

(2009) 02 GUJ CK 0107

In the Gujarat High Court

Case No : Misc. Criminal Application No. 562 of 2008

Pravin Premchand Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 482

Penal Code, 1860 (IPC) — Section 406, 465, 467, 468, 471

Citation : (2009) 2 GLR 1774

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Anil S. Dave, for the Appellant; D.A. Desai and Hasit Dilip Dave, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—The petitioner, a resident of England, has invoked the provisions of Section 482 of Cr.P.C. for pressing the prayer to set aside the complaint filed by respondent No. 2 in the Court of learned Additional Chief Metropolitan Magistrate, Court No. 45, Kurla, Mumbai, for the offences punishable u/s 406 read with Sections 465, 467, 468 and 471 of I.P.C. While admitting the petition by a detailed oral order dated 21-8-2008, stay of further proceedings and investigation in connection with M.C.R. No. 2 of 2005 and Criminal Case No. 18/I&R/2005 pending before the Court in Mumbai, was granted and Rule was made returnable on 10-9-2008. On 10-9-2008, respondent No. 2 had appeared through Advocates and filed affidavit-in-reply. The hearing was adjourned because Court time was over. Thereafter, on 22-9-2008, in the teeth of opposition on behalf of respondent No. 2, adjournment was sought and granted on the basis of sick note of learned Counsel Mr. Anil S. Dave with the clarification that the ad-interim relief granted earlier was restricted to the petitioner only, so as to prevent the other accused persons from taking disadvantage of the order of this Court. On 20-10-2008, while the original

complainant was personally present along with his Advocate from Mumbai to press for hearing of the petition, it was stated by learned Counsel Mr. Dave that the petitioner was being called at his office for the purpose of exploring the possibility of a settlement and in case no viable settlement could be negotiated, no further adjournment would be sought on behalf of the petitioner. It was expressly on that understanding and statement that no further adjournment or extension of the interim relief may be granted, hearing was adjourned to 18-11-2008 for final disposal with the clarification that even if final hearing does not take place on that date, interim relief would not be extended. It was thereafter, on 18-11-2008, that detailed order vacating the interim relief and imposing cost of Rs. 25,000/- was made. Adjournments were sought even thereafter on the ground that the aforesaid order dated 18-11-2008 was being carried in appeal before the Supreme Court, while learned Counsel for the respondent had protested and objected to any adjournment. However, since the Court time was over on 16-1-2009, the hearing was adjourned to 30-1-2009. It is thereafter that the petition has come to be argued on merits for the first time after initial grant of ex-parte interim relief and vacation thereof by the order dated 18-11-2008, which was proposed to be challenged by the petitioner. As on today, admittedly, that order dated 18-11-2008 is neither challenged nor complied. However, the Court has heard learned Counsel on merits in extenso and the contentions and decision thereon are recorded as under:

2. It was submitted by learned Counsel, Mr. A.S. Dave that, as stated on oath in the petition, the petitioner was given a general Power of Attorney for effecting sale of properties in the year 1997 and that was executed in Jamnagar. The agreement to sell the property in question was registered at Jamnagar and subsequent sale-deed was also executed in Jamnagar. Thus, the transaction from which the complaint arose was entered into and executed in Jamnagar, while the complaint was filed in Mumbai with the ulterior motive of harassing the petitioner, and hence, it was required to be quashed. As against that, according to the complaint of respondent No. 2, the petitioner had agreed to remit an amount of Rs. 1 crore on the understanding that the complainant would be required to execute a special Power of Attorney in respect of the properties located in Jamnagar. Thus, the petitioner induced the complainant into executing a Power of Attorney which was handed over to the petitioner at the complainant's residence in Mumbai, according to the complaint. Thereafter, the petitioner did not pay any amount to the complainant, tampered the document of Power of Attorney and surreptitiously created third party rights upon the properties of the complainant, according to the allegations.

3. Having regard to the above facts, the issue of territorial jurisdiction of this Court was raised and agitated and after briefly dealing with that, the interim order dated 18-11-2008 was made to vacate the ex-parte ad-interim relief.

4. It was fairly conceded by learned Counsel, Mr. Dave that recently the issue of territorial jurisdiction of the High Court was decided by this Court by the decision

dated 12-2-2009 in Special Criminal Application Nos. 2477, 379 and 934 of 2008. After reference to the relevant observations of the Supreme Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, in Asit Bhattacharjee v. Hanuman Prasad Ojha : AIR 2007 SC 1925 and in Alchemist Limited and Another Vs. State Bank of Sikkim and Others, the Court has culled out the following propositions.

6. The above discussion of relevant dicta on the issue makes it amply clear that decision on the issue of territorial jurisdiction of the High Court exclusively depends upon the cause of action, wholly or partly, arising within the territorial jurisdiction of the High Court concerned and the seat of Government, or authority or residence of the person against whom a writ or direction is sought is not material; and "cause of action" means every fact which it would be necessary for the petitioner to prove, if traversed, in order to support his right to judgment of the Court.

7. ...The major cause of action, i.e. the reason for filing the present petition, is admittedly registration of complaint in Rajasthan, which according to the petitioner, is false, baseless and mala fide. Ordinarily, a petition for quashing such F.I.R. would be filed u/s 482 of Cr.P.C. before the High Court having jurisdiction under the provisions of Cr.P.C. Instead, the petitioner has chosen to file the present petition exclusively under Article 226 of the Constitution, instead of adopting the appropriate alternative remedy, and pressed the grounds of expediency and convenience. However, the fact remains that, strictly speaking, the cause for filing the petition has arisen in Rajasthan as an allegedly false, baseless and mala fide F.I.R. is registered in Rajasthan.

8. The cause or causes for making a complaint at a particular place must not be confused with the cause of action for filing a petition for quashing that complaint. As seen earlier, even if a fraction of the cause for filing a complaint has arisen in Rajasthan, an F.I.R. could be lodged at Jaipur. And even assuming that such filing of the F.I.R. in Rajasthan was mala fide, the cause of action for filing a petition for quashing such F.I.R. could arise only in Rajasthan and not at all places where parts of causes for filing the F.I.R. may have arisen and where the F.I.R. could have been lodged and investigated and where the ensuing criminal case could have been tried. In other words, the cause of action for filing a criminal complaint is different from the cause of action for quashing the complaint. The provisions of Sections 177 and 178 of Cr.P.C, therefore, could not and ought not to be applied for determining the issue of territorial jurisdiction of the High Court, which has to only consider the provisions of Article 226 of the Constitution. The arguments that the petitioners are unnecessarily and with ulterior motives dragged to face the authorities in Rajasthan and that it is a calculated move to choose the legal forum in Rajasthan cannot be accepted so as to usurp territorial jurisdiction and undermine the authority and jurisdiction of another High Court.

5. It may be pertinent to note that in the facts of the present case, the petitioner has not invoked even the provisions of Article 226 of the Constitution, and hence,

the issue of territorial jurisdiction has to be decided only with a reference to the provisions of Section 482 of Cr.P.C., keeping in mind the definition of "High Court" as under:

Section 2(e) "High Court" means:

- (i) In relation to any State, the High Court for that State;
- (ii) In relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;
- (iii) In relation to any other Union Territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.

6. Having regard to the provisions of Section 482 of Cr.P.C. and the High Court, for the purpose of exercising the inherent powers being the High Court of the State, and the prayer in the petition being to quash proceedings pending before the Court in Mumbai, it is quite clear that this Court would have no territorial jurisdiction to grant the relief prayed by the petitioner.

7. In the facts of the present case, it could not be gainsaid that, prima facie, at least a fraction of the cause of action was alleged to have arisen within the jurisdiction of the Criminal Court in Mumbai, and therefore, it cannot be said that the complaint itself could not have been filed in Mumbai. Once, the Criminal Court in Mumbai was seized of the matter, the appropriate High Court for quashing or interfering with the proceedings of Criminal Court in Maharashtra would be the High Court of that State. Therefore, the present petition is required to be dismissed only on the ground of want of territorial jurisdiction. However, in view of the record of the proceedings before this Court, as briefly narrated hereinabove, it is clear that the petitioner has abused the process of Court, put the respondent to unnecessary expenditure and defied the interim order dated 18-11-2008 of this Court. Such attitude on the part of the petitioner, who approached the Court for an equitable relief and obtained an ex-parte order without accepting the obligation to at least attend the hearing and respect the orders of the Court cannot be viewed lightly. Since learned Counsel, Mr. Dave, stated at the Bar that the petitioner may now challenge the interim order or may challenge the final order on the basis that interim order would merge into the final order, the petition is dismissed and Rule is discharged with costs quantified at Rs. 30,000/-, which shall include the amount ordered to be paid in the previous order dated 18-11-2008. The amount of cost shall be paid by the petitioner to respondent No. 2 latest by 6-3-2009.