
(1992) 12 PAT CK 0033
In the Patna High Court
Case No : Criminal W.J.C. No. 605 of 1992

Manoj Kumar Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 226(12), 226(2)
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1993) 1 PLJR 273

Hon'ble Judges : Naresh Kumar Sinha, J; Nagendra Rai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner, a resident of village Panapur Dilawarpur, P. S. Biddupur in the district of Vaishali, has filed the present application for quashing the prosecution of Aizawl P. S. Case no. 484 of 1992 dated 8.6.92 under Sections 420 and 406 of the Indian Penal Code instituted on the basis of a written complaint of respondent no. 8, A. K. Saluta on the ground that he has been set up by his cousin brother namely. Devendra Prasad Sharma, respondent no. 7 who at present is posted as Dy. S. P., Crime Branch in the Head quarters in the Police Directorate of Mizoram to institute the present case. It is stated that a number of cases are going on between the petitioner and the family members of respondent no. 7 and only with a view to harass and humiliate, he has set up respondent no. 8 to file the present case with baseless and false allegations. It appears from annexure-1 appended to the writ application that a telex message was sent by Aizawl police to the Superintendent of police, Patna as well as Kankarbagh police station in the town of Patna stating therein that respondent no. 8, A. K. Saluta of Aizawl has lodged a written complaint against the petitioner, who had earlier his place of business as Cammo Prof of Colour Palace Nal Road, that he has to supply Konica Black and Colour film worth Rs. 51,000/- within sixty days from the date of taking advance to him but he has neither supplied the film as agreed upon nor returned the advance money when contacted. The investigation carried

out so far prima facie justify the registration of a case under Sections 420 and 406 of the Indian Penal Code being Aizawl P. S. Case no. 484 of 1992. It was also stated therein that the petitioner should be arrested from his present address at Patna and be sent under escort to Aizawl police station or he should be taken into custody and forwarded to judicial custody with an intimation to Aizawl police station so that the police patty with production was rant may be sent to bring back the petitioner for taking further action in the case.

2. In pursuance of the aforesaid telex message the petitioner was apprehended, Thereafter, the petitioner filed an application for bail before the Chief Judicial Magistrate, Patna who by order dated 7.9.92 vide annexure-2 granted provisional bail to the petitioner till 6.11.92 with a direction to appear before the court/officer-in-charge of Aizawl police station. Thereafter, the petitioner filed the present writ application for quashing the prosecution. It appears that the petitioner has again moved the Chief Judicial Magistrate, Patna for extension of provisional bail and he by order dated 6.11.92 has extended the provisional bail till 28.11.92 with a direction to the petitioner to surrender before the court in seisin of the case and to file certificate of surrender in his court. The certified copy of the said order has been filed during the course of hearing by the Learned Counsel for the petitioner.

3. During the course of hearing, we entertained a doubt as to the maintainability of this writ application in this High Court for quashing the prosecution with regard to a case which has been instituted in the State of Mizoram and accordingly, we requested the Learned Counsel for the petitioner to address us on the point of maintainability of the present writ application before this Court. After hearing him on this point we are deciding the point of maintainability of the writ petition.

4. It is not in dispute that the offences of cheating and criminal breach of trust, which are alleged to have been committed by the petitioner were committed within the Aizawl police station within the State of Mizoram. Neither there is any averment nor there is anything on the record to show that the aforesaid offences were committed in this State. The case was also instituted at Aizawl police station.

5. The question for determination is as to whether only in view of the arrest of the petitioner in this State in pursuance of telex message sent by the Aizawl police station this Court has jurisdiction to entertain the writ application for quashing the prosecution of the petitioner.

6. Prior to commencement of the Constitution, the power to issue prerogative writs was vested only in the High Court of Calcutta, Madras and Bombay. The Constitution conferred several beneficial rights including fundamental rights on the citizens. For the enforcement of the same, the power has been conferred on the High Courts to issue prerogative writs and others directions under Article 226 of the Constitution. Prior to the amendment of Article 226 in the year 1963 two

limitations were placed upon the High Courts in exercise of jurisdiction under Article 226 of the Constitution. One was that the writs cannot run beyond the territories subject to its jurisdiction and other was that the person or authority to whom the High Court is empowered to issue such writs must be within those territories. In the case of *Lt. Col. Khajoor Singh v. Union of India* and another reported in A. I. R. 1961 S. C. 532 a Constitution Bench of the Supreme Court held that the concept of place where the impugned order has effect or concept of the functioning of the Government or concept of the place where the cause of action arises has no place in deciding the question of territorial jurisdiction of the High Court to issue writs under Article 226 of the Constitution. It was also held that the jurisdiction of the High Court to issue writs does not depend upon the residence or location of the person applying for relief under Article 226 of the Constitution.

7. Article 226 of the Constitution was amended by inserting clause (1A) by the Constitution (15th Amendment) Act, 1963 which was numbered as clause 2 by the Constitution (42nd Amendment) Act, 1976. Clause 2 runs as follows :

The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

From a bare perusal of the aforesaid provision it is clear that the High Court within whose jurisdiction the cause of action wholly or in part arises can also issue directions and writs to the Government, authority, or person as mentioned in clause (1) of Article 226 of the Constitution notwithstanding that the seat of such Government or authority or the residence of such person is not within its territories. In other words, clause (2) conferred power on the High Court within those jurisdiction the cause of action wholly or in part arises to issue writs.

8. The word cause of action is not defined anywhere but now it is well settled that the cause of action means every fact which will be necessary for the party to prove if traversed in order to support his right to the judgment. Whether a particular fact would constitute a cause of action or not has to be determined with reference to the facts of the case as well as the nature of the proceeding. The scope of Article 226(12) of the Constitution was recently considered by the Supreme Court in the case of *State of Rajasthan and Others Vs. Swaika Properties and Another*, . It appears from the facts of that case that a land acquisition proceeding was initiated in the State of Rajasthan under the provisions of Rajasthan Urban Improvement Act, 1959. A notification u/s 52 (2) of the Act was issued under the provisions of the said Act and served upon the respondent-company which has its registered office in West Bengal. A writ application was filed by the petitioner-company before Calcutta High Court challenging the validity of the land acquisition proceedings. The Calcutta High

Court entertained the said application and also passed interim orders. The said matter was challenged before the Supreme Court and the Supreme Court held that mere service of notice will not give rise to a cause of action unless service of such notice was an integral part of the cause of action. It is useful to quote the relevant part of the judgment dealing with this aspect of the matter which runs as follows:

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 (1) 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 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 the official Gazette as thereupon the notified land became vested in the State Government free 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 aggrieved 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 the 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.

9. The question for determination in the present case is as to whether the arrest of the petitioner in this State in pursuance of telex message is integral part of the cause of action so as to give jurisdiction to this Court to quash the prosecution pending in the State of Mizoram. It is not in dispute that neither the offence has been committed nor the investigation is pending within this State and as such, in our opinion, no part of cause of action arises within the jurisdiction of this Court. Residence of the accused or the service of process for his appearance or his arrest in pursuance thereof from a particular place in this State during investigation of the case instituted outside the State cannot be termed as integral part of cause of action so as to give right to the accused to move for quashing the prosecution and the investigation of the case in this High Court. The cause of action generally in relation to criminal case arises within the territorial jurisdiction of the High Court where offence is committed or the

investigation or trial is pending. Residence of the accused or service of process on him for appearance or arrest in pursuance thereof during the investigation or trial are not the relevant consideration for quashing the prosecution/investigation and as such they cannot form a part of cause of action in relation to the quashing of the prosecution/investigation and accordingly, the High Court within whose jurisdiction the accused is arrested in pursuance of issuance of process has no jurisdiction to entertain a writ application for quashing the prosecution or investigation pending within the jurisdiction of the other High Court.

10. Learned Counsel for the petitioner relied upon a case reported in 1989 ACCIE page 40 (Atlus Exports v. K. V. Irniraye) and submitted that according to the aforesaid decision this Court has also jurisdiction to entertain the writ application. From the facts of that case, it appears that the petitioner of the case was a resident of Bombay and order was passed at Delhi but the writ application was entertained by the Bombay High Court on the ground that the consequences of the order fell upon the concerned petitioner in Bombay. The said case has no application to the facts of the present case. In the present case we have noticed that the offence was committed in the State of Mizoram and case has been instituted at Aizawl police station within the said State. The arrest of the petitioner within the territorial jurisdiction of this Court in pursuance of the telex message, in our opinion, is not an integral part of cause of action. In this case, the entire cause of action arose in the State of Mizoram. The Gauhati High Court has territorial jurisdiction to entertain the case in question. this Court has no jurisdiction to entertain this application. Thus, in our opinion, the present case is not maintainable in this Court and accordingly, the same is dismissed as not maintainable.