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**(2004) 10 AHC CK 0141**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 36612 of 1999

Rajendra Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 05-10-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2005) 5 AWC 4542 : (2005) 104 FLR 71 : (2005) 2 RCR(Criminal) 652 : (2005) 1 UPLBEC 108

**Hon'ble Judges :** M. Katju, Acting C.J.;Sunil Ambwani, J;K.N. Ojha, J

**Bench :** Full Bench

**Advocate :** B.N. Singh, Umesh Vats, G.D. Mukerji and O.P. Tiwari, for the Appellant; Sandeep Saxena, S.S.C. and S.C., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M. Katju, A.C.J.

1. This Full Bench has been constituted by the order of Hon"ble the Acting Chief Justice on a reference made by a learned Single Judge dated 12.3.2004 as the learned Single Judge was of the opinion that there were contradictory Division Bench judgments of this Court by Division Bench decisions in SarojMahanta (Mrs.), Li. Colonel v. Union of India 2003 (3) ESC 1419, and in Kailash Nath Tiwari v. Union of India, Special Appeal No. 997 of 1995, decided on 9.1.2002.

2. The short question in this case is whether this Court has jurisdiction to decide this petition.

3. The petitioner/accused was serving in the Indian Army, While on duty at Kanchanpara at Calcutta in West Bengal, he was given a charge-sheet by Lt. Col. S. Ganguly of 1841 Light Regiment in which the following charge was levelled against him u/s 64(e) of the Army Act:

"Obtaining for himself a gratification as motive for procuring the enrolment of a

person in that he, at Kanchanpara, on 3.1.1999, while working as a clerk in the branch recruiting office, Kanchanpara obtained a sum of Rs. 14,500/- (rupees fourteen thousands and five hundred only) by demanding from Sri Babu Mandal son of Sri Niyta Gopal Mandal, a gratification as a motive for procuring enrolment of the said individual."

4. True copy of the charge-sheet is Annexure 1 to the writ petition. The petitioner was also given a letter dated 4.4.1999 in which he was informed that he will have to face a Summary Court Martial on 8.4.1999 by the Commanding Officer, 1841-Light Regiment vide Annexure 2 to the writ petition. The petitioner was thereafter tried by the Summary Court Martial and he was found guilty of the charges and awarded the following punishments :

- (1) To be reduced to the ranks.
- (2) To suffer rigorous imprisonment for one year in civil jail, and
- (3) To be dismissed from the service.

5. True copy of the verdict is Annexure 3 to the writ petition.

6. The petitioner has challenged the Court Martial proceedings and the sentence dated 15.4.1999 Annexure 3 to the writ petition on various grounds but in our opinion this petition is liable to be dismissed on the short ground that the Allahabad High Court does not have jurisdiction in the case and only the Calcutta High Court or Delhi High Court has jurisdiction in this case.

7. Learned Counsel for the petitioner has urged that in view of the Supreme Court decision in Dinesh Chandra Gahtori v. Chief of Army Staff , a writ petition challenging the impugned sentence can be filed in any High Court in India as the Army Chief has been made a party (respondent No. 2) in this case.

8. He has further urged that since the petitioner is a resident of District, Ballia the writ petition can be filed in the Allahabad High Court as Ballia is in U.P.

9. We have carefully perused the decisions in Dinesh Chandra Gahtori's case (supra). The entire judgment of the Supreme Court is as follows:

"By the Court-Leave granted.

The notice on the SLP stated that the matter might be disposed of at this stage by an order setting aside the order under challenge and restoring the writ petition to the file of the High Court to be heard and disposed of on merits.

The appellant filed a writ petition before the High Court at Allahabad to quash a communication sent to his wife which stated that the appellant had been tried by a Summary Court Martial and had been found guilty of using criminal force against his superior officer and awarded the sentence of dismissal from service. The High Court dismissed the writ petition at the admission stage by holding, "In view of the fact that the Summary Court martial proceedings were conducted in the State of Punjab and orders were also passed in Punjab by the West

Command, we are of the view that this Court has got no territorial jurisdiction to entertain this writ petition."

The writ petition was filed in 1992. The impugned order was passed in 1999.

This is a fact that the High Court should have taken to have consideration. More importantly, it should have taken into consideration fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action as the High Court did, was not justified.

The appeal is allowed. The order under appeal is set aside. The writ petition (CMWP No. 39209/92) is restored to the file of the High Court to be heard and disposed of on merits expeditiously.

No order as to cost."

10. In our opinion the observation in the aforesaid decision "The Chief of Army Staff may be sued in any High Court in the Country" cannot be construed to mean that the Supreme Court has laid down any absolute proposition that it is open to the petitioner to file a writ petition in any High Court in India. Such an absolute proposition as canvassed by the learned Counsel for the petitioner may lead to conflicting decisions because different petitions can be filed in different High Courts by co-accused in the same case and conflicting decisions can be given.

11. It may be noted that the aforesaid observation in the three Judges decision of the Supreme Court in Dinesh Chandra Gahlori's case (supra) is only a laconic observation and it cannot be override Larger Bench decisions of the Supreme Court.

12. In the present case it may be noted that the misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta. Thus the entire cause of action arose at Calcutta. We, therefore, fail to understand how a writ petition can be entertained at Allahabad High Court where no part of the cause of action had arisen.

13. In our opinion merely because the petitioner is presently residing in Ballia this will not give jurisdiction to this Court in view of the Seven Judges Bench decision of the Supreme Court in Lt. Col. Khajoor Singh Vs. The Union of India and Another, . In paragraph 13 of the aforesaid decision the Supreme Court observed:

"Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority x against whom a writ is sought being within those territories. It seems to us, therefore, that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within

those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say , in Calcutta, the forum in which he has to seek relief is not the Mumbai High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226."

14. The Constitution Bench decisions of the Supreme Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, , and in *Election Commission, India Vs. Saka Venkata Subba Rao and*, , have held that a writ cannot be issued beyond the territorial jurisdiction of the High Court.

15. In *Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another*, , the Supreme Court examined a case which related to a claim for waiver of port charges and release of the goods seized by the Board of Trustees of the Port of Calcutta. The consignment of imported goods by the plaintiff had been unloaded at Calcutta Dock, the respondents' representations to the Port Trust Authority to waive the port charges and release the goods were refused by the Board of Trustees of the Port at Calcutta. The suit was filed for waiver of the port charges and release of goods in the District Court, Bharatpur (Rajasthan). Obviously no part of the cause of action relating to the seizure of the goods by the Port Trust of Calcutta which were unloaded at Calcutta for non- payment of port charges had arisen within the territory of Rajasthan. The Court found that the cause of action had arisen at Calcutta. The Supreme Court affirmed the principle that the place where the whole or part of the cause of action arises, gives jurisdiction to the Court within whose territory such place is situate. Whether the cause of action has arisen within the territory of the particular Court will have to be determined in each case on its own facts in the context of the subject matter of the litigation, and relief claimed.

16. In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 , the Apex Court noticed that the contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, and even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The Arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta based firm, the High Court of Calcutta had no jurisdiction in the matter.

17. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, , it was held by the Supreme Court:

"Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly

or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against, whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

18. While deciding the said case, the Supreme Court placed reliance upon the judgment in *Chand Koer v. Partab Singh*, 15 Ind. Appeals 156, wherein it had been observed as under:

"The cause of action has no relation whatsoever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers, entirely to the grounds set forth in the plaint as the cause of action; in other words, to the media upon which the plaintiff asked the Court to arrive at a conclusion in his favour."

19. Therefore, in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration although without embargo upon an inquiry as to the correctness or otherwise of the said facts.

20. In *Union of India and Others Vs. Adani Exports Ltd. and Another*, . the Supreme Court held that the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded by the party in its application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts, pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

21. Similarly in *Rajasthan High Court Advocates Association v. Union of India and ors* AIR 2001 SC 416, the Supreme Court held that clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court and one of the test may be as to whether the cause of action partly or fully has arisen within its territorial jurisdiction. While deciding the said case reliance was placed upon the Court's earlier judgment in *U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others*, , wherein it had been held that the expression "cause of action" has acquired a judicially-

settled meaning. In the restricted sense, cause of action means the circumstances forming, the infraction of the right of the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises the "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

22. In *Manju Bhatia and Anr. v. New Delhi Municipal Council and another* AIR 1998 SC 223, the Supreme Court considered a case for damages, under which a "cause of action" in a definite form may not be relevant except when necessary to comply with the laws relating to procedure, limitation etc. The Supreme Court observed that "a cause of action" in modern law is merely a factual situation, the existence of which enables the plaintiff to obtain a remedy from the Court and he is not required to head his statement of claim with a description of the breach of the law on which he relies.

23. In *C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar*, the Supreme Court considered a case where the respondent was the Incharge/Collector in Daman within the territorial jurisdiction of Bombay High Court and FIR had been lodged against him in Daman for hatching a conspiracy. He stood transferred to Arunachal Pradesh within the territorial jurisdiction of Gauhati High Court. The CBI gave him a wireless message from Bombay advising him to appear before its officers, in respect of investigation of the said case in Bombay. The respondent filed a writ petition under Article 226 of the Constitution before the Gauhati High Court. The Supreme Court did not decide the case on merits but observed :

"Suffice it to say that on the facts and circumstances of the case and the material on record, we have no hesitation to hold that the Gauhati High Court was clearly in error in deciding the question of jurisdiction in favour of the respondent. In our considered view, the writ petition filed by the respondent in the Gauhati High Court was not maintainable."

24. The entire argument in the case had been that the Gauhati High Court had no jurisdiction to entertain the writ petition as no cause of action had arisen, even partly, within its territorial jurisdiction, and receiving the message in Arunachal Pradesh to appear before the CBI Authority at Bombay did not give rise to the cause of action, even partly.

25. In *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, the Supreme Court while considering the provisions of clause (2) of Article 226 of the Constitution, observed :

"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 basis for suing; a factual situation that entitles one person to obtain a remedy in Court from another person....."Cause of action<sup>1</sup> is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment..:the meaning attributed to the phrase "cause of action<sup>1</sup> in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf."

26. The Apex Court held that. the Court must examine as to whether institution of a complaint/plaint is a mala.fide move on the part of a party to harass and pressurise the other party for one- reason or the other or to. achieve, an ulterior goal For that consideration; the relief clause may be relevant-criterion for, consideration but cannot be the sole consideration in the matter. .

27. In H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, the Supreme Court examined the issue of territorial jurisdiction of a Court in respect of the offence u/s 113(2) of the Indian Companies Act, 1956. Taking note of Sections 113 and 207 of the said Act, the Court held, that the cause of action for default of not sending the share certificates within the stipulated period would arise.only at a place where the registered office, of the company was situated as from that place the share certificates..could be posted and . are usually posted,.

28. In AIR 1922 23 (Privy Council) . the expression "cause of action" was explained as under: . .

".....cause of action is the cause of action which gives occasion for and forms the foundation of the suit."

29. Similarly, in Read v. Brown (1889) 22 QBD 128, cause, of action was explained as under: .

"Every fact winch would be necessary tor the plaintiff to prove, if traversed in order to support his right to the judgment of the Court,"

30. The same view has been reiterated by the Privy Council in AIR 1949 78 (Privy Council) , and by the Supreme Court in The State of Madras Vs. C.P. Agencies and Another, ., and A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, .

31. In our opinion the judgment of the three Judges Bench decision of the Supreme Court in Dinesh Chandra Gahtoh's case (supra) cannot prevail over the Constitution Bench decisions of the Supreme Court in K.S. Rashid v Income Tax Investigation Commission (supra) and Election Commission v. S . Venkata Rao (supra). It is well settled that if there is a conflict between a Larger Bench decision of the Supreme Court and a Smaller Bench decision then the view of the Larger I Bench will prevail.

32. In *Union of India (UOI) and Another Vs. K.S. Subramanian*, , the Supreme Court observed:

"The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by Larger Benches of this Court in preference to those expressed by earlier Benches of the Court. That is the practice followed by this Court itself. The practice has now crystallised into a rule of law declared by this Court."

33. A similar view was taken by a Division Bench decision of this Court in *M/s. Rapti Commission Agency v. State of UP*. 2003 UPTC 780.

34. In *Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others*, , a five Judges Constitution Bench of the Supreme Court observed:

"We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."

35. Moreover, as observed by the Supreme Court in *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, , the observation of a Judge are not to be read as Euclid's Theorem, nor as provisions of a statute, In *State of Punjab Vs. Baldev Singh, etc. etc.*, , the Supreme Court observed that everything in a decision is not a precedent. In *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , the Supreme Court observed:

"The Scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation-Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all, nor every passing expression of a Judge, however, eminent, can be treated as an ex cathedra statement having the weight of authority."

36. In *M/s. Amar Nath Om Prakash v. State of Punjab (supra)*, the Supreme Court observed that judgments of Courts are not to be construed as statutes. Judges interpret words of statutes, but their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.v. Horton* 1951 AC 737 at p. 761. Lord MacDermot observed :

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

37. In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294, Lord Reid said, "Lord Atkin's speech....is not to be treated as if it was a statutory definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062,



observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in *Harrington v. British Railways Board* (1972) 2 WLR 537, Lord Morris said :

"There is always peril in treating the words of a speech of judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case,"

38. In *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, , the Supreme Court observed :

"It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority, for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into a rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi,"

39. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law.

40. For the reasons given above we are of the opinion that the Chief of Army Staff can only be sued either at Delhi where he is located or at a place where the cause of action, wholly or in part, arises.

41. We may mention that a "cause of action" is the bundle of facts which, taken with the law applicable, gives the plaintiff a right to relief against the defendant. However, it must include some act done by the defendant, since in the absence of an act, no cause of action can possibly occur. [Vide Radhakrishnamurthy Vs. Chandrasekhara Rao, ; Ram Awalamb and Others Vs. Jata Shankar and Others, , and Salik Ram Adya Prasad v. Ram hakhem and others AIR 1973 All. 1071.

42. In the present case no part of the cause of action has arisen in U.P. Hence in our opinion the writ petition is not maintainable in this Court. It is accordingly dismissed. The decision of the Division Bench in Kailash Nath Tiwari v. Union of India (supra) in our opinion does not lay down the correct law and is overruled.