

(2009) 02 GUJ CK 0008

In the Gujarat High Court

Case No : Spl. Cri. Application No. 2477 of 2008

Rahul Gupta and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

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

Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2009) CriLJ 3154 : (2009) 3 GLR 2148

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

Bench : Single Bench

Advocate : M.B. Gandhi and Chinmay M. Gandhi, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—The petitioners have exclusively invoked Article 226 of the Constitution to pray for quashing the complaint which is registered as FIR I-C.R. No. 92 of 2008 at Jaipur City (South) Mahila Thana, Rajasthan. The complaint is made for the alleged offences punishable under Sections 498-A and 406 of Indian Penal Code, 1860 against the complainant's husband and his parents and it alleges series of events occurring at several places in Gujarat, Rajasthan and Madhya Pradesh.

2. Since the preliminary issue of territorial jurisdiction of this Court is required to be addressed first, before assuming jurisdiction and issuing process, the facts relevant for that purpose may be culled out and summarized. According to the petition, petitioner No. 1, the husband, was selected for Indian Administrative Services (IAS) of Gujarat Cadre in the year 2004 and respondent No. 1-wife, the original complainant, was selected for IAS of Jammu & Kashmir Cadre in the year 2005. They married at Jaipur on 17-9-2005, immediately after which the husband returned to Ahmedabad and the wife went to Massoorie. They

practically pursued their careers separately till February, 2006 as the husband joined his service in Gujarat and the wife underwent her training in Massoorie and went on Bharat Darshan Tour. Thereafter, they stayed together for ten months during which the disputes started and, on 16-9-2008, divorce petition came to be filed by the husband in the Court of learned Civil Judge (S.D.), Gandhinagar. As a counter-blast, the impugned complaint was filed on 24-9-2008 in Rajasthan because the father of the complainant is a highly placed influential person in the State of Rajasthan, according to the petition. It is alleged by the petitioners that, while the complainant is also posted in Gujarat, she could not have remained silent when several alleged incidents were happening over three years and hence the complaint was, ex-facie, an afterthought and a frivolous attempt at achieving her ulterior motives by harassing the petitioners by showing her address in the FIR to be in Jaipur City.

3. While addressing his arguments with regard to the preliminary issue of territorial jurisdiction of this Court, learned Counsel Mr. Gandhi relied upon the provisions of Sections 177 and 178 of Cr. P.C., even as Section 482 of the Code is not invoked, and the provisions of Clause (2) of Article 226 of the Constitution and submitted that, since most of the alleged events constituting the offence are alleged to have occurred in Gujarat, they are required to be investigated and tried in Gujarat and the parties on both sides also being resident of Gujarat, this Court was required to exercise its jurisdiction on the ground of the cause of action, wholly or partly, arising in Gujarat. He relied upon judgment of the Supreme Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, and emphasized the following observations made therein:

Per : Thomas, I. (concurring)

8. ...Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

13. ...We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in the particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.

15. ...In the aforesaid situation it is almost impossible to hold that not even a

part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that major portion of the investigation of the case under the FIR has to be conducted at Bombay itself shows that the cause of action cannot escape from the territorial limits of the Bombay High Court,

Per : P.P. Mohapatra, J.

33. ...From the provision in Clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

34. ...In legal parlance the expression "cause of action" is generally understood to mean a situation or State of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. (Black's Law Dictionary).

38. ...So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed.

43. ...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 Bombay High Court.

4. Learned Counsel also relied upon judgment of the Supreme Court in Asit Bhattacharjee Vs. Hanuman Prasad Ojha and Others, wherein a writ petition was filed in the High Court at Allahabad for quashing a criminal case filed in Kolkata. The Apex Court, after reference to the aforesaid decision in Navinchandra N. Majithia Vs. State of Maharashtra and Others, held that:

32. Stricto sensu therefore, the High Court should not have issued such a direction. Assuming, however, that the High Court could mould the relief, in our opinion, it was not a case where on the face of the allegations made in the complaint petition, the same could be said to be mala fide. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever.

5. In a contemporary decision in Alchemist Limited and Another Vs. State Bank of Sikkim and Others, (Hon'ble Justice C.K. Thakker, being a party to both the decisions), it is held:

21. The legislative history of the constitutional provisions, therefore, make it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises.

41. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

On the above basis, rejection of the writ petition by Punjab & Haryana High Court for want of territorial jurisdiction was upheld after holding that "cause of action" could not be said to have arisen within its jurisdiction, even as the petitioner company was registered at Chandigarh, acceptance of its offer was communicated and part performance of the contract took place at Chandigarh, Chairman and Managing Director of the respondent had visited Chandigarh to ascertain the bona fides of the petitioner, negotiations were held between the parties at Chandigarh and letter of revocation was received by the petitioner at Chandigarh. It was the grievance of the petitioner company that consequences of revocation had ensued at Chandigarh by which the petitioner was aggrieved. It was submitted before the Apex Court that at least a part of the cause of action had certainly arisen within the territorial jurisdiction of the High Court of Punjab & Haryana.

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 the "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. In the facts of the present case, in order to succeed in the petition for quashing the FIR lodged at Jaipur, it would be necessary for the petitioner to establish that the complaint in question could not have been legally, lodged and registered at Jaipur and even if it were registered, it could not have been investigated by the investigating agency at Jaipur, Rajasthan, Perusing the complaint from that stand point, it would clearly appear that several alleged incidents, being part of the ingredients of the alleged offences, had happened at Jaipur even as many of the incidents were also alleged to have happened in Gujarat or Madhya Pradesh. Therefore, it cannot be said that the complaint could not have been lodged, registered or investigated at Jaipur. The cause of action

for filing the present petition to quash such FIR could be said to have arisen exclusively in Rajasthan; although consequences of filing such FIR in Rajasthan may have to be suffered by the parties in Gujarat as both the parties are stated to be presently staying in Gujarat. 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 FIR 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 FIR 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 FIR could be lodged at Jaipur. And even assuming that such filing of the FIR in Rajasthan was mala fide, the cause of action for filing a petition for quashing such FIR could arise only in Rajasthan and not at all places where parts of causes for filing the FIR may have arisen and where the FIR 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.

8.1 In another set of petitions calling for decision on the same issue, this Court has made following further observations:

...Besides that; the petitions have thrown up a larger and more interesting issue of several accused persons approaching several High Courts in a case where the cause of action could be traced to events and actions taking place in more than one State. If all the High Courts within whose territorial jurisdiction any of the acts constituting the offences have taken place and all the High Courts assume extraordinary writ jurisdiction for intervention in a criminal case registered in any one of the States, a distinct possibility of several High Courts taking inconsistent views and issuing conflicting directions may arise. Therefore, judicial discipline requires and expediency demands that only the High Court within whose territorial jurisdiction the complaint is filed or criminal case is pending entertains the petitions arising therefrom.

9. In the facts and for the reasons discussed hereinabove, the petition is summarily dismissed only on the ground of jurisdiction and without entering into merits or examination of the other averments made in the petition.