

(2019) 09 DEL CK 0258

In the Delhi High Court

Case No : Criminal Writ Petition No. 2330 Of 2019, Criminal Miscellaneous
Application No. 33956 Of 2019

Lt. Col Amit Sharma

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226(2)

Citation : (2019) 4 JCC 3680

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Lovkesh Sawhney, Durgesh Kumar Pandey, Deepak Kumar, Ripu
Daman Bhardwaj

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that the FIR No. CBI: ACB: Imphal, RC02120180003, be quashed.

2. The petitioner is a serving officer with the Indian Army. The petitioner was posted at Dimapur and was commanding officer of 50 Coy (Company) ASC (Army Service Corps) (Supply). During his tenure, he had accepted illegal gratification from a local contractor (Sh. Jai Prakash - proprietor of M/s Singh and Singh Cargo and The Carpenters, Dimapur, Nagaland). The said contractor was engaged in supplying edible oil and pulses to 50 Coy ASC (Supply). He had alleged that a sum of Rs. 58,62,198/- had been paid in cash and/or in kind to the petitioner. The same also included a sum of Rs. 10,00,000/-, which was alleged to have been paid by the said contractor through banking channels. It was alleged that the said amount was transferred to the account of one Mr Gajender Sharma, maintained at Vijaya Bank, Ramnagar Branch, Delhi (Account No. 601801141000050). It is alleged that Sh. Gajender Sharma was working as the

cashier in a company, namely Associated Road Carrier Ltd. At the material time, the petitioner's brother, Sh. Kapil Sharma, was employed as a Manager with the said company. It is alleged that Sh. Kapil Sharma had informed Sh. Gajender Sharma that someone would remit money from his account for the marriage of his sister. Sh. Gajender Sharma had received the said amount of Rs. 10,00,000/- in his bank account and had withdrawn the said amount in two tranches of Rs. 5,00,000/- each. He claimed that he had handed over the said amount to Mr Kapil Sharma.

3. At the outset, the learned counsel appearing for the CBI has raised objections regarding the jurisdiction of this Court to entertain the present petition. He submits that the said FIR is registered in Imphal and therefore, this court does not have the jurisdiction to entertain the present petition. The allegation of illegal gratification shows the conduct of the petitioner while he was posted in Dimapur. The contractor was engaged in supplying goods at Dimapur and had alleged that illegal gratification was paid in connection with those contracts.

4. The learned counsel appearing for the petitioner countered the aforesaid submissions. He had submitted that with the introduction of Clause (2) to Article 226 of the Constitution of India (which was initially introduced as Clause 1A by the 15th Constitutional Amendment), this Court would have the jurisdiction to entertain the present petition. He relied on the decision of the Supreme Court in *Navinchandra N. Majithia v. State of Maharashtra and Ors.*: AIR 2000 SC 2966 in support of his contention.

5. It is well settled that even if the part of cause of action had arisen within the territorial jurisdiction of a High Court, the Court would have the jurisdiction to entertain a writ petition (See: *Alchemist Ltd. v. State Bank of Sikkim*: (2007) 11 SCC 335). However, this Court is of the view that the principal question for consideration is not whether this Court has the jurisdiction to hear the petition but whether the Court should exercise its jurisdiction in these given facts.

6. Undeniably, substantial part of the offence alleged against the petitioner was committed outside the jurisdiction of this Court. As noticed above, the petitioner was posted in Dimapur and the allegation is regarding his conduct of receiving illegal gratification while serving as the commanding officer of 50 Coy ASC (Supply). Whilst it may be correct that the funds are stated to have been received by the petitioner; the allegation is that the same was done at the instance of the petitioner, who was, at the material time, posted in Dimapur.

7. In view of the above and given the totality of the circumstances in the instant matter, this Court is of the view that it would not be apposite for this Court to entertain the present petition since the allegations relate substantially to the events that have occurred in Dimapur, Nagaland.

8. The learned counsel appearing for the petitioner submits that the Coordinate Bench of this Court had entertained a petition for anticipatory bail application in the instant matter and the principle of forum conveniens is also required to be

considered by this Court.

9. This Court is not persuaded to accept either of the said contentions. The issue whether this Court has the jurisdiction was not considered by this Court while granting anticipatory bail. Furthermore, the consideration for granting anticipatory bail is materially different. Insofar as the principle of forum conveniens is concerned, the said principle has to be applied keeping in view the place where the substantial cause has arisen and where the substantial evidence for adjudicating the cause is available.

10. The Supreme Court, in the case of *Kusum Ingots & Alloys Ltd. v. Union of India*: (2004) 6 SCC 254, has held as under:

"Forum conveniens -

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney*: AIR 1941 Cal 670, *Madanlal Jalan v. Madanlal*: AIR 1949 Cal 495, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*: 1997 CWN 122, *S.S. Jain & Co. v. Union of India*: (1994) 1 CHN 445 and *New Horizons Ltd. v. Union of India*: AIR 1994 Del 126]"

11. In the present case, bulk of the events forming a part of the allegations are stated to have occurred at Dimapur and therefore, the principle of forum conveniens would not come to the petitioner's aid. On the contrary, the principle of forum conveniens requires this Court to refrain from exercising its jurisdiction given that the said FIR is registered in Imphal. And, concededly, the trial in this case is required to be conducted within the jurisdiction of another High Court.

12. The petition is dismissed with the aforesaid observations.

13. It is clarified that this would not preclude the petitioner from approaching the appropriate Court.

14. This Court has not expressed any opinion on the merits of the case and nothing stated herein should be construed as such.

15. The pending application is also disposed of.