(1989) 07 CAL CK 0004

In the Calcutta High Court

In Re : Kalyan Kumar Thavarchand Shah

Date of Decision : 10-07-1989

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 4
Constitution of India, 1950 — Article 19, 21, 226, 226(2)
Foreign Exchange Regulation Act, 1973 — Section 37, 52(1), 52(2), 57(2)

Citation : 94 CWN 367

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : F.M. Razack and Swapan Kumar Kar, for the Appellant; Anjan Mukherjee and Prantosh Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Mahitosh Majumdar, J.—This writ application is directed against the threatened action of respondents in detaining Sri Kalyan Kumar Thanvarchand Shah (for short the petitioner hereinafter). The petitioner claims to be resident of Ali''s House, opposite Lakshminarayan Temple, Port Blair is sought to be detained in pursuance of the order of detention dated September 28, 1988 issued by the Joint Secretary, the Government of India, Ministry of Finance, Department of Revenue under the provisions of the Conservation of Foreign Exchange and the prevention of Smuggling Act, 1974 (for short COFEPOSA hereafter). This Court granted a Civil Order on December 23, 1988 and also passed an interim order of injunction in terms of prayer (h) of the petition. Thereafter, interim order was extended on diverse date. Respondents entered appearance and raised preliminary objection to the effect that-

(a) On the basis of materials and pleading of the writ application, this Court has no jurisdiction to entertain this application under Article 226 of the Constitution of India;

(b) In the absence of the order of detention along With grounds for detention, this Court is not competent to issue writ in the nature of mandamus and/or

Certiorari and/or Prohibition, nor is it proper to determine the basic challenge against the order of detention;

(c) The order of detention can only be challenged by presenting the writ application for writ in the nature of Habeas Corpus. Objections as taken by the learned Counsel for the respondents in the first blush, as would appear against (b) and (c) hereinabove, can only be decided by this Court after determination of the objection referred to in (a) above;

2. Mr. Anjan Mukherjee, the learned Advocate appearing along with Mr. Prantosh Mukherjee, the learned Advocate submitted that this Court should proceed on the pleadings as would appear from the writ application. Facts not in dispute are, inter alia, as follows:

The petitioner carries on business in the name and style of Messrs Andhra Express Service at Bombay. The petitioner is the managing partner.

On June 13, 1988 the Officers attached to the Enforcement Directorate conducted search of the petitioners business at Premises namely Messrs Andhra Express Service at Bombay. Panchnama was prepared and handed to the petitioner who was then at Bombay in connection with the business. On the basis of the seizure of the documents and Indian Currency notes amounting to Rs. 67,000 effected by the officers on May 12, 1988 from one Harun Jan Mohammed of Bombay.

Similar raid has been conducted by the officers of the FERA Directorate at the petitioner''s branch office at Bombay in presence of Sri Harshad Rai Joshi on June 3, 1988. Sri Harshad Rai Joshi partner of Messrs Andhra Express Service was arrested and taken to the Enforcement Directorate on June 6, 198S. Sri Joshi was arrested and produced before the Special Court for Economic Offences, Bangalore. The Special Court enlarged Sri Joshi on bail and directed Sri Joshi to appear for investigation for a period of 10 days. In search of the petitioner''s Bombay office, nothing incriminating was found. The petitioner appeared before the Officers concerned on June 14, 1988 and June 15, 1988 at Bombay for thorough interrogation about his complaint on the payment.

3. Thereafter, the petitioner appeared before the Authority concerned on August 12, 1988 and was arrested and produced before the Chief Metropolitan Magistrate, Bombay. The Assistant, Enforcement, Bombay filed a Memo of Appeal before the Chief Metropolitan Magistrate, Bombay. The said remand application, inter alia, discloses the same at Bombay. Arrest of Harshad Rai Joshi at Premises of Andhra Express at 4/5, 6th Floor, B.T. Street, Bangalore residence of Sk. Hard-had Raj Joshi at Bangalore Harun Joshi recorded the statement on June 3, 1988 that he was receiving Indian Currency large quantity from the head office at Bombay. On the basis of the information gathered at the office of Messrs Andhra Express Service at 15, Sadguru Kadmala Lane, First Floor, Dr. H.B. Vophlar Marg. Kalbodebi at Bombay was searched.

4. The statement of the petitioner was recorded on June 14, 1988 and June 16, 1988 at Bombay. Sri Harshad Joshi of Messrs Andhra Express Service was served with an order of detention along with the grounds of detention at Bangalore.

5. The relevant facts touching the question of territorial jurisdiction would appear from the remand application which is stated below:

Reliable information was received in the Enforcement Directorate, Bombay that Sk. Haroon Jan Mohammed residing at 55, Moorland Road, 2nd Floor, Bombay-4oooo8 was receiving huge amounts of Indian Currency on instruction from persons resident outside India and that he was making payments of the same to various persons in India.

On receipt of the said information the residential premises of Sk. Haroon Jan Mohammed were searched u/s 37 of the Foreign Exchange Regulation Act, 1973 on May 12, 1988 and as a result of the same, some documents, Indian Currency of Rs. 67,000 and one locker key were seized.

Sk. Haroon Jah Mohammed clarified that A.R.S. representative of Messrs Andhra Express Services having their office at Kulbadevi doing Angadia Service and the payments denoted against A.R.S. were made through Messrs Andhra Express Services. The payments were made in Bangalore.

Information''s have been passed on to Bangalore office of Enforcement Directorate for necessary follow-up actions in Bangalore. Enquiries made with some of the recipients of amounts disclosed that they had received payments in Indian Currency from Bangalore branch of Messrs Andhra Express Service on instructions from abroad. On the basis of this information, the office premises of Messrs Andhra Express Service at 4/5, 6th Floor, B.T. Street, Bangalore and residence of Sk. Harshad Rai Joshi, Partner of the firm were searched.

These chits were thereafter returned to their Bombay Office by him. He also stated that he understood from his Bombay office that these payments were to be made to the parties as per the instructions from their relatives residing in USA.

On the basis of the aforesaid information gathered after the investigations in Bangalore, the office premises of Messrs Andhra Express Service at 15, Sodguru Kadam Bada Lane, First Floor, Dr. H.B. Vokdar Marg, Kulbadevi Road, Bonibay-400002 was searched on June 13, 1988.

The statement of Sk. Kalyan Kumar Thavarchand Shah i.e. the marginally noted accused was recorded on May 14, 1988, June 15, 1988 and thereafter on August 12, 1988. In his statements he admitted that he knows Mr. Haroon Jan Mohammed residing at 55, Hoorland Road, Bombay and he was coming to his office with Indian Currency and which was to be delivered to various places in South.

Indian Currency was handed over to him along with chits showing the names of the persons to whom the currencies is to be paid along with the sender''s name.

The Indian currency as and when it is received from Haroon Jan Mohamed or from his man, the currency was sent to his Bangalore Branch handed by Dharchand L. Joshi along with chit. Sri H.L. Joshi on receipt of the same containing the addresses and after ascertaining the identity of the concerned persons delivered the amounts to the addresses through delivery boys. Sometimes the recepients themselves came to the office of Andhra Express Services, Bangalore and collected the money. After delivery of the Indian currency and after obtaining the acknowledgement from the recepients. Bangalore office used to forward the chits bearing signature of the recepients to the marginally noted accused in Bombay and the marginally noted accused in Bombay and the marginally noted accused in turn passed on those chits to Haroon Jan Mohammed.

Marginally noted accused was deeply involved in the compensatory payments racket of receiving and making payments of Indian currency in India on instructions from abroad in association with Sri Haroon Jan Mohammed who was earlier arrested and produced in this Hon''ble Court vide Remand Application No. 424 of 1988 dated May 13, 1988.

Upon production of the petitioner before the Chief Metropolitan Magistrate, Bombay, prayer for bail was made on behalf of the petitioner and the Chief Metropolitan Magistrate released the petitioner on. bail on August 12, 1988. Officer attached to Enforcement Directorate came to the residence of the petitioner on September 28, 1988 when the petitioner was at Port Blair in connection with the business. The petitioner came to know of the aforesaid fact from his wife who was informed by one of the officers on September 28, 1988 that they came to arrest the petitioner and detain him under COFEPOSA pursuant to an order of detention issued by the Joint Secretary to the Government of India, Ministry of Finance, department of Revenue, New Delhi lender the provisions of COFEPOSA dated September 28, 1988. The petitioner has been residing at Port Blair for the purpose of his business. The officers could not execute the said order of detention at Bombay. The petitioner initiated the writ proceeding before this Court on November 14, 1988 challenging the order of detention. Thereafter, the said order of detention was withdrawn on December 5, 1988. Thereafter the instant writ petition has been filed for the second time. After referring to the said facts as would "appear from the writ petition, Mr. Anjan Kumar Mukherjee claimed that the writ petition should not have been entertained by this Court and entire cause of action has arisen beyond the jurisdiction of this Court. Mr. Mukherjee further claimed that the petitioner should have challenged the order of detention either before the High Court at Bombay or the High Court at Delhi. This Court cannot extend its jurisdiction in respect of the matter which falls within the jurisdiction of the High Courts as referred to above.

6. Mr. Mukherjee also claimed and contended that the writ petition should be dismissed in limini on the ground that the most relevant, vital and essential averments as made in paragraphs 5, 13, 14, 14B, 14F and 14I cannot be verified

and affirmed true to the knowledge of the petitioner. Mr. Mukherjee further claimed that the verification of the writ petition should conform to the requirement of Rule 15 of the Rules of the High Court, Calcutta relating to the application under Article 226 of the Constitution of India. The said Rule 15 of the Writ rules is quoted below:

Every petition shall be verified by the solemn affirmation made by the petitioner or a person or persons having cognizance of the facts stated and shall clearly state by reference to the paragraphs of the petition whether the statements are based on knowledge, information and belief on records and where statements are based on information, the source of information should be disclosed and where the statements are based on records, sufficient particulars should be given to identify the records.

7. In terms of Rule 15 of the Rules of this Court, an application under Article 226 of the Constitution of India is required to be supported by an affidavit in support of application. Verification is warranted to be modelled in the manner indicated in Rule 15 of the Writ Rules. The aforesaid paragraphs cannot be affirmed true to the knowledge of the petitioner.

8. The petitioner did not disclose the source of information in respect of the documents mentioned above. The method of knowledge and information in terms of the Rule 15 of the Writ Rules is meritted to be distinguished. Sources of information and knowledge are also to be clearly disclosed. The petitioner did not state in affidavit portion which portion was totally true to his knowledge and which portion was verily to his belief. It is incumbent upon the petitioner to disclose his nature and knowledge with sufficient particularity and in the absence, no reliance could be placed thereon.

9. In support of his submissions, the Learned Advocate for respondents duly assisted by Mr. Prantosh Mukherjee, the learned Advocate referred to and relied on the following decisions:

1. State of Rajasthan and Others Vs. Swaika Properties and Another, .

2. Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, .

3. Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, .

4. Kajaria Exports v. Union of India reported, in 88 CWN 1086.

5. Unreported judgment dated 28/5/85 passed by their Lordships the Hon''ble Mr. Justice Manas Nath Roy and the Hon''ble Mr. Justice Amarendra Chandra Sengupta in Appeal from Original. Order No. 1096 of 1985 (Amant Plazma Pvt. Ltd. & Anr. v. Union of India & Ors.)

10. The conclusionary submissions of the learned Advocate for respondents is that in view of the facts as would appear from paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and 14A, therefore, the writ petition cannot ask for the

invocation of the jurisdiction of this Court nor this Court can entertain such an application on the ground of lack of territorial jurisdiction.

11. Mr. F.M. Razack, the learned Advocate appearing for the petitioner, made elaborate submissions before this Court on the question of jurisdiction. He initially advanced his oral submissions in answer to the preliminary objection raised on behalf of the respondents. Mr. Razack, the learned Advocate, resisted the plea of Mr. Anjan Mukherjee, the learned Advocate, for respondents by advancing the oral arguments subsequently engrafted in written submission which was filed with leave of the Court. The learned Counsel for the petitioner before making submissions on the preliminary objection as raised by the learned Counsel for the respondents submitted that prior to the fifteenth Amendment, law was well settled that writs do not run beyond the territories in relation to which each High Court exercises jurisdiction. High Court could not then issue writ or orders under Article 226 of the Constitution of India; unless the person, authority or government against whom the writ was sought for was physically resident or located within the territorial jurisdiction of the High Court. Prior to 15th Amendment in certain cases, High Court issued appropriate Writs or Orders or Directions under Article 226 of the Constitution of India against those respondents who were physically not resident within the territories of the High Court. It was, further, submitted on behalf of the petitioners that the crutial point fell for determination before the Hon''ble Supreme Court in Election Commission of India v. Saka Venkata Subba Rao reported in 1953 SCR 1145. Similar point arose for consideration before a Full Bench of the Hon''ble Supreme Court in the case of K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., .

12. It was further submitted on behalf of the petitioners that the legislature in its profounded wisdom to ensure that the fundamental rights of the citizen is safeguarded against the legal and arbitrary action of an authority who is situated outside the territories or where the effect of the order is to be felt within the territory gave further wide powers to the High Court by inserting Clause 1(A) subsequently renumbered as Clause 2 of the 42nd Amendment Act, 1976 and retained by the Constitutional 44th Amendment Act, 1978 in terms whereof the High Courts were duly empowered to issue appropriate Writs, Orders and/or Directions against a respondent who was situated outside its territories within the jurisdiction of another High Court where the whole or part of the cause of action arose within its territories. Great reliance was placed on Article 226 of the Constitution prior to fifteenth amendment and on Clause 2 of the Article 226 of the Constitution of India. Submissions with greater force and emphasis were laid, inter alia, to the effect that in the instant case, a part of the cause of action is deprivation of the personal liberty of the petitioner at Port Blair by the Police Authorities of Port Blair within the jurisdiction of the Court and as such, a part of the cause of action having arisen within the jurisdiction of the Court, this Court in exercise of its territorial jurisdiction should entertain this application and issue appropriate Writs, Orders and Directions upon the respondents who are located or situated outside the territorial jurisdiction of this Court.

13. The learned Counsel for the petitioner then made a shift in his submissions by inviting the attention of the Court to another fact which according to the learned Counsel for the petitioner is essential and vital in character. The learned Counsel intended to justify his basic submission as regard the territorial jurisdiction of this Court by referring that the order of detention is sought to be executed on the petitioner at his residence at Port Blair which comes within the sweep, ambit and reach of the territorial jurisdiction of this Court. In this event, with the service of the said order of detention, it is further claimed that he would be deprived of his valuable and cherished liberty as guaranteed to him under Article 21 of the Constitution of India and as such, to safeguard his liberty the petitioner invoked the Constitutional Writ Jurisdiction of this Court under Article 226(2) of the Constitution of India praying for appropriate reliefs in the manner as would appear from the writ applications. It is also to be recorded that the learned Counsel repeatedly referred to and relied on Section 4 of COFEPOSA. Section 4 of COFEPOSA is quoted below:

Execution of detention orders - A detention order may be executed in any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1873(2 of 1974).

14. After referring to Section 4 as aforesaid, it is claimed and contended that the said order of detention may be executed in any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Proceedings, 1973.

15. Therefore, the petitioner''s right to liberty would be affected by the order of detention to be executed at Port Blair. It is also urged that there should be no bounds for exercise, of power by the Court in its Extra-ordinary Jurisdiction under Article 226 of the Constitution of India with a view to protecting and safeguarding the fundamental rights of citizen of India.

16. Accordingly, by applying the fundamental or essentials of territorial jurisdiction, the learned Counsel sought to advance the test to be taken into account where a person against whom an order of detention passed by a different State is served even in Calcutta and he is detained in pursuance of the said order of detention passed by an authority in a different State or by the Central Government at Calcutta. The petitioner, in that case, immediately upon being detained has got a Constitutional right under Article 226 of the Constitution of India to invoke the jurisdiction of the High Court at Calcutta for a Writ or appropriate writs.

17. Therefore, in a given situation there is no bar to exercise of jurisdiction of this Court. In the facts and circumstances of this case, this Court, according to the leaned Counsel for the petitioner, has and had jurisdiction to pass appropriate orders in respect of an accused who is brought before it after being arrested in pursuance of a warrant of arrest issued by a Court at Bombay in connection with a case going on at Bombay irrespective of the fact that the whole

cause of action had arisen in such a case at Bombay. This test is also to be applicable in the facts and circumstance of this case. Part of the cause of action as strenuously argued by the learned Counsel for the petitioner in terms of Clause 2 of the Article 226 of the Constitution of India springs from the execution of the order of detention on the petitioner at his residence at Port Blair, which gives ample jurisdiction to this Court to issue appropriate Writs, so as to uphold the liberty guaranteed to the petitioner under Article 21 of the Constitution.

18. While advancing submission on the aspect of the territorial jurisdiction much has been submitted on Article 21 of the Constitution in depth which is summed up as follows:

No person shall be deprived of his life and liberty without a procedure established by law. Personal liberty under Article 21 of the Constitution primarily means freedom from physical restraint of person by incarceration or otherwise. But it also includes all the varieties of rights which goes to make up a man''s personal liberties other than those which already included in the several Clauses of Article 19 of the Constitution. The expression is of the widest amplitude and therefore, it includes-

(a) the right of location

(b) the right to travel abroad, that is the right to live with members of one''s family and friends etc. etc.

19. The learned Counsel further urged that on the question of personal liberty under American Law in section 472 of Corpus Juris Secundum Constitutional Law, VOL-16A, it reads thus:

Personal liberty, or the right of enjoyment of life and liberty is one of the fundamental or natural rights. Such right has been protected by its inclusion as a guarantee in various constitutions which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable right as sacred as the right of private property or has been occupying a preferred position as contrasted with the property rights and is regarded a inalienable. The Government may when necessary protect personal liberties even when that protection to a limited extent subordinates the Constitutional interests of others. Any doubt which might exist between approving the exercise of uncertain judicial discretion and the liberty of a citizen should be resolved in favour of the citizen.

20. Clause B of Section 472 provides-

Any unlawful interference within right of personal liberty may be resisted and it is the constitutional obligation of the court to safeguard personal liberties. More specifically it is a constitutional function of the judiciary to protect the right and liberty against highhanded or capricious official invasions operating under legal forms.

21. Thereafter, reference to the following cases was made by the learned Counsel for the petitioner in respect of the claim of the petitioner as made in the writ application:

1. Smt. Manjulaben and Another Vs. C.T.A. Pillay and Others, .

2. Jagat Nath Wahal and Others Vs. The U.P. State Road Transport Corporation and Others, .

3. Damomal Kausomal Raisinghani Vs. Union of India and Others, .

4. Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another,

5. Advocate General, State of Bihar v. Madhya Pradesh Kahir Industries (supra).

6. Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, .

7. Hiralal Somabhai Damania v. Dr. Copal Singh & Ors., reported in 1988 (1) crimes 857.

8. Om Prakash Jalan v. Union of India, reported in

22. The next branch of submission as advanced by the learned Counsel for the petitioner was that in all the cases cited by the learned Counsel for respondents in support of the contentions that this Court has no territorial jurisdiction to entertain this writ petition requires examination in depth. The subject matter of the cases referred to by the learned Counsel/for respondents either revenue or land, life and liberty of a citizen was not involved in those cases and in case of State of Rajasthan v. Swaika Properties, the learned Judges of Supreme Court held that the High court at Calcutta did not have any territorial jurisdiction because the entire cause of action culminating in the approch of Section 57(2) of the Act arises in the State of Rajasthan.

23. The learned Counsel for the petitioner further pin-pointed that integral part of cause of action in the instant case is that respondents would serve the order of detention on the petitioner at Port Blair where liberty as guaranteed u/s 21 of the Constitution would be imperilled. The threatened service of order of detention by the officers of police in Port Blair is integral part of cause of action within the meaning of Article of Article 226(2) of the Constitution. The learned Counsel for the petitioner further sought to distinguish the decisions cited by the learned Counsel for respondents that the facts and circumstances of these cases is entirely different from the tarts and circumstances of the present case and hence, the decisions thus relied on behalf of respondents have and had no manner of application to the present facts and circumstance of the case.

24. The last submission of the learned Counsel for the petitioner is that no affidavit has been filed by respondents and hence, the avernments made in the writ application go unchallenged. Therefore, this Court ought not to shut its doors of justice to citizens. The objections raised by respondents without any

support of affidavit should not be taken into consideration. Balance of convenience, therefore, rests solely in favour of the petitioner.

25. The learned Counsel appearing for the respondents in the reply claimed that the sub-article (2) of Article 226 of the Constitution introduces an additional basis of jurisdiction namely, the whole or part of action arising within the jurisdiction of a Court. Therefore, jurisdiction to issue writs can be exercised by a Court within whose jurisdiction a person or an authority including in appropriate cases any Government resides or is located, within whose jurisdiction, the cause of action wholly or in part arises notwithstanding that the seat of such Revenue Officer or authority or the residence of such person is not within those territories. Cause of action, according to the learned Counsel for respondents, wholly arises outside the jurisdiction of this Court.

26. The learned Counsel further referred to the facts not in dispute in support of his preliminary objections and claimed that this Court has no jurisdiction to entertain this application as cause of action wholly or in part does not arise within the territorial jurisdiction of this Court. That being so, this Court in terms of Article 226(2), of the Constitution having no jurisdiction to entertain this writ application for the fact revealed, in brief, sunder.

1) Search of the petitioner''s business premises, namely, Messrs Andhra Express Services, Bombay conducted at Bombay (i) panchname was prepared and handed over to the petitioner at Bombay. (ii) officers conducted search of the petitioner''s business premises at Bombay on the basis of seizure of documents and Indian currency notes amounting to Rs. 67,000 seized by them on them on March 12, 1988 (iii) the petitioner appeared before the Enforcement Officers on June 14 and 15 at Bombay, (iv) the petitioner was arrested at Bombay and produced before the Chief Metropolitan Magistrate at Bombay, Remand Application No. 688 of 1988 before the Chief Metropolitan agistrate, (v) the petitioner was released on pail on June 5, 1988, (vi) the police authorities came to the Bombay residence of the petitioner looking for him, (vii) an order of detention was issued by the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi under the provisions of COFEPOSA dated September 20, 1988. An effective perusal of the above shows that the petitioner can only move against the order of detention before the Bombay High Court or the High Court at Delhi. No relief against the actions culminating in the order of detention as claimed by the petitioner can be granted not any cause of action arises in any part of the State of West Bengal or Andaman & Nicouar Islands.

27. The petitioner affirmed the aforesaid paragraphs as true to his knowledge, whereas in some of the said paragraphs, the avernments are made that on enquiries he reliably learnt or on further enquiries the petitioner came to know that the important of verification is to test the genuineness and authenticity of alienations and also to make the deponent responsible for allegations. In essence, verification as required to enable the Court to find out as to whether it

will be safe to act such affidavit evidence.

28. In a petition under Article 226 of the Constitution of India, an affidavit conforming to Rule 15 of the Writ Rules should not contain facts which only have affirmed as true to his knowledge although the facts derived by the petitioner without disclosure of the source, avernments as made in the said paragraphs could not be within the personal knowledge of the petitioner. It is to be recorded that unless the affidavit is properly verified and in conformity with the Rule 15 of the Writ Rules, the said affidavit shall be rejected by the Court, unless the affidavit is properly verified, the Court shall not act on the basis thereof.

29. In the instant case, the affidavit so verified does not conform to the requirements of Rule 15 of the Writ Rules. The affidavit is verified not in conformity with the Rule 15 of the Writ Rules. That being so, the petition on such verification cannot be accepted.

30. Now it is proper for the Court to examine the other contention of Mr. Farook that in view of Section 4 of COFEPOSA the order of detention sought to be executed on the petitioner at his residence at Port Blair and the petitioner sought to be denied personal liberty at Port Blair. This Court has jurisdiction to entertain the writ application.

31. Mr. Anjan Mukherjee, the learned Advocate seriously, criticized 14K of the writ application. Mr. Mukherjee urged that the plea thus raised in paragraph 14K presents hypothetical situation and the Court should not entertain the writ application founded upon hypothetical situation. It is further stated by Mr. Mukherjee that there is no bar to the filing of the writ application before the High Court at Bombay or the High Court at Delhi. The petitioner cannot ask for any relief from this Court on such hypothetical situation as is indicated above.

32. Mr. Mukherjee while advancing his submission on Section 4 of the said Act lain his attack on the plea as would appear from the expression "is being sought to be executed". According to Mr. Mukherjee, this is a glaring instance of hypothetical situation. Mr. Mukherjee further claimed whether the order of detention will be executed to Port Blair or not can not be gone into by this Court inasmuch as cogent materials were placed before this Court by placing the names of officer or the dates when the officer went to the residence of the petitioner at Port Blair. Absence of materials particulars and cogent materials, according to Mr. Mukherjee, as a warrant for dismissal of the writ application. It is true while considering the aspects of the matter, the Court is to ask itself as to whether in a given situation where the basic grievance of the petitioner as regards the execution of the order of detention is founded upon hypothetical situation interference as asked for is merited or not. There can be no catscan of the. hypothetical situation. It will be very dangerous and unsafe to arrive at a decision founded upon hypothetical situation. The hypothetical tests could not be the basis of any decision.

33. This pleading is utterly vague, feeble and nebulous in character. On the basis

of the said pleadings, this Court cannot take it for granted that the execution of the order of detention will be executea at Port Blair. Section 4 of COFEPOSA cannot be construed in such manner as to confer power upon the High Court where no cause of action arises. In the back ground of the factual and the contextual aspects of the entire matter, I am of the view that on mere hypothetical basis, the central point which goes to the root of the jurisdiction falls for the determination is the execution of the order of detention does not arise at all. The grievance of the petitioner is based on the possibility, the order of detention being executed in pursuance of the order of detention issued by the concerned authority in Delhi. If the petitioner really falls aggrieved he shall be at liberty to challenge the same, but founded upon in the contextual perspective that hypothetical situation cannot be visualized, in this writ application. This Court, in its view, shall not exercise jurisdiction under Article 226(2) of the Constitution of India. The petitioner has chosen to move the present writ application before this Court on the basis of such pleadings which could not be taken into account for reasons stated a over. the decisions cited by the learned Counsel for the petitioner have no manner of application in the facts and circumstances of this case. None of the cases deals with this aspect of the matter namely, jurisdiction of the High Court under Article 226(2) of the constitution. The decisions cited by the earned Counsel for the petitioner could have been assistance to him in a case where the High Court has the jurisdiction to entertain the writ application under Article 226(2) of the Constitution of India. It or one of such case.

34. Once the Court is required to decide as to whether this court has territorial jurisdiction to entertain this writ application, the decision cited by the learned Counsel for the petitioner are wholly inapplicable. The decisions in case of Srimati Manjula Ben & Another v. C.T. Fillai &. Anr, New Delhi reported in 1986 SC Criminal journal, 889, Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, are clearly distinguishable in the facts of the case. The possibility of the order of detention which has been passed from Delhi being executed at Port Blair in the absence of positive pleadings does not confer any jurisdiction upon this Court to entertain this writ application. It is appropriate for this Court to refer to the decisions of the Supreme Court in case of State of Rajas -than v. Messrs Swaika Properties (supra) Their Lordships, inter alia, held that "Cause of action is tersely defined in Mulla''s Code of Civil Procedure:

The Cause of action means every fact which, if traversed, it Would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

35. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the

service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52(2) of the Act arose within the State of Rajasthan i.e.. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated February 8, 1984 issued by the State Government u/s 52(1) of the Act became effective the moment it was published in he official Gazette as thereupon the notified land became vested in the State Government from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur u/s 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the Notification issued by the State Government u/s 52(1) of the Act. If the respondents felt grieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the Notification issued by the State Government of Rajasthan u/s 52(1) of the Act by a petition under Article 226 of the Constitution the remedy of the respondents for grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

In the present case, the respondents began the game by filing an application under Article 226 of the Constitution in the Calcutta High Court, whereas in the normal course one would expect such an application to be filed in the Patna High Court within those jurisdiction the subject matter of the dispute was situate. For some mysterious reason which nobody has been to explain to us, the writ application was filed in the Calcutta High Court. A justifiable prima facie interference from this circumstance may be that the application was not bonafide but intended to harass and oppress the opposite parties. We do not want to say anything more about this aspect of the case as we are told that this is a failing of the respondents which they shared with several others. Perhaps, as we had occasion to remark during the course of the hearing, some parties are unable to reconcile themselves to the fact that the Calcutta High Court has long since ceased to have jurisdiction over the area comprising the State of Bihar which it had several decades ago."

36. In the case of Union of India v. Oswal Woolen Mills Ltd. (supra), the Hon''ble Supreme Court, inter alia, observed as follows:

Messrs Oswal Woolen Mills Limited having its registered office at Ludhiana in the State of Punjab and a branch office at Calcutta and Narayan Das Jain, Secretary of the Company have filed a writ petition in the Calcutta High Court seeking various reliefs against the Union of India (through the Secretary, Ministry. of Commerce, New Delhi), the Chief Controller of Commerce, New Delhi, the Chief Controller of Imports and Exports, New Delhi, the Deputy Chief Con-roller of Imports and Exports, Amritsar, the Collector of Customs, Calcutta and the State

Trading Corporation of India, New Delhi. The primary prayer in the writ petition is to present or to quash an apprehended or purported action under Cl. 8-B of the Import Control Order. Ail the other reliefs sought in the writ petition remove round the principal reliefs regarding Cl.8-B of the Import Control Order. The other prayers are either ancillary or incidental to the principal prayer or are of an interlocutory character. Having regard to the fact that the registered office of the company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners, however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of the writ petition elsewhere than at the place where the concerned officers and the relevant records are located is to delay prompt return and contest. We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are often deliberately filed in distant High Courts, as part of a manoeuvre in a legal battle, so as to render it difficult for the officials at Delhi to move applications to vacate stay where it becomes necessary to file such applications. More about this later.

37. In view of my decision on the question of territorial jurisdiction as raised by the learned Counsel appearing for the respondents, I am not required to express any opinion on the other two objections as would appear from preliminary objection (b) and (c) referred to above.

38. After objective appraisal of the basic and fundamental aspects of the matter as also the submissions of the learned Counsel appearing for the parties, I am of the view that this writ application cannot but fail on the ground of absence of territorial jurisdiction of the Court as also failure on the part of the petitioners to have the petition properly verified by an affidavit conforming to the requirements of Rule 15'' of the writ Rules.

39. In the circumstances, the writ application cannot but be dismissed on the ground of absence of territorial jurisdiction of this Court to entertain the same as also the non-compliance of Rule 15 of the Writ Rules which is fatal in character.

40. Accordingly, the writ application is dismissed. Interim order, if any thus granted by this Court, stands dissolved. No order as to costs. Mr. F.M. Razack, the learned Counsel appearing for the petitioner prays for stay of operation of the order till July 21, 1989. Considering the gravity of the entire matter as also objection of the learned Counsel appearing for the respondents to such grant of stay of operation of the order, I allow the stay of operation of the order only upto 18th July, 1989. Respondents shall, therefore, be at liberty to take steps in accordance with law.

