

(2009) 01 SC CK 0084

In the Supreme Court Of India

Case No : Criminal Appeal No. 142 of 2009 (Arising out of SLP (Criminal) No. 3589 of 2006) and Transfer Petition (Criminal) No. 234 of 2006

Shri Rajendra Ramchandra Kavalekar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 162, 177, 178
Penal Code, 1860 (IPC) — Section 120, 420, 461, 465, 467
Prevention of Corruption Act, 1988 &

Citation : AIR 2009 SC 1792 : (2009) AIRSCW 1379 : (2009) 1 ALD(Cri) 928 : (2009) CLT 620 : (2009) CriLJ 1592 : (2009) 2 JT 125 : (2009) 4 PLJR 1 : (2009) 1 SCALE 751 : (2009) 11 SCC 286 : (2009) 1 SCR 480 : (2009) 1 Supreme 497 : (2009) 1 UJ 464

Hon'ble Judges : Tarun Chatterjee, J; H. L. Dattu, J

Bench : Division Bench

Advocate : K.T.S. Tulsi, H. Pillai, Nayna, Vijay Thakur and Senthil Jagadeesan, for the Appellant; B. Datta, A.S.G., P.K. Dey, B.K. Prasad, P. Parmeswaran, Aprajita Singh, Ravindra Keshavrao Adsure and Anjani Kumar Mishra, for the Respondent

Final Decision : Disposed Of

Judgement

S.L.P (Crl.) No. 3589 of 2006

1. Leave is granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 1375 of 2006 dated July 5, 2006. By the impugned order, the High Court has rejected the writ petition, however, has directed the respondent therein, not to arrest the appellant for a period of six weeks, in R.C. Case No. 1(A).2004 registered under Sections 120(b), 420, 467, 468 and 471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988,

pending on the file of the Special Judge (C.B.I.), Ranchi, Jharkhand, to facilitate the appellant to move the appropriate court for appropriate relief. It may be useful to extract the reasoning, conclusion and the directions issued by the court to appreciate the issues canvassed by the appellant. It is as under:

From the submissions made by the petitioner's advocate, it is clear that the Jharkhand Court seized of the matter. It is the C.B.I. Court, all papers and documents pertaining to the case mentioned above are in the custody and possession of the said court and, therefore, it will not be proper for the court to entertain this petition for quashing the proceedings.

3. In the Criminal Writ Petition filed before the High Court of Judicature at Bombay, the appellant apart from others, had asserted that he is the accused No. 1 in the case registered by C.B.I., SPE, Ranchi in the State of Jharkhand for the offences under Sections 120(b), 420, 467, 468, 471 of IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The State of Maharashtra which is arrayed as Respondent No. 1 in the petition, through RCF Police Station, Kurla, has registered a case bearing Crime No. 250 of 1999 dated 14th October, 1999 under Sections 420, 461, 465, 468, 471, 473, 476 and 120(b) of IPC and tried as CC No. 855/P/2000 before the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, wherein the role of Kanhayalal Sharma and his son Prakash Kanhayalal Sharma is being investigated for having issued bogus and false Degree certificates to large number of students purportedly from Ranchi and Pune Universities. It is also stated that with the help of the degree certificate and the provisional certificate issued by the Ranchi University, he had joined India Tourism Development Corporation (ITDC for short) as Cashier-cum-Sales Assistant by producing the aforesaid certificate issued for the academic year 1993-94 and it is also stated that until he was issued with suspension order by the employer viz. ITDC, he was not aware, that, the certificate issued by the Ranchi University was bogus/fake/fabricated. The appellant has further stated that he has never been to the State of Jharkhand or to Ranchi for the purpose of appearing in the examination for the academic year 1993-94. It is further asserted that Kanhayalal Sharma who is the main accused in the case registered by RCF Police Station, Kurla, had opened an educational institution known as 'Marudhar Mahavidyalaya' operated both from Pune and Mumbai cities and the said institution has issued forged/bogus/false certificates of the Ranchi University. It has also stated that he had applied for anticipatory bail before the Special Judge, CBI, Ranchi and by an order dated 22nd November, 2005, the learned Judge had rejected the anticipatory bail on the ground that appellant was not one of those appellants who had approached the High Court of Judicature at Bombay in the Writ Petition No. 71 of 2001 and connected matters. It is further stated, that, he had approached the High Court of Jharkhand for grant of anticipatory bail and it was also rejected. It is further assertion of the appellant that there is no reason for CBI, SPE, Ranchi to launch a case against the appellant in the year 2004, of a case where inquiry had already been initiated by RCF Police Station for the very same offence and the matter is

already pending before the Additional Chief Metropolitan Magistrate, Kurla, Mumbai. Lastly, it is stated that the CBI, SPE, Ranchi has no jurisdiction to register a case against the appellant, since the entire cause of action had arisen in the State of Maharashtra and not in Ranchi and by registering a case at Ranchi by the CBI, SPE, Ranchi, have abused the process of law and it has no locus standi to file a complaint against the appellant in respect of the offences mentioned in the charge sheet in which the appellant is a victim by himself. Accordingly, he has sought for the following reliefs :

1) To issue a writ in the nature of writ of certiorari to quash registration of the case R.C. Case No. 1(A)/2004 registered under Sections 120(b), 420, 467, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 pending before the Special Judge (CBI), Ranchi, Jharkhand State,.

2) Without prejudice to the aforesaid relief, if this Hon'ble Court decline to quash the registration of the case R.C. Case No. 1(A)/2004 registered under Sections 120(b), 420, 467, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and the same order to be sent to RCF Police Station for investigation, inquiry and trial before the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai in accordance with law.

4. As we have already stated, the High Court of Judicature at Bombay has rejected the writ petition with certain observations and directions.

5. Questioning the correctness or otherwise of the final judgment and order passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 1375 of 2006, the appellant is before us in this appeal.

6. We have heard Shri K.T.S. Tulsi, learned Senior Counsel, for the appellant and Shri Datta, learned senior counsel for the respondents.

7. Shri Tulsi, learned Senior Counsel, submitted that the High Court of Judicature at Bombay was not right in rejecting the Criminal Writ Petition filed by the appellant solely on the ground that the entire matter is pending before the Special Judge (CBI) at Ranchi, and, therefore, it would not be proper for the court to entertain the petition for quashing the proceedings in the case R.C. Case No. 1(A)/2004. It is further contended that since the part of the cause of action has arisen in the State of Maharashtra, the High Court of Judicature at Bombay has the jurisdiction to entertain the writ petition and grant relief sought for by the appellant. In aid of his submission, learned senior counsel would invite our attention to the observations made by this Court in the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, .

8. Shri Datta, learned Senior Counsel appearing for the respondents would contend, that, the appellant in collusion and connivance with the officials of the Ranchi University had obtained forged degree certificate and by producing that certificate had secured a job in ITDC as Cashier-cum- Sales-Assistant and when

the Vigilance Department of ITDC tried to verify those documents from Ranchi University, the appellant with the help of the Dispatching Clerk of the office of the Controller of Examination, Ranchi University had destroyed the letter dated 26.2.2000 issued by the Controller of Examinations, Ranchi University, informing the ITDC that the mark sheet, the Provisional Certificate and the Degree Certificate of the appellant are false and are not issued by the University and instead a bogus letter bearing No. EX/1715 dated 17.7.2000 was sent to ITDC under the name of Controller of Examination, Ranchi University wherein it had been mentioned that the appellant had appeared in B.A. Degree Examination of Ranchi University in the year 1993-94 and his marksheet, provisional certificate and the degree certificate were declared as genuine and therefore, the entire cause of action has arisen in the District of Ranchi, State of Jharkhand. The learned Counsel further submitted that the investigation in R.C. Case No. 1(A)/2004 is completed by the CBI, Ranchi and the chargesheet against the appellant and against Sri P.C. Ram, Despatch Clerk of Ranchi University has been filed before the Special Judge (CBI), Ranchi and the same is pending consideration. Therefore, the learned Counsel would submit that the High Court of Judicature at Bombay was right in declining to entertain the Criminal Writ Petition filed by the appellant.

9. Having heard the learned Counsels for the parties, in our view, the issue that requires our consideration is, whether the High Court of Judicature at Bombay was right in passing the impugned order rejecting the Criminal Writ Petition filed by the appellant on the ground, that, the Special Judge (CBI), Ranchi has heard case R.C. Case No. 1(A)/2004 and all the documents pertaining to the case are in the custody and possession of the Special Judge (CBI), Ranchi.

10. Before we advert to the issue raised for our consideration and consequent decision, let us first notice the decision on which reliance is placed by learned senior counsel Shri Tulsi in support of his submission.

11. The facts in Navinchandra N. Majithia v. State of Maharashtra's, case was that the FIR was filed in Shillong, Meghalaya against the appellant to reverse the transaction relating to transfer of company shares which had entirely taken place at Maharashtra. Therefore, the appellant had filed a writ petition before the Mumbai High Court for quashing of FIR filed at Shillong and alternatively a prayer was made for the issue of Writ of Mandamus against the State of Meghalaya for transfer of the investigation to the Mumbai Police. The High Court had dismissed the petition. In appeal, this Court observed that the High Court has failed in not considering the alternative prayer, since the part of the cause of action had arisen with the territorial jurisdiction of the Bombay High Court.

12. It is also relevant to state, that, in Navinchandra N. Majithia's case, the Court at paragraph 22 of the judgment has observed :

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.

13. The territorial jurisdiction of a court with regard to criminal offence would be decided on the basis of place of occurrence of the incident and not on the basis of where the complaint was filed and 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 court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or charge sheet. Section 177 of Criminal Procedure Code provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Reference can be made to the observations made by this Court in *Asit Bhattacharjee Vs. Hanuman Prasad Ojha and Others*, . This Court at paragraph 23 has stated as under :

The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition *stricto sensu* may not be applicable for the purpose of bringing home a charge of criminal offence. The application filed by the petitioner u/s 156(3) of the Code of Criminal Procedure disclosed commission of a large number of offences. The fact that major part of the offence took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the petitioner Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter.

14. This Court has further observed :

30) "The High Court has placed strong reliance upon a decision of this Court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, , wherein this Court held, while considering a contention that the High Court of Bombay was not correct in not entertaining the application for quashing of a complaint petition filed by the complainant in Shillong, went into the merit of the matter and instead of remitting the matter back to the High Court directed: (SCC p. 651, para 29)

29. Considering the peculiar fact situation of the case we are of the view that setting aside the impugned judgment and remitting the case to the High Court for fresh disposal will cause further delay in investigation of the matter and may create other complications. Instead, it will be apt and proper to direct that further investigation relating to complaint filed by J.B. Holdings Ltd. should be made by Mumbai Police.

31) This Court arrived at the finding that the High Court should have issued a writ of mandamus directing the State of Meghalaya to transfer the investigation to Mumbai Police taking note of the averments made in the writ petition that the

complaint petition filed at Shillong was mala fide.

32) No such explicit prayer was made by the respondents in their writ petition, although a prayer for issuance of a writ in the nature of mandamus, directing the State of West Bengal to transfer Case No. 381 to the State of U.P. had been made. The question of the State of West Bengal's having a legal duty in that behalf did not arise. Only in the event an investigating officer, having regard to the provisions contained in Sections 154, 162, 177 and 178 of the Code of Criminal Procedure had arrived at a finding that the alleged crime was not committed within his territorial jurisdiction, could forward the first information report to the police having jurisdiction in the matter.

33) *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.

15. In the instant case, the CBI has initiated the suo-moto investigation against the appellant. In the First Information Report filed before the Special Judge (CBI), Ranchi, it is stated that during the course of investigation of R.C. Case No. 1(A)/2000, which was registered pursuant to the orders of High Court of Jharkhand at Ranchi, a reliable source of information had been received to the effect that Shri Rajendra Ramchandra Kavalekar (appellant) had entered into a criminal conspiracy with the other unknown persons including the officials of Ranchi University during the academic year 1993-94 by obtaining the false and forged mark sheets of Ranchi University, and, further, on the strength of those false and fabricated documents pertaining to his graduation degree, fraudulently and dishonestly obtained employment in India Tourism Development Corporation as Cashier-cum-Sales Assistant. In the First Information Report, it is also stated that the appellant in collusion with the officials of India Tourism Development Corporation Ltd., Mumbai, the University, had managed to suppress letter dated 26.2.2000 written by the Controller of Examination, Ranchi pursuant to the queries made by the Manager (Vigilance) of ITDC, for ascertaining whether the provisional certificate and the degree certificate issued to the appellant for the academic year 1993-94 is forged and fake, and the appellant with a collusion and connivance of the officials of the University had got prepared a letter dated 26.2.2000, wherein it is stated that the marks sheets, provisional certificate and the degree certificate produced by the appellant at the time of securing the job in ITDC is correct and genuine and thereby has committed a criminal offence under the provisions of Indian Penal Code.

16. The case of the appellant before the High Court of Mumbai, was that he was nowhere responsible for the issuance of fake/forged degree certificates while securing job as Cashier-cum-Sales Assistant in ITDC. According to appellant, it is the handiwork of Shri Kanhayalal Sharma, who was managing the institution

known as 'Marudhar Mahavidyalaya' having its centres at Pune and Mumbai. Except this bald assertion, he has not produced any material in support of that assertion. However, in the complaint filed by CBI, Ranchi, it is specifically alleged that the appellant had entered into criminal conspiracy with the officials of the Ranchi University and had obtained fake degree certificates. A court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of conspiracy irrespective of the fact that any or all the other offences were not committed within the territorial jurisdiction (See Banwari Lal Jhunjhunwala and Others Vs. Union of India (UOI) and Another,).

17. A bare perusal of the complaint filed would clearly go to show that the cause of action arose within the jurisdiction of Special Judge (CBI), Ranchi, the investigation is completed in Ranchi, all the records and the documents pertaining to complaint and the charge sheet are before the Special Judge (CBI), Ranchi, and therefore, in our considered view, the High Court of Judicature at Bombay was perfectly justified in declining to entertain the Writ Petition filed by the petitioner.

18. In view of the above reasons, we reject the appeal. In the facts and circumstances of the case, we direct the parties to bear their own costs.

T.P. (Crl.) No. 234 of 2006

19. In view of the orders passed in Criminal Appeal No. 142 of 2009 arising out of SLP (Crl.) No. 3589 of 2006, the Transfer Petition does not survive and no further order is required. The Transfer Petition is disposed of accordingly.