. S. Road, Guwahati, is totally false. Though the officials of the Company stayed at Hotel Novotel, Guwahati, yet they stayed as in the normal state of affairs in their official capacity or for other purpose, and there is no document to prove that they had any established office at Dona Planet, G. S. Road, Guwahati, to give rise any jurisdiction to try the case by the learned Judicial Magistrate First Class, Kamrup(M), Guwahati.

6. Further, it is stated that the petitioner Company also send the Demand Letter to the respondent on 25.11.2011 through courier service asking the respondent to clear the installment in respect of the flat booked by the respondent, but the respondent miserably failed to make any payment as per the Demand Letter. After sending the said Demand Letter, the petitioner Company also send one more legal notice to the respondent asking him to fulfill all the terms and conditions and to clear the outstanding dues as the petitioner Company has already completed their construction of flats and also handed over some of the flats to other customers who had already clear their installments and also issued possession certificate to them accordingly.

7. Further it is stated that the petitioner Company is a registered Company under

the Companies Act, 1956, and under the said Act, there are provision which lays down for settling any dispute by way of Arbitration and Conciliation and as such, the learned Court below has no jurisdiction to try the matter.

8. Accordingly, vide the instant petition, it is prayed to set aside and quash the entire criminal proceeding of C.R. Case No. 4452c/2019, wherein, the cognizance was taken by the learned Court below and issued process to the present petitioners.

9. In this context, the learned counsel, Mr. A. K. Bhuyan, appearing on behalf of the respondent, has submitted that the learned Court below rightly took the cognizance against the present petitioner Company and committed no error or mistake while taking cognizance against the present petitioner Company. After the agreement between the parties, a payment Schedule/Plan was provided by the present petitioner along with the Letter of Allotment and as per the said agreement, the allottee is only required to pay the installment as per the payment Schedule/Plan and the petitioner would be authorized to demand the allottee to make any extra payment which is not covered by the aforesaid Payment Schedule/Plan. Accordingly, the respondent was regularly paying the installment as per the Payment Schedule/Plan upto the step No. 6, i.e. the 6th installment, through cheque, dated 05.12.2011, at Guwahati without any default on his part including all connected ancillary payments. The petitioner Company also duly acknowledged the receipt of the payments. But, even after several letters, the petitioner Company did not intimate the progress of the work of concerned apartment and vide Letter dated 09.09.2015, the petitioner instructed the respondent to make payment of Rs. 1,91,645 (Rupees One Lakh Ninety One Thousand Six Hundred Forty Five) only stating the same as previous due along with the next installment. After receiving the notice, it was informed to the petitioner that no payment is due upto step No. 6 and he cleared all the payments/installments as per payment Schedule/ Plan upto step No. 6. When the respondent did not get any information from the petitioner Company, he visited the New Delhi and it was surprising that there was no sign of any construction work on the said site where he was allotted an apartment by the petitioner Company. Thereafter, finding no other alternative, the respondent had to send a notice on 01.06.2018 for cancellation of provisional allotment of the residential apartment. However, as there was no reply from the petitioner side, the respondent again send letter to the petitioner Company, but there was no response from the Company, though it has come to the knowledge of the respondent that there was a meeting between the accused Nos. 1, 2 & 3 at Hotel Novotel on 25.08.2019. The respondent had already paid Rs. 7,85,382 (Rupees Seven Lakh Eighty Five Thousand Three Hundred Eighty Two) only to the petitioner Company on the basis of the agreement, but the said amount has been misappropriated by the petitioner Company and hence, finding no other alternative, the respondent had to institute a complaint case against the present petitioner Company.

10. It is further submitted by the learned counsel for the respondent, on the issue of jurisdiction, that though the Office of the petitioner Company was at New Delhi, but they had a Branch Office at Dona Planet, G.S. Road, Guwahati. Further it is submitted that all the payments were made by the respondent from Guwahati and all the inducement was also done at Guwahati and at the same time, there was conspiracy took place at Guwahati, though the registered Office of the said Company was stated to be at New Delhi. Further it is submitted that before taking cognizance, the learned Court below verified regarding the existence of the Office/Branch Office of the petitioner Company at Guwahati and accordingly, after receiving report from the I.O., it was found that one Branch Office of the Company, namely, Falcon Realty Private Limited, was at Dona Planet, G.S. Road, Guwahati. But, at the time of enquiry, it was seemed to be closed as per the statement of some local witnesses. During enquiry, it was also found that from Company, Mr. Bhim Yadav and Mr. Shelly Sharma also stayed at Hotel Novotel on 25.08.2019 and subsequently, they again stayed in the said hotel from 26.12.2018 to 30.12.2018. So, considering all these aspects, the learned Magistrate took cognizance under Sections 420/34 of the Indian Penal Code after examining the complainant as well as the witnesses under Sections 200 and 202 Cr.P.C., respectively. Accordingly, it cannot be held that the learned Judicial Magistrate First Class, Kamrup (M), Guwahati, had no jurisdiction to take cognizance of the said offence.

11. In this context, the learned counsel for the respondent also relied on a decision of Hon'ble Apex Court reported in (2000) 7 SCC 640 (Navinchandra N. Majithia Vs. State of Maharashtra & Ors., wherein, in paragraph No. 24 thereof, it has been held as under:

"24. this Court held (at SCC p.517, para 11) that under Section 177 of the Criminal Procedure Code "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed". The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. The offence under Section 138 of the NI Act would not be completed with the dishonor of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. This Court further held that Section 178 of the Criminal Procedure Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again,

Section 179 of the code stretches its scope to a still wider horizon.”

12. Accordingly, it is submitted that in the present case also, all the payments were made from Guwahati and the act of inducement was also taken place at Guwahati along with conspiracy and hence, the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, has the territorial jurisdiction to try the case or to take cognizance of the offence as there is no jurisdictional bar to take the cognizance of the offence.

13. Further it is submitted by the learned counsel for the respondent that it is a fact that there is an Arbitration Clause in paragraph No. 62 of the agreement, but the Court cannot be debarred from taking cognizance of any conduct which amounted to an offence. Here in the instant case also, the respondent brought the allegation against the petitioner of misappropriation of money which was given by him through cheques at Guwahati for delivery of the flat which was allotted to him at New Delhi and hence, there cannot be any bar to conduct any trial for any offence committed by the party only for the reason that there was an Arbitration Clause in the agreement.

14. The learned counsel for the respondent further relied on a decision of Hon’ble Supreme Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal & Ors.*, reported in (1999) 8 SCC 686, wherein, in paragraph No. 9 thereof, it has been held as under:

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal*.”

15. Accordingly, it is submitted by the learned counsel for the respondent that the learned Court below rightly took cognizance of the complaint case after applying his judicial mind and recording the statement of the complainant as well as the statement of witness under Sections 200 and 202 Cr.P.C., respectively, and also made an enquiry by the officer regarding the existence of any Branch Office of the petitioner at Dona Planet, G.S. Road, Guwahati, and hence, there is no reason for quashing or setting aside the order of cognizance as well as the criminal proceeding initiated against the present petitioner Company.

16. After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the annexures filed along with the petition.

17. It is a fact that there was an agreement between the parties for allotting a flat/apartment in New Delhi and accordingly, the present respondent was allotted Flat No. 511 on 5th floor, Tower No. 01, in ABAY Tower at New Delhi. It is also a fact that some payment of installments were already made by the respondent as per schedule of the payment. But the complaint case had to be instituted by the respondent as he did not get any response from the petitioner Company and on enquiry, it was come to the notice/knowledge of the respondent that no construction was started in the construction site, though he had already paid more than Rs. 7 Lakhs towards the installment upto step No. 6. So, with the allegation of misappropriation of money, the complaint was filed by the respondent and it is seen that after recording the statement of the respondent, the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, also made an enquiry through the police officer regarding the existence of any Branch Office at Dona Planet, G.S. Road, Guwahati, of the said company and considering the report from the police officer and also recording the statement of witnesses under Section 202 Cr.P.C., the learned Court below took cognizance of the said case.

18. Coming to the issue of jurisdiction, it is seen that though the registered office of the petitioner Company is at New Delhi, but the Company had a Branch Office at Guwahati itself and all the transactions were made by the respondent from Guwahati and all the cheques were also issued from Guwahati by the respondent and hence, it cannot be held that only because the registered Office of the Company is situated at New Delhi, the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, has no territorial jurisdiction to try the same.

19. As per Section 177 Cr.P.C., every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. But, Section 179 Cr.P.C. says that when an act is an offence by reason of anything which has been done and of a consequence which may be ensued, the place of enquiry and trial can as well as by in a Court "within whose jurisdiction such things has been done or consequences has ensued".

20. Here in the instant case also, it is seen that though as per agreement, the apartment was supposed to be allotted at New Delhi, but all the payments were made by the present respondent from Guwahati and in the same time, the petitioner also had a Branch Office at Dona Planet G.S. Road, Guwahati, and the respondent also met one of the agent of the petitioner Company at Guwahati where it was stated that they are going to establish a Office at Dona Planet at Guwahati and he was asked to apply for an apartment if he is interested to take an apartment at 5th floor at Tower No. 01 in ABAY Tower. And, in pursuant to the said discussion, the respondent had entered into an agreement with the petitioner Company, as stated in the complaint, and hence, it cannot be said that the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, has no territorial jurisdiction to try a suit.

21. Coming to the issue raised by the learned counsel for the petitioner in

regards to the Arbitration clause, it is seen that as per paragraph No. 62 of the said agreement, there is a clause for Arbitration if any dispute arise between the parties. But from the discussion made above, it is seen that the complaint case was lodged by the respondent only with the allegation of misappropriation of money and cheating by the petitioner company. So, it is seen that though there is an Arbitration clause where the dispute can be solved between the parties by appointing Arbitrator, but the Court has the power to conduct a trial of a case if there is an allegation of committing an offence by either of the parties.

22. The Hon'ble Apex Court has expressed the view that the Arbitrator cannot conduct a trial or any act which amounted to offence and hence, the Court has the power or authority to try the case if there is an allegation of any offence committed by either of the parties in respect of the fact that there is an arbitration clause in the agreement.

23. So, considering the entire discussions made above, I am of the opinion that the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, has committed no error or mistake while taking cognizance under Sections 420/34 of the Indian Penal Code and I find no reason to make any interference in the order dated 18.01.2020, passed by the learned Judicial Magistrate First Class, Kamrup(M), Guwahati, in C.R. Case No. 4452c/2019 or I do not find it a fit case to exercise power under Section 482 of the Code of Criminal Procedure to set aside or quash the entire proceeding initiated under C.R. Case No. 4452c/2019, which is pending before the Court of learned Judicial Magistrate First Class, Kamrup(M), Guwahati.

24. In the result, I find no merit in this petition and accordingly the same stands dismissed.