

(2001) 11 MP CK 0060
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3329 of 2001

Ram Narain Singh

APPELLANT

Vs

Chief of The Army Staff and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Army Act, 1950 — Section 39(b)

Citation : (2001) CriLJ 4033 : (2002) 2 MPLJ 324

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : P.N. Dubey, for the Appellant; Rajendra Menon, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The question involved in the present writ petition is whether this Court has jurisdiction to entertain and decide the matter in question?

The factual matrix relevant for the purpose of decision of the question involved is that the petitioner was Sepoy in the Trade of Tin Smith of Army Supply Corps. He proceeded on 20 days casual leave from 11-8-1998 to 30-8-1998 to his home town in Rewa District within the State of Madhya Pradesh. During the said casual leave, the petitioner fell ill at his village. He informed the commanding officer regarding his illness on 20-8-1998 and 23-9-1998. He also sent another application for extension of leave for two months due to illness and also sent the medical certificate after recovering from the sickness. The petitioner reported on 1-11-1998, but, was shown to have joined on 5-11-1998. He sustained injuries and thereafter was hospitalized and Court martial was set up. Charge-sheet was prepared u/s 39(b) of the Army Act, 1950. The petitioner was posted at the relevant time at Bangalore. Court martial was conducted at Bangalore. Charge-sheet was issued at Bangalore. Pursuant to the Court martial, he was dismissed at Bangalore. Order was given of his dismissal at Bangalore. The petitioner

further submits that he submitted appeal from Rewa to the Competent Authority on 23-3-1999. The rejection of the appeal was communicated to him at his home address at Rewa.

The respondents have filed an application for dismissing the writ petition for want of territorial jurisdiction. They submit that the respondent Nos. 2 and 3 reside at Bangalore. Office is at Bangalore in the State of Karnataka whereas office of respondent No. 1 Chief of Army Staff is at New Delhi. Thus, no part of cause of action has arisen within the State of Madhya Pradesh.

Learned counsel for the petitioner submits that this Court is having the jurisdiction as the petitioner had overstayed the leave at Rewa within the jurisdiction of this Court and he has filed the appeal while he was residing at Rewa and he received the order of his dismissal of appeal at Rewa which was despatched from New Delhi.

Learned counsel for the respondents reiterated the objection and submits that no part of cause of action has arisen within the State of Madhya Pradesh. Hence, the writ petition is not maintainable. The writ jurisdiction requires that some part of cause of action should have arisen within the State of Madhya Pradesh. Petitioner was posted at Bangalore at the relevant time. He proceeded on leave from Bangalore and simply by his overstaying the leave in Madhya Pradesh or by the place of residence of the petitioner to be at Rewa within the State of Madhya Pradesh, it cannot be said that part of cause of action arose within the State of Madhya Pradesh. The Court martial was conducted at Bangalore, the petitioner admittedly was dismissed while he was at Bangalore. Order of dismissal was served on him at Bangalore. Whatever the misconduct was, arose at Bangalore. By mere fact that the petitioner overstayed the leave within the State of Madhya Pradesh or had gone else where, cannot confer the jurisdiction to that Court to deal with the matter.

The submission raised that since the appeal was filed at Madhya Pradesh and the appellate order was served within the State of Madhya Pradesh, it should be held that this Court is having the jurisdiction to hear the writ petition. Simply the appellant order was passed at New Delhi and was despatched to the residential address of the petitioner, it cannot be said that part of cause of action arose in Madhya Pradesh. Factum of despatch is material not that of receipt. The order was despatched at New Delhi. The appellate Authority's office is situated at New Delhi.

In C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar, , their Lordships of the Supreme Court considered the question of territorial jurisdiction in the factual matrix where a wireless message was sent while the respondent was posted at Arunachal Pradesh receiving a wireless message through Chief Secretary of the State to meet CBI Inspector in Bombay in connection with investigation of a corruption case registered by CBI. On receiving the message, respondent filed a writ petition in Guwahati High Court for quashing the FIRs

registered by CBI, the Supreme Court held that simply by receipt of the wireless message within the jurisdiction of the Guwahati High Court, it cannot be said that Guwahati High Court was having the territorial jurisdiction to deal with the matter.

In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710, the Supreme Court held that the residence of the petitioner cannot give jurisdiction under Article 226/227 of the Constitution of India.

In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, the Supreme Court held that simply the situation of the office of the Company cannot confer the jurisdiction to that High Court. It should be shown that some part of cause of action has arisen within the territory. In the said case tenders were invited at New Delhi and work was to be done in the State of Gujarat. It was held that Calcutta High Court was having no jurisdiction.

In *State of Rajasthan and Others Vs. Swaika Properties and Another*, the Supreme Court held that mere service of a notice at Calcutta would not clothe the Calcutta High Court with any jurisdiction to entertain a petition under Article 226 of the Constitution of India as service of notice could not give rise to a cause of action within the territory unless the service of such notice was an integral part of the cause of action. It was held that cause of action has arisen in the State of Rajasthan. Hence, the Court was not having the jurisdiction to deal with the matter.

In *South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others*, the Supreme Court held that the cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the Plaintiff a right to claim relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In the said case contract was executed in Bombay, i.e. within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court, it was held that merely because Bank Guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court.

In *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, the shares were transferred at Mumbai. Earnest Money was also transferred at Mumbai. The balance was not paid. Therefore, the agreement was terminated. Suit was filed in the High Court of Mumbai for specific performance of the agreement. A writ petition was filed before the Mumbai High Court for quashing the criminal complaint. The Criminal Complaint was filed at Shilong. In the writ petition it was contended that the criminal complaint was filed with the mala fide intention of

causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares, which had entirely taken place at Mumbai. Alternative prayer made in the petition for issuance of writ of mandamus to State of Meghalaya for transfer of the investigation to Mumbai Police. It was held by the Supreme Court that the Mumbai High Court had the jurisdiction. The Supreme Court in paragraphs 38 and 41 held as under:-

38. "Cause of action" is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies, the Collocation of the words "Cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts. As per that section the suit could be instituted in a Court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". 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 would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action, wholly or in part, arises" vide *State of Rajasthan and Others Vs. Swaika Properties and Another*, . A three-Judge Bench of this Court in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, observed that it is well settled that 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. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice of convenience. The following are such observations. (SCC p. 722 para 12).

If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

Learned counsel for the petitioner has relied on a decision in *M.C. Jain vs. the Chairman and Managing Director, Cement Corporation of India Ltd., Government of India Undertaking, New Delhi* and another 1991 LabI.C. 1438, wherein learned Single Judge of Andhra Pradesh High Court held that service of order of punishment was served in Andhra Pradesh. Enquiry was held against the petitioner both at Hyderabad and Delhi. Since the enquiry was held at Hyderabad and the order was served at Cochin, within the State of Andhra Pradesh, by the date of the appellate order was served on the Petitioner, he was working in the lower post of Deputy Manager (Marketing) at Tandur in the State of Andhra Pradesh. Thus, the Andhra Pradesh High Court held that it was having jurisdiction. This factual situation is not obtainable in the instant case. Enquiry was not conducted in the State of Madhya Pradesh and at no point of time during the Court martial proceedings, the petitioner was posted within the State of Madhya Pradesh.

Another decision which is pressed into service by learned counsel for the petitioner is *P.P. Gopalan vs. The D.I.G. and another* 1985 (3) SLR 371, wherein the appellate order was served in the State of Kerala. It was held that Kerala High Court was having jurisdiction.

Since the order was despatched in the instant case from New Delhi, I am in respectful disagreement with the view taken by the Kerala High Court.

In *P.K. Mondal Vs. Union of India (UOI) and Others*, , similar factual matrix was obtainable as exists in the instant case. P.K. Mondal was an employee of the Central Government, challenged the order of dismissal from service, which was served on him at Calcutta within the jurisdiction of High Court of Calcutta. Departmental enquiry was held at Madras. Order of dismissal was also passed at Madras, the appellate authority decided the appeal at Delhi. The question arose whether Calcutta High Court was having the jurisdiction. It was held that the bundle of facts, as stated in the petition, relates to the proceedings of the enquiry, the order of dismissal and the order on appeal none of which occurred within the territorial jurisdiction of the Calcutta High Court. Neither the competency nor the allegations made in the charge-sheet has been challenged in the writ petition. Merely because the petitioner received a communication of the appellate order at his residence at Calcutta, Calcutta High Court will not have jurisdiction to try the petition.

In *Ex. Major Gurnam Singh vs. Union of India and others* 1994 (4) SLR 76, High Court of Punjab and Haryana considered the question of territorial jurisdiction. Major Gurnam Singh was proceeded with for commission of offence at Dehradun, sentence was imposed on him at Meerut. Confirmation petition was rejected at Delhi and the writ petition against penalty was filed before the Punjab and Haryana High Court. The High Court did not agree with the submission that simply because the employee had stayed at Patiala after dismissal from service give him any right to approach the High Court. Mere service of notice at Patiala where the petitioner chose to settle in life after his dismissal from service does

not give him any cause of action to challenge his order of dismissal as also the General Court Martial proceedings in High Court of Punjab and Haryana.

Learned counsel for the petitioner has also relied on the decision of this Court in K.P. Govil Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur and Another, . In that case the petitioner was working as an Assistant Professor at Gwalior in the Agriculture College at Gwalior of the Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, challenged his fixation of pay made at Jabalpur at Gwalior Bench of this Court. It was held that since the petitioner was posted at Gwalior and consequences fell on him while he was posted at Gwalior by pay fixation done at Jabalpur, it was held that the Gwalior Bench of this Court was having the jurisdiction.

Upshot of the foregoing discussion is that this Court cannot be said to be having territorial jurisdiction to entertain the writ petition, the same is dismissed for want of jurisdiction. It goes without saying that the petitioner at liberty to file writ petition before the High Court having the jurisdiction.