

(2002) 03 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2488 of 2002

Kanwardeep Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Citation : (2003) 1 AICLR 503 : (2002) 4 RCR(Criminal) 742

Hon'ble Judges : M.M.Kumar, J and G.S.Singhvi, J

Advocate : Shri Ashok Aggarwal, Senior Advocate with Shri Vivek Bhandari, Advocate. For the Respondents No. 1 and 2, Shri K.T.S. Tulsi, Senior Advocate with Shri R.T.P.S. Tulsi, Advocate and Shri V. Hari Pillai, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. By this order, we are disposing of C.W.P. Nos. 1485, 2488, 4202 and 4286 of 2002 filed by the petitioners for quashing FIRs No. 45 of 30.6.2001, 102 of 23.7.2001, 166 of 14.6.2001 and 222 of 13.6.2001 registered against them by different police stations in the State of West Bengal.

2. For the purpose of deciding the issue relating to jurisdiction of this Court to entertain these petitions, we may briefly notice the facts from C.W.P. No. 2488 of 2002.

3. Petitioner No. 2 is a public limited company having its registered head office at SCO No. 1213, Sector 9, Chandigarh. It is engaged in various manufacturing activities. It has seven divisions, like Steel Division, Flower Division, Infotech Division, Biotech Division, Trading Division, Food Processing Division and Media Division. The company appears to have liquid investment to the tune of Rs. 29,36,66,078/ in the form of fixed deposit and SBI mutual funds. It further appears from the consolidated balance sheet for the year 19992000, that the Company has shown a net profit of Rs. 3,26,000,00/. Petitioner No. 1 is the Managing Director of petitioner No. 2. In order to argument its financial

resources and to arrange funds for its various projects, the Board to Director of the company decided to issue non convertible secured debentures through private placement for a total amount of Rs. 1000 lakhs with a green shoe option of 600 lakhs. For this purpose, resolution No. 9 was passed by the Board of Directors of the Company in its meeting held on 12.10.2000 at its head office at Sector 9, Chandigarh. In pursuance of the resolution passed by the Board of Directors, the company published an offer document and the scheme was opened on 1.11.2000. The debentures were secured against the assets of the Food Processing Division of the company. It is averred that the company received adequate subscription for its debentures and on the conclusion of the issue, a charge was created on the assets of the company in accordance with the provisions of the Companies Act with the Registrar of the company at Jalandhar. With the object of serving its investors and to ensure delivery of allotment letters, debentures and interest warrants, the company is said to have set up service centres in areas where there are a large number of investors. The allotment letter, debenture and interest warrants and even the correspondence are delivered personally by the representative of the company. It has further been averred that respondent No. 4 the complainant had invested a sum of Rs. 1,00,000/ in a monthly income scheme in accordance with the offer document and was allotted debentures with distinctive Nos. 587/387 to 587/486 and that when the representative of the company repeatedly went to deliver the allotted debentures to respondent No. 4, no one was found at the address given. Notwithstanding this, he lodged a complaint to the police which was registered as FIR No. 102 dated 23.7.2001 at police station Barrackpur Sub Division, District North 24 Parganas, West Bengal alleging commission of offences by the petitioners under Sections 468, 420, 471 and 120B of the IPC. It is claimed that no offence under the aforesaid provisions is made out from the reading of the FIR and the only complaint which could be filed would fall within the provisions of section 113 of the Act in view of the ratio of the judgment in the case of H.V. Jayaram v. Industrial Credit & Investment Corporation of India Ltd., & others, (2002) 2 SCC 202. The petitioners say that registration of cases under the various provisions of the IPC amount to an abuse of the process of law and, therefore, the official respondents may be restrained from proceeding with the investigation of the case and arresting petitioner No. 1.

4. In their written statement, the respondents have averred that petitioner No. 1 has been evading his arrest for the last over six months who was granted an order of interim anticipatory bail for a period of four weeks on 5.11.2001 by the High Court of Madras in Crl. Original Petition No. 22234/2001. It is alleged that the aforementioned order was passed on a false averment with regard to an alleged case No. 192 of 2001 registered at police station Kotwali, Calcutta where the case is alleged to have been registered as well as the case itself are fake and nonexistent. The interim anticipatory bail was granted on the basis of a report from the local police station of Chennai that no such case was registered against the petitioner. It is claimed that another order of anticipatory bail has been

obtained by the petitioner in case No. 45, P.S. Dhaniakali on the basis of a false averment that he was present in Chennai and as such, was entitled to invoke the jurisdiction of the High Court of Madras. According to the respondents, the petitioners gave wrong addressees of the parties in the application filed before Madras High Court with an ulterior motive to ensure that notices issued by the Court may not be served. It is further averred that the Calcutta High Court on 3.12.2001, has already dismissed a petition for anticipatory bail filed by the petitioner in case FIR No. 222, P.S. Behala. The learned District & Sessions Judge, Barasat has also dismissed the petition for anticipatory bail in FIR No. 102, P.S. Airport in respect of which the present petition for quashing has been filed. The orders of Madras High Court, Calcutta High Court as well as the learned District & Sessions Judge, Barasat have been placed on record as Annexures R.1 to R.3. The respondents have further asserted that no cause of action has arisen within the territorial jurisdiction of this High Court and as such, these petitions cannot be entertained. Respondents No. 1 to 3 have further averred that all the Directors of the Company have been evading arrest and have escaped the police dragnet. It is claimed that many of the Directors have fled out of the country to evade arrest and despite the fact that the Investigating Agency has procured warrants of arrest from the competent court of jurisdiction against the petitioner and others none out of eight of the persons including the petitioner could be arrested and to nab them, the Investigating Agency has also obtained the services of the Interpol Wing of the CBI for execution of the warrants of arrest.

5. The case of the respondents projected in the written statement further shows that after investigation, it has come to the light that thousands of investors have been defrauded in various parts of the country on the basis of issue documents published by the company with the active knowledge and consent of petitioner No. 1. The operation was conducted mainly in the State of West Bengal through the agents of the company, although some cases of investment in Bihar, Orissa and Assam have also come to the knowledge of the Investigating Agency. In all the cases, investors have claimed that they have been fraudulently and dishonestly induced by the agents of the company on the basis of issue documents which contained a false representation declaring Credit Rating of "A" and the returns on the debentures being tax free. It is alleged that the investigation has found that the Credit Rating A was given by the Times Bank, Chandigarh only for the purpose of securing a loan for a chicken processing unit and it was so specifically mentioned by the Bank. The representation Tax Free Returns on the issue documents is also false and fraudulent as in the existing Income Tax Laws, tax is required to be paid by the individual concerned on his income and cannot be paid by any other person. It is further averred that the petitioners have realised crores of rupees by issuing debentures in the private placement through a well organised network of commission agents and there were 18 tiers of commission agents of the company who were paid commission varying from 28% to 45% out of the money collected from the innocent investors.

6. In the application filed by the petitioners, it has been averred that transitory

bail orders was issued to the petitioners, without issuing notice to the respondents. It has further been asserted that no misrepresentation on account of Credit Rating 'A' or declaration stating Tax Free Returns in Annexures P.11 and P.14 has been made which constituted the basis for investment by respondent No. 4. The declaration of Credit Rating 'A' or Tax free Returns was made in earlier offer documents regarding which the investigation is being carried out by SEBI as a criminal complaint has been lodged under Sections 63 and 68 of the Act.

7. We have heard Shri Ashok Aggarwal, Senior Advocate appearing for the petitioners and Shri K.T.S. Tulsi, Advocate for respondents No. 1 and 2.

8. Shri Ashok Aggarwal raised the following contentions :

"(a) that the penal provisions of the IPC have been invoked with a malafide intention of conferring jurisdiction on criminal Courts in the State of West Bengal. According to the learned counsel, the allegation disclosed in the FIR constitutes violation of the provisions of the section 113 of the Act which relates to the commission of noncognizable offence arising out of non issuance of debenture certificate. The learned counsel submitted that such a course is not permissible in view of the law laid down by the Supreme Court in H.V. Jayaram's case (supra) wherein it has been declared that default in delivery of share certificate within the specified period would be an offence under section 113(2) of the Act and a complaint in that regard could be filed only where registered office of the company is situated because the cause of action would arise there and no cause of action would arise where complainant is residing. Our pointed attention has been drawn to the observations of the Supreme Court in paras No. 7, 8 and 11; and

(b) In any case, substantive facts constituting the offence have arisen at Chandigarh, the assets of the company are situated in the State of Punjab and, therefore, the criminal Courts in the State of West Bengal would not acquire jurisdiction merely because an FIR has been registered at a police station of that State. For this proposition, the learned counsel has placed reliance on another judgment of the Supreme Court in the case of Navinchandra N. Majithia v. State of Maharashtra and others (2000) 7 SCC 640.

9. On the other hand, Shri K.T.S. Tulsi, learned senior counsel for the respondent State of West Bengal argued that there has been an active and fraudulent misrepresentation made by the petitioners within the jurisdiction of criminal Courts at Calcutta. Referring to the declaration made in Annexure R.4, he has argued that Credit Rating A and Tax Free Returns was held out to the public at large and to a number of investors in West Bengal. Learned counsel has submitted that it cannot be said that the offences have not been committed in the jurisdiction of the criminal courts where FIRs have been registered. According to the learned counsel, deception and misrepresentation has been made within the local jurisdiction of the criminal Courts where the cases have been

registered. It is, therefore, submitted by the learned counsel that Section 113 of the Act would have no application in cases where fraud, misrepresentation and deception has been practised and the argument based on the judgment in H.V. Jayaram's case (supra) is wholly misconceived. Learned counsel argued that in Navinchandra's case (supra), it has been highlighted that the High Court ought not to assume jurisdiction in cases where insignificant event connected with the cause of action has taken place within the territorial limits of the High Court. In other words, according to the learned counsel, the insignificant event of resolution having been passed at the headquarter at Chandigarh or the scheme having been opened at Chandigarh would not constitute a basis for the High Court to assume jurisdiction because the offences have been committed in the local jurisdiction of the criminal Courts situated in the State of West Bengal. He has drawn our attention to para No. 41 and 44 of the judgment in Navinchandra's case (supra).

10. We have thoughtfully considered the rival contentions raised by the learned counsel and have perused the record with their assistance. We are of the view that the writ petitions are liable to be dismissed. Section 113 of the Act deals with lodging of a complaint to the Company Law Board in cases where there is a delay in delivery of debentures. Clause (2) of Section 113 of the Act provides for punishment in case there is a delay. The provisions of Sections 113 and 53 read as under :

"113. Limitation of time for issue of certificates [(1) Every company, unless prohibited by any provisions of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares, debentures and certificates of debentures of debenture stock allotted or transferred :

Provided that the Company Law Board may, on an application being made to it in the behalf by the Company, extend any of the periods within which the certificate of all debentures and debenture stocks allotted or transferred shall be delivered under this subsection, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods.]

The expression "transfer", for the purposes of this subsection, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for reason entitled to refuse to register and does not register.

(2) If default is made in complying with subsection (1) the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five thousand rupees] for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good the default in complying with the provisions of subsection (1), fails to make good the default within ten days after the service of the notice, the [Company Law Board] may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of and incidental of the application shall be borne by the company or by any officer of the company responsible for the default.

[(4) Notwithstanding anything contained in subsection (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.]"

"53. Service of documents on members of company (1) A document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, if any, within India supplied by him to the company for the giving of notices to him.

(2) Where a document is sent by post,

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

b) * * *

(3)(5) * * *"

11. A perusal of the above sections makes it obvious that the company within a period of three months of allotment of its shares or debentures is under an obligation to deliver the same to the allottee. In case of application for transfer, a period of two months has been fixed after the application for registration of the transfer of any such share or debenture has been made. On the application of the company, the period could be extended to the maximum of nine months. There is no provision in section 113 of the Act dealing with the case where there is fraudulent misrepresentation or deception as is alleged to have been practised on an investor in the present case. Therefore, the applicability of the judgment of the Supreme Court in H.V. Jayaram's case (supra) will have to be examined in the light of this factual background. In that case, there was no allegation which might constitute an offence punishable under Sections 420, 468, 471 and 120B of the IPC. The only allegation levelled was that the provisions of section 113 of the Act is violated. A random glance at the judgment further shows that in cases where delivery of debentures or shares certificate is to be made personally

instead of sending by post, then the Courts in that area would acquire jurisdiction. A postal delivery even in cases relating to violation of section 113(2) of the Act would not confer jurisdiction at the place of the investor but in cases where the delivery and documents are handed over personally, then the Courts where the addressee resides would acquire jurisdiction. The observations of their Lordships based on section 53 of the Act reads as under:

"Section 113, inter alia requires that within three months after the allotment of any shares and within two months after the application for the registration of the transfer of any such shares, every company shall deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares allotted or transferred. Subsection (2) provides punishment if default is made in complying with subsection (1). Reading Sections 113 and 53 together, share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at a registered address within India. Subsection (2) specifically mentions that where a document is sent by post, such service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available at the same locality where the registered office of the company is situated, it is reasonable to think that service of documents may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel up to that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send it to him by post. For such default, as contemplated under Section 113(1), there is no question of any cause of action arising at the place where the complainant was to receive postal delivery. What is punishable under subsection (2) of Section 113 is nondelivery, in accordance with the provision laid down under Section 53, of the certificates of shares within the prescribed time. So, if the documents are posted within the stipulated time, there would be compliance of Section 113 and that there would not be any offence."

11. If the aforementioned observations are applied to the facts of the present case, it is patent from the averments made in para Nos. 9, 10 and 11 that the allotment letter, debenture and interest warrants were to be delivered personally by a representative of the company. Para Nos. 9, 10 and 11 of the petition read as under :

"9. That in order to serve the investors and to ensure delivery of allotment letter,

debenture and interest warrants, the company has set up service centres in areas where there are a large number of investors and all such documents and correspondence is delivered personally by a representative of the Company.

10. That it is submitted that respondent No. 4 has invested a sum of Rs. 1,00,000/ in a monthly income scheme in accordance with the offer document and was allotted debentures with distinctive Nos. 587/387 to 587/486.

A photocopy of the application form is Annexure P.14 and a photocopy of the allotment letter is attached as Annexure P.15.

11. That when the representative of the company went to the residence of the respondent No. 4 from the Dharamtalla Office, Calcutta¹³, he did not find anyone there to receive the documents and this happened on a number of occasions.

12. Therefore, even in cases where violation of subsection (2) of section 113 of the Act is alleged and the delivery of allotment letter, debenture and interest warrants is to be made personally by a representative of the company, the courts situated at the place of residence of the investor would acquire jurisdiction. It is further clear from the allegations made in the FIR No. 102 dated 23.7.2001 that the company has been maintaining its office at 156A Lenin Sarani Suite No. 501 and 513 (5th floor) Kamalaley Centre Calcutta¹³ and from that registered office, they were to deliver allotment letters, debentures and interest warrants. Therefore, the argument based on sections 53 and 113 of the Act that only offence would be deemed to have been committed at the head office at Chandigarh is liable to be rejected on this additional ground.

13. The other argument of the learned based on the judgment in Navinchandra's case (supra) that mere registration of FIR should not constitute the basis for conferring jurisdiction does not deserve any serious consideration for the view we have taken on the basis of sections 53 and 113 of the Act. In Navinchandra's case (supra), Supreme Court came to the conclusion that no cause of action has arisen at Shillong where the FIR was registered and the investigation was being carried in respect of the company known as Indian Farmers Private Limited with its registered office at Mumbai. However, the facts of the cases in hand are entirely different and, therefore, the ratio of that decision cannot be invoked by the petitioners. At this stage, we may refer to the decision of the Supreme Court in Oil and Natural Gas Commission v. Utpal Kumar Basu (1994) 4 SCC 711. In that case, the Apex Court held that it is incumbent upon the complainant in a criminal case like respondent No. 4 to show that the cause of action had arisen within the territorial jurisdiction of the criminal courts at Calcutta. The expression "cause of action" fell for consideration before Lord Weston in the case of Chand Kour v. Partab Singh, ILR (1889) 16 Cal. 98, it has been observed that in order to determine the territorial jurisdiction with reference to a criminal offence, the main factor to be considered is the place where the alleged offence was committed. After making reference to some earlier decisions, the Court held as

under :

"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 pressurise 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."

14. When the facts of the present case are analysed in the light of the law laid down by the Supreme Court, no doubt is left about the offences concerning fraudulent misrepresentation covered by sections 420, 468, 471 and 120B of the IPC were committed within the territorial jurisdiction of the criminal courts situated in the State of West Bengal. The cause of action has arisen within the territorial jurisdiction of criminal courts of the State of West Bengal. Hence, we do not find any illegality in the registration of criminal cases against the petitioners within the territorial jurisdiction of the State of West Bengal.

15. Another reason for rejecting the prayer concerning quashing of the FIRs and various criminal cases registered against the petitioner is that such grievance should have been made before the High Court at Calcutta and not before this Court as the petitioner No. 2 has its registered office at 156A Lenin Sarani Suite No. 501 and 513 (5th floor) Kamalalay Centre Calcutta¹³.

For the reasons recorded above, these writ petitions fail and the same are dismissed.