
(2009) 08 MAD CK 0315

In the Madras High Court

Case No : W.A. No"s. 482 and 483 of 2006

Marshall Sons and Co. (Mfg.) Ltd.

APPELLANT

Vs

Jayanth Bhattacharjee

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2009) 5 CTC 623

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

**Advocate : V. Srikanth for Mr. R. Venkatavaradan, for the Appellant;
Shivakumar, for the Respondent**

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The appellant herein has lodged a Private Complaint as against the respondent and another before the 11th Metropolitan Magistrate, Kolkata for the offences under Sections 108 and 120-B, IPC and the same was taken on file by the learned Magistrate in Case No. C/4725/05. While so, the second accused therein, the respondent herein, has come forward to file Writ Petition No. 30760 of 2005 before this Court, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution, praying to quash the said Criminal case. Along with the Writ Petition, the writ petitioner i.e. the respondent herein has filed W.P.M.P. No. 33712 of 2005 to grant an order of stay of all further proceedings in case No. C/4725/05 pending before the learned 11th Metropolitan Magistrate, Kolkata and a learned Single Judge of this Court has granted an order of interim stay on 22.9.2005 on the ground that a part of cause of action has arisen at Chennai as the office of the complainant is situated at No. 33, Industrial Estate, Ambattur, Chennai-58. Thereupon, the appellant herein, who is the respondent in the Writ Petition and the complainant before the Criminal Court, has filed a Petition in W.V.M.P. No. 423 of 2006 praying to vacate the interim stay granted.

2. Taking up both the Stay Petition and the vacate Stay Petition and placing

reliance on two judgments of the Honourable Apex Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, , and H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, , the learned Single Judge has held that excepting the averments found in para No. 4 of the Complaint preferred by the complainant, in all other respects, the allegations made in the said Complaint do not disclose any substantial part of cause of action having arisen within the jurisdiction of Kolkata and on such and further observations, the learned Single Judge has made the interim stay absolute, dismissing the vacate Stay Petition filed by the complainant.

3. Aggrieved, the respondent in the Writ Petition, who is the complainant before the Criminal Court, has come forward to prefer both these Writ Appeals.

4. The legal question that is required to be considered and answered by us in these Appeals is "whether the writ petitioner is justified in filing a Petition under Article 226 of the Constitution of India, praying to quash the Criminal proceedings pending before a Criminal Court, admittedly, outside the territorial jurisdiction of this Court ?"

5. The writ petitioner/respondent herein has contended in his affidavit filed in support of the Writ Petition that on a complete reading of the Criminal Complaint, it is evident that the entire narration of events, the allegations therein pertain to actions/inactions on the part of the writ petitioner in his capacity as the Chief Executive Officer of the complainant Company herein in Chennai and no part of the cause of action arose within the jurisdiction of the Courts in Calcutta, which gave rise to a cause of action for the complainant to even initiate a Criminal proceedings in the Chief Metropolitan Magistrate's Court at Calcutta. In his Writ Petition, the writ petitioner, who is the respondent herein and the accused in the Criminal case, has placed much reliance on the judgment of the Honourable Apex Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, to maintain the Writ Petition before this Court.

6. In the above said judgment, the Honourable Apex Court has held in the following manner:

The power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment by which Clause (2) is inserted is thus aimed at widening the width of the area for reaching the writs issued by different High Courts.

7. It is to be mentioned that even by the date the impugned order has been passed by the learned Single Judge, on 5.4.2006, the Honourable Apex Court by its judgment in Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others, decided on 24.2.2006, has clarified the position in the following manner:

In a Criminal matter also the High Court may exercise its extraordinary Writ jurisdiction but interference with an order of the Magistrate taking cognizance u/s 190, Cr.P.C. will stand somewhat on a different footing as an order taking cognizance can be the subject matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A Writ of Certiorari ordinarily would not be issued by a Writ Court under Article 226 of the Constitution against a judicial Officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent Court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the Subordinate Court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Courts, however, must remind themselves about the doctrine of forum non conveniens also.

8. Thus, by the above quoted judgment of the Honourable Apex Court, we have no hesitation to hold that the present Writ proceedings initiated by the respondent/second accused on the file of this Court seeking to quash the Criminal case pending before a Calcutta Court is not at all maintainable. But, unfortunately, this judgment of the Honourable Apex Court does not seem to have been brought to the notice of the learned Single Judge, while passing the impugned order of making the interim stay absolute. Therefore, when it has been unambiguously made clear by the Honourable Apex Court in the above judgment about the legal position, the very Writ Petition No. 30760 of 2005 pending on the file of this Court has to be dismissed as not maintainable. Accordingly, in view of the above legal position, even though only the interim orders passed in the Writ Petition are the subject matter in these two Writ Appeals and not the very Writ Petition itself, since no fruitful purpose will be served by keeping W.P. No. 30760 of 2005 pending on the file of this Court, we declare that the said W.P. No. 30760 of 2005 itself is not maintainable and accordingly, the same is hereby dismissed as not maintainable. Coming to the point of "cause of action" about which much has been argued on the part of the respondent/accused, the parties are at liberty to raise their respective pleas before the Court wherein the Criminal Complaint is pending.

For all the above discussions held, both these Writ Appeals are allowed and W.P. No. 30760 of 2005 pending on the file of this Court stands dismissed as not maintainable. No costs. Connected Miscellaneous Petitions are also dismissed.