

(2001) 02 MAD CK 0097

In the Madras High Court

Case No : Criminal Original Petition No. 14457 and Cri. M.P. No's. 6449 and 6450 of 1998

Royal Consultants (P) Ltd. and Another

APPELLANT

Vs

Chief Enforcement Officer

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 180, 181
Foreign Exchange Regulation Act, 1973 — Section 16(1), 56, 56(1), 68, 68(1)
Prevention of Corruption Act, 1988 — Section 5(1)

Citation : (2001) CriLJ 2464

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Raghunathan, for the Appellant; K. Raviananthapadmanabhan, Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Royal Consultants Private Limited, Bombay and William Mascaranhas, its Director are the accused 2 and 3 in the private complaint filed by the Chief Enforcement Officer, Enforcement Directorate, Madras in E.O.C.C. No. 15 of 1996 taken on file in the Court of Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Madras, against three accused including the petitioners for the offences under Sections 9(1)(f)(i), 9(1)(b) and 9(1)(d) of the Foreign Exchange Regulation Act, 1973 punishable u/s 56(1)(i) of the said Act.

2. On service of summons, the petitioners (A2 and A3) appeared before the Court and filed an application raising a preliminary objection u/s 201, Cr.P.C. contending that the Court at Madras had no territorial jurisdiction to try in so far as it relates to the petitioners and requesting the Court to return the private complaint to the respondent for presentation before the proper Forum, namely the Court at Bombay. The said application was dismissed by the trial Court. On

being aggrieved, the petitioners 2001 Cri. L.J. 155 VII filed revision in Cri. R. C. No. 1 of 1998 before the Principal Sessions Judge, Madras. After hearing the counsel for the parties, the Principal Sessions Judge also while agreeing with the view of the trial Court, dismissed the revision. Hence, the unsuccessful petitioners have presented this application u/s 482, Cr.P.C. seeking to set aside the orders of the Courts below referred to above.

3. Mr. Raghunathan, the learned counsel for the petitioners/accused, while challenging the orders impugned would reiterate the preliminary objection in regard to the jurisdiction, which is summarised as follows :-

According to the respondent, the petitioners at Bombay received payment under instructions from a person residing abroad without the permission of the Reserve Bank of India from one Mohamed Omar, the first accused, at Chennai, thereby the petitioners had contravened the provisions of the Act. Admittedly, the alleged payments were made only at Bombay. The search and arrest of A3, who is the Director of A2, was made only at Bombay. The charge levelled against A2 and A3 is that the amounts were received at Bombay in contravention of the provisions of the Act. There is no connecting link between the offences committed by A1 and by the petitioners. There is no allegation in the complaint that the offences are interlinked and inseparable. Therefore, as far as the offences alleged against the petitioners are concerned, they have to be tried only at Bombay Court u/s 177, Cr.P.C. Hence, the petitioners filed an application requesting the trial Court to return to the complainant for the presentation of the complaint as against the petitioners before the proper Forum u/s 201, Cr.P.C. Both the Courts below by misreading of Sections 178(b), 184 and 223, Cr.P.C., had wrongly held that the Court at Madras will have a jurisdiction to try the cases as against the petitioners along with A1.

4. In elaboration of the above contention, the learned counsel for the petitioners would argue at length by referring to the various provisions and citing several authorities.

5. The learned counsel appearing for the respondent/complainant, in justification of the reasonings given in the impugned order, would contend that under Sections 178(b) and 223(d), Cr.P.C. the offences committed by all the three can be tried in the Court at Madras. He has also placed some authorities to substantiate his plea.

6. In addition to the above submission, he would also incidentally question the maintainability of the petition u/s 482, Cr.P.C. by pointing that the second revision is barred and the said bar cannot be circumvented by filing the application u/s 482, Cr.P.C.

7. Let us at the outset would understand the brief facts culled out from the complaint and other records before dealing with the questions raised in this case :

(a) Mohamed Omar (A1) is the Proprietor of M/s. Twaik Estt. International,

Madras, which is engaged in the recruitment of manpower for employment in Gulf countries. One Muthuvappa, who is the brother of A1 had been carrying on business in the name of Feraha Traders in Jeddah. The said Muthuvappa was canvassing and processing Visas to the firm of A1, namely M/s. Twaik Estt. International, Madras. He came in contact with one Ahmed Anoor at Jeddah. He had arranged 260 Visas to his friend Muthuvappa. Towards the same, certain amounts were payable by Muthuvappa to Ahmed Anoor. A2 is M/s. Royal Consultants situated at Bombay. William Mascaranhas (A3) is the Director of the said company. He is also engaged in the recruitment of skilled and unskilled workers for various Principals in Gulf countries including the said Ahmed Anoor. Totalling about 440 persons were recruited through M/s. Twaik Estt. International, Madras (A1). On the instruction of the said Ahmed Anoor, A1 paid Rs. 55,90,000/- to A2 which was payable to him by Ahmed Anoor.

(b) On information about the involvement of Al Mohamed Omar in this dealing, on 20-9-1994 the respondent, officials searched both office premises and residential premises of the first accused at Madras and recovered incriminating documents. While he was interrogated, first accused stated that he had made payments totalling to Rs. 55,90,000/- to M/s. Royal Consultants Private Limited (A2) and on behalf of A2, William Mascaranhas (A3) received the same on the instruction of Ahmed Anoor of Saudi Arabia. On the basis of this statement, the search was conducted in A2's office and recovered some incriminating documents. A3 admitted that he received Rs. 55,90,000/- from Mohamed Omar of Madras in about 5 to 6 instalments at the instruction of Ahmed Anoor of Saudi Arabia. Since the act of giving and receiving the amount on behalf of the person outside India would attract the offences under the Act, the complaint was filed against all the three before the trial Court at Madras.

8. The petition u/s 201, Cr.P.C. has been filed before the trial Court questioning the jurisdiction only by A2 and A3, the petitioners stating that they cannot be jointly tried along with A1 who is stated to have committed the offence at Madras, since the alleged offence committed by the petitioners is at Bombay and, therefore, the Court at Madras will have no jurisdiction to try the petitioners for the offences committed by them outside the jurisdiction of Madras.

9. It is true, as pointed out by the learned counsel for the respondent/complainant, that the unsuccessful petitioners after obtaining dismissal orders both before the trial Court as well as the revisional Court, have approached this Court u/s 482, Cr.P.C. which is normally not to be entertained as it would amount to second revision.

10. The above contention raised by the counsel for the respondent/complainant is liable to be rejected, in view of the judgment of the Apex Court in Krishnan and another Vs. Krishnaveni and another, Madhu Limaye Vs. The State of Maharashtra, and V.C. Shukla Vs. State through C.B.I., in which it is held that though ordinarily, when a second revision has been barred by Section 397(3) of the Code or u/s 482 of the Code, since it may amount to circumvention of the

provisions of Section 397(3) or 397(2) of the Code, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the complaint was taken on file without jurisdiction, it is but the duty of the High Court to have it corrected at the inception otherwise grave miscarriage of justice would ensue. It is, therefore, in the light of the above decision, to meet the ends of justice, the High Court is preserved with inherent power and would be, justified, under such circumstances, to exercise inherent power in an appropriate case.

11. In that view of the matter, when this application is questioning the very jurisdiction of the Magistrate to try the accused, it cannot be said that the application u/s 482, Cr.P.C. would amount to circumventing the bar u/s 397(3), Cr.P.C. Therefore, when this Court finds that the impugned orders are one without jurisdiction and vitiated by manifest error of law warranting interference, this Court has to invoke the inherent powers to set right the illegality. Thus, in my view, the petitioners would be entitled to approach this Court requesting to invoke inherent power to find out whether the trial Court has got jurisdiction to try the accused/petitioners for the alleged offences committed by them.

12. At this stage, I shall point out one other infirmity. It is seen that the application raising a preliminary objection has been filed by the petitioners on receipt of summons and after appearance before the Court and after receiving the copy of the complaint and other records from the Court. Thus, it is clear that the petition u/s 201 has been filed requesting for the return of the papers to the respondent for the presentation before the appropriate Court only after cognizance was taken by the trial Court.

13. Since it is a private complaint, the cognizance was taken u/s 190(1)(a) Cr.P.C. On being satisfied with the essential requirements in filing the private complaint, the trial Court issued process u/s 204, Cr.P.C. Once the stage of process u/s 204, Cr.P.C. is over, then the petitioners/accused cannot request the Court to return the complaint to the respondent u/s 201, Cr.P.C, since it cannot go back to the stage which the trial Court has already crossed. In other words, at the stage when the trial was about to be commenced, the petitioners filed an application u/s 201, Cr.P.C, which in my view, may not be valid.

14. However, this technical infirmity would not stand in the way of this Court to solve the issue raised in this Court as to whether the trial Court has got jurisdiction to try the petitioners or not. Even though the petition u/s 201, Cr.P.C. cannot be held to be maintainable, if this Court finds that the trial Court has no jurisdiction, then this Court under inherent powers would not only set aside the impugned orders but also pass an order invalidating the very cognizance which has been taken by the trial Court in respect of the offences alleged to have been committed by the petitioners. Therefore, let us now come to the main question with regard to the jurisdiction.

15. u/s 177, Cr.P.C, every offence shall ordinarily be enquired into and tried by a

Court within whose local jurisdiction it was committed.

16. Crime is in its essential nature local and, therefore, the section adopts the common law that all crimes are local and justiciable only by the local Courts within whose jurisdiction they are committed. A Magistrate has no power to try an accused for an offence committed wholly outside the limits of his jurisdiction.

17. Various sections in Chapter 13 of Cr.P.C. create several exceptions to the rule prescribed under this section. But these exceptions to the rule should be reasonably and properly construed and their scope should not be enlarged on analogous considerations.

18. Sections 178 to 185 provide exceptions to this rule and provide the circumstances in which an accused may be tried at a place other than the place of the commission of the offence. In other words, the jurisdiction must be conferred by the statute.

19. The question of jurisdiction is to be decided by perusal of the complaint. It is on the terms of the complaint that the Magistrate has to first inform himself as to the nature of the case and to see whether he has jurisdiction to entertain it. A complaint must indicate that the offence complained of was committed within the territorial jurisdiction of the Court in which complaint is filed. It is open to the Magistrate to dismiss the complaint if the existence of the territorial jurisdiction is not indicated in the complaint itself.

20. The venue of enquiry or trial of a case has primarily to be determined by the averments contained in the complaint. On the basis of such averments, if the Court finds jurisdiction, it has to proceed with the complaint.

21. These principles have been laid down in *Narang Industries Ltd. etc. v. Ashok Leyland Finance Limited etc.* 1997 (2) MLW 699 , *P.K. Muraleedharan Vs. C.K. Pareed and Another*, and *State of M.P. v. K.P. Ghaira* AIR 1957 SC 196 : 1957 Cri LJ 322.

22. From the above principles, it is clear that in order to ascertain whether the Court at Madras has got jurisdiction, we have to necessarily look into the allegations in the complaint.

23. Let us now see the relevant averments in the complaint :

(i) On information the business premises of the accused M/s. Twaik Estt. International, No. 9 Greenway Road, I Floor, R.A. Puram, Madras-28 and his residential premises at No. 9-A, Parameswari Nagar, II Main Road, Adyar, Madras-20 were searched u/s 37 on 20-9-1994 and as a result of the search incriminating documents were recovered and seized from both the places.

(ii) The first accused, while explaining the Sheet No. 1 of loose sheets seized from his office stated in his statement dated 20-9-1994 that one Ahmed Anoor, a Pakistani National settled in Jeddah had arranged 260 visas to his friend; that out of 260 visas he should pay Rs. 23,000/- for each visa for 120 visas and for

the remaining 140 visas at Rs. 22,000/- per visa; that in connection with earlier business done the accused owed a sum of Rs. 19,00,000/- to him; that total payment to be made for 260 visas including the old balance came to Rs. 77,40,000/-; that as per the instructions of the said Ahmed Anoor he paid amounts of Rs. 23,00,000/- and Rs. 9,40,000/- to M/s. Royal Consultants, a recruiting agent at No. 802 Raheja Centre, Nariman Point, Bombay (A2) of which William Masceranhas (A3) was the important functionary; that after the above payment a sum of Rs. 45,00,000/- was the balance; that Rs. 2,50,000/- to Ada, Rs. 5,00,000/- to Kwaja; Rs. 7,00,000/- to Kabir (total Rs. 14,50,000/-) were adjusted as per orders of Ahmed Anoor and from the remainder of Rs. 30,50,000/- he again paid Rs. 23,50,000/- in three or four instalments in cash to the said Royal Consultants (A2) on the instruction of the said Ahmed, Anoor; that he had thus paid in all Rs. 55,90,000/- to M/s. Royal Consultants, Bombay on the instructions of the said Ahmed Anoor during 1994.

(iii) As a follow up action, two office premises of M/s. Royal Consultants Private Limited, 802 Raheja Centre, Nariman Point, Bombay-21 were searched on 21-9-1994 and documents seized. Shri William Masceranhas, Director (A3) in his statement dated 21-9-1994 stated that his company (A2) was engaged in the recruitment of skilled and unskilled workers for various Principals in Gulf countries like M/s. Twaik Estt., Riyadh, etc.; that so far about 440 persons were recruited through Shri M. S. Mohamed Omar of Twaik Estt., Madras (A1) and that Shri M. S. Mohamed Omar (A1) charged Rs. 23,000/- to Rs. 25,000/- for each candidate; that as per the verbal agreement with Mr. Anoor of Saudi Arabia Rs. 13,000/- per person was to be paid to him; that so far 440 persons recruited through Omar of Twaik Estt., Madras (A1), William Masceranhas (A3) received Rs. 55,90,000/- from the said Omar, Madras (A1) on the instructions of Anoor, Saudi Arabia in five to six instalments in his office through his persons who were coming from Madras in the past few months.

24. On the basis of the above averments and other details, the complaint is filed against each of the accused for the following offences :-

As against A1 :

(a) For contravention of the provisions of Section 9(1)(f)(i) of the Foreign Exchange Regulation Act, 1973 for having made various payments to persons in India totalling Rs. 48,85,000/- in consideration of the receipt of total Saudi Riyals 5,10,000/- by his brother Muthuvappa in Jeddah without the general or special exemption of the Reserve Bank of India punishable u/s 56(1)(i) of the said Act.

(b) For contravention of the provisions of Section 9(1)(d) for having made various payments totalling Rs. 55,90,000/- to Shri William Masceranhas (A3) of Royal Consultants Private Limited, Bombay during 1994 without the general or special exemption of the Reserve Bank of India punishable u/s 56(1)(i) of the said Act.

(c) For contravention of the provisions of Section 8(1) read with CSR 679 in

respect of an amount of Saudi Arabia Riyals 4,000/-punishable u/s 56(1)(ii) of the said Act.

As against A2 and A3 :

(a) For contravention of the provisions of Sections 9(1)(b) and 68(1) for having received various amounts totalling Rs. 55,90,000/- from the first accused without the general or special exemption of the Reserve Bank of India punishable u/s 56(1)(i) of the said Act.

(b) For contravention of the provisions of Section 16(1) of the Foreign Exchange Regulation Act for having failed to receive a sum U. S. \$ 6195.29 and Rs. 74,520/- punishable under Sections 56(1)(i) and 68(1) of the said Act.

25. The reading of the entire complaint in the light of the specific averments extracted above, it is clear, as alleged in the complaint, that A1 made payments to A3, the Director of A2 for the credit of Ahmed Anoor, a resident of Saudi Arabia and accordingly, A3 received the said amount from A1 on the instruction of person resident outside India without any general or special permission from the Reserve Bank of India.

26. u/s 9(1)(d) and (f) of the Foreign Exchange Regulation Act, no person or no resident in India shall make any payment for the credit of any person who is resident outside India without the permission of the Reserve Bank of India. Section 9(1)(b) would provide that no person or no resident in India shall receive any payment on behalf of any person who is resident outside India without the permission of the Reserve Bank of India.

27. Both these offences are punishable u/s 56 of the Act. If offence has been committed by the company, Section 68 also would get attracted. So, the charge as against A1 who is at Madras relates to the making payment to the resident in India on behalf of the resident outside India and the charge as against A2 and A3 would relate to the receipt of the said payment, resident in Bombay on behalf of the resident outside India.

28. In this context, it is contended by the counsel for the petitioners that the alleged receipt of the amount u/s 9(1)(b) is a separate offence committed at Bombay punishable under Sections 56(1)(i) and 68(1) of the Act which is triable by the Bombay Court and as such, they could not be tried along with person (A1) at Madras, who made payment which is a separate offence u/s 9(1)(d) and (f) which can be tried by the Court at Madras.

29. While dealing with the contention, the trial Court rejected the same by holding that u/s 178(b), Cr.P.C, the case into the offences can be tried by the Court having jurisdiction over any of such local areas, where an offence is committed partly in one local area and partly in another area and as such, the Court at Madras also will have jurisdiction where one part of the offence was committed.

30. While affirming the view of the trial Court, the revisional Court would further hold on the strength of the provisions under Sections 184 and 223(d), Cr.P.C. that when offences took place in the course of the same transaction in various areas, the jurisdiction will vest in any one of such areas and as such, the complaint at Madras was maintainable.

31. These findings by both the Courts below are seriously challenged by the counsel for the petitioners on the ground that all these sections would not apply to the present facts of the case, in view of the fact that the reading of the complaint would show that the petitioners committed a separate offence in a different transaction at Bombay and as such, those findings are wrong.

32. The trial Court rejected the petition on the strength of Section 178(b) and (d), Cr.P.C. Section 178 provides as follows :-

178. Place of inquiry of trial, (a)....

(b) where an offence is committed it is uncertain in which of several local partly in one local area and partly in another, or

(c)....

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

33. On going through Section 178, in my view, this provision would not help the prosecution, in view of the fact that both (Section) 178(b) and (d) would relate to an offence. But, in my view, the more relevant sections which would save the prosecution are (Sections) 179 and 180.

34. Section 179 provides thus :-

179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

35. The above section provides that when an act is offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired or tried by a Court in whose local jurisdiction such thing is done or such consequence has ensued. Thus, it is clear that the act of making payment ensues the consequence of receiving the payment. Under this section, both the places relate to making payment and receiving payment would have jurisdiction.

36. Section 180 would provide as follows :-

180. Place of trial Where act is offence by reason of relation to other places. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first mentioned offence may be inquired into or tried by a Court

within whose local jurisdiction either act was done.

37. The reading of the above section would make it clear that when a particular act is an offence if it is relating to some other act which is also an offence both can be tried by a Court in the local jurisdiction either act was done.

38. In the present case, making the payment by a person at Madras is a separate offence. Receiving the said payment by the party at Bombay would be a separate offence. Admittedly, in this case, both these offences have been committed in two different places.

39. In that context, it shall be noticed from the wording contained in Section 180, Cr.P.C., since the making and receiving the payment which are closely connected together and in other words, the act of receiving payment would relate to the act of making payment, then the jurisdiction will vest in the Court in either of the places.

40. In the judgment reported in State of Punjab Vs. Nohar Chand, when the similar question was raised in regard to the question of jurisdiction in relation to the place where the sub-standard fertiliser was manufactured and to the place where it was marketed, it has been held by the Supreme Court that though both are different offences, since they are inter-connected as cause and effect, both can be tried at one or the other place. The relevant observation is this (at page 1155 of Cri LJ) :

Now if manufacturing sub-standard fertiliser is by itself an offence and marketing the sub-standard fertiliser is itself a distinct offence but they are so inter-connected as cause and effect, both can be tried at one or the other place. If one manufactures the sub-standard fertiliser, wherever it is marketed the inter-relation or causal connection is of cause and effect. The situation will be adequately covered by Sections 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the Court where the sub-standard fertiliser is being marketed will equally have the jurisdiction to try the manufacturer of sub-standard fertiliser.

41. The learned counsel for the petitioners would cite Bhagwan Das Jagdish Chander Vs. Delhi Administration, and would contend that in the absence of any allegation in the complaint, the Court cannot presume that the acts are interconnected with each other. As a matter of fact, this decision was cited before the revisional Court also. The said decision was rightly distinguished by the Sessions Court holding that in the said case, there is no allegation that the ghee distributed by the manufacturer to the vendor is adulterated and, therefore, the Apex Court held that there cannot be joint trial. But, in this case, as correctly pointed out by the revisional Court that definite allegations are available in the complaint on the instruction given by Ahmed Anoor of Saudi Arabia for whom A1 and A3 were working at Madras and Bombay respectively, A1 made payment and A3 received the same. Though these are two distinguished offences, it is nothing but cause and effect and as such, in my view, both Sections 179 and 180, Cr.P.C.

would squarely apply.

42. In regard to the other offences, as pointed out by the revisional Court, when it is a prosecution case that those offences were committed in the course of same transaction, as per Section 223(d), though they are different offences, since they were committed in the course of same transaction, they can be charged and tried together in one Court as provided u/s 184, Cr.P.C.

43. In this case, A1 at Madras and A2 and A3 at Bombay are admittedly engaged in the recruitment of skilled and unskilled workers for Ahmed Anoor, common Principal of Saudi Arabia, a person resident in outside India on whose behalf accused 1 to 3 were receiving instructions and accordingly, making and receiving the payments. Therefore, the contention of the prosecution that in view of the proximity of time, unity of purpose and design and continuity of series of actions, the Court at Madras has got jurisdiction, as the cause of action for filing complaint has arisen in Madras also as the entire transaction is inter-connected with one another and the offence committed by A2 and A3 cannot be isolated from that of the offence committed by A1, cannot be rejected outright, in the light of the facts and figures given in the complaint.

44. The learned counsel for the petitioners would cite the decisions in P. Mohan v. State 1990 MLW (Cri) 228 and K.T.M.S. Mohd. and another Vs. Union of India, This Court in 1990 MLW 228, on facts, held that for the prosecution u/s 5(1)(e) of the Prevention of Corruption Act, as the materials are available only against the husband, the wife cannot be jointly tried along with him. Similarly, in the other judgment of the Supreme Court K.T.M.S. Mohd. and another Vs. Union of India, on facts, it was held that there is no material for conspiracy for the appellants 1 and 2 in the act of third appellant fabricating false evidence. This decision was given while setting aside the conviction given by the trial Court confirmed by the High Court. These decisions would be of no avail to support the contention of the counsel for the petitioners.

45. Thus, I find no merit in the petition. Consequently, the petition is liable to be dismissed and accordingly, the same is dismissed. Consequently, Cri. M.P.Nos. 6449 and 6450 of 1998 are also dismissed.