
(2016) 04 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 24036, 24403, 24404, 24405, 27174, 27179 of 2015

Vir Karan Awasthy

APPELLANT

Vs

State of UP and others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 406, 407
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420

Citation : (2016) 3 PLR 783 : (2016) 3 PLR 560 : (2016) 3 RCRCriminal 258

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Deepak Sabharwal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J. (Oral) - This order shall dispose of six petitions bearing CWP No. 24036 of 2015 titled as "Vir Karan Awasthy v. State of UP and others", CWP No.24403 of 2015 titled as "Vir Karan Awasthy v. State of UP and others", CWP No.24404 of 2015 titled as "Vir Karan Awasthy v. State of UP and others", CWP No.24405 of 2015 titled as "Vir Karan Awasthy v. State of UP and others", CWP No.27174 of 2015 titled as "Vir Karan Awasthy and another v. State of UP and others" and CWP No.27179 of 2015 titled as "Vir Karan Awasthy v. State of UP and others" as the issue involved in all the cases is common and the petitioner, who is common in all the petitions, has prayed for transfer of investigation, which is being carried out in six different FIRs, subject matter of six different aforesaid petitions, from UP to Haryana. However for the sake of convenience, the facts are being extracted from CWP No.24036 of 2015 titled as "Vir Karan Awasthy v. State of UP and others".

2. In this case, FIR No.0317 dated 29.9.2015 was registered at the instance of Karamvir Singh son of Kheemchand Singh, resident of Meerut Road Parikshitgarh, Meerut, Uttar Pardesh, under Sections 420, 406, 504, 506 of the Indian Penal Code, 1860 [for short `the IPC`] at Police Station Parikshitgarh,

District Meerut, UP. The common case of the parties is that the petitioner was the promoter and Managing Director of M/s Bush Food Overseas Pvt. Limited, Bahalgarh, Sonapat [for short 'the Company']. The company purchased paddy from the various grain markets of UP and did not make the payment. The paddy was however, brought by the company to their warehouse located at Sonapat. It is an admitted fact that the company was sold to M/s Hassad Netherlands B.V. [for short 'the company of Netherlands'] a company incorporated under the laws of the Netherlands. The petitioner ultimately became an employee of the company of Netherlands as per employment agreement dated 28.3.2013, which was executed at New Delhi, as per which the petitioner was appointed as MD/CEO of the company of Netherlands and hence, he ceased to be an Executive Director of the company. It is also not disputed that besides the dealers of various places in UP, who had sold paddy to the company and were allegedly cheated, the company of Netherlands has also registered FIR No.13 dated 3.12.2014 under Sections 406, 409, 420 and 120B IPC at Police Station Economic Wing, Saket, New Delhi, against the company much less the petitioner and his wife, who was also one of the Directors of the company, in which it is alleged that the Delhi High Court has already ordered for constitution of Special Investigation Team.

3. Learned counsel for the respondents have also informed the Court that Ritika Awasthy wife of the petitioner had filed a petition under Section 482 of the Cr.P.C. for quashing of some FIR before Allahabad High Court and remained unsuccessful. However, it is also not disputed that the petition filed by Ritika Awasthy before the Supreme Court is pending in which only notice of motion has been issued.

4. Learned senior counsel for the petitioner has submitted that this petition is confined only to a request that the investigation, pursuant to the FIRs registered in the State of UP against the petitioner, may be ordered to be transferred to Haryana because the petitioner has the works much less the factory at Haryana besides the fact that the paddy was supplied to the petitioner in Haryana. He has also stated that the registered office of the company is otherwise in Delhi. In support of his submission, he has relied upon a decision of the Supreme Court in the case of "Navinchandra N. Majithia v. State of Maharashtra" 2000 (4) RCR (Criminal) 30 to contend that this Court under Article 226 of the Constitution of India has ample power to transfer the investigation of the case, registered by an FIR, from UP to another State. He has also referred to a decision of this Court in the case of "Dr. Rajinder Singh v. State of Bihar and others" 2013 SCC online PandH 5690, in which investigation has been ordered to be transferred from Bihar to Ludhiana, on the basis of the order passed in the case of Navinchandra N. Majithia (Supra).

5. Learned counsel for the respondents, however, have submitted that the investigation cannot be transferred from one State to another by the High Court as the power lies with the Supreme Court in terms of Section 406 of the Cr.P.C. It

is further submitted that the judgments relied upon by the petitioner in the case of Navinchandra N. Majithia (Supra) and Dr. Rajinder Singh (Supra) are not applicable. They have submitted that in the case of Dr. Rajinder Singh (Supra) transfer order has been passed because of a consent given by the State. On merits, it is submitted that the investigation of this case from UP cannot be transferred to Haryana because the offence was committed in UP, the complainant resides in UP was cheated by the petitioner and goods were lifted from UP and transported to Haryana and merely because of the goods have been transported to Haryana and stored in the warehouse of the petitioner at Sonapat would not given any right to the petitioner to ask for transfer of investigation from UP to Haryana.

I have heard learned counsel for the petitioner and perused the available record.

6. The question in this case is as to whether High Court has power to transfer the investigation from one State to another in terms of Article 226(2) of the Constitution of India? In this regard, the judgment relied upon by the petitioner in the case of Navinchandra N. Majithia (Supra) supports his case that the investigation can be transferred from one State to another by the High Court while exercising its power under Article 226(2) of the Constitution of India. The second question in this case arises as to whether under Article 226(2) of the Constitution of India, the High Court can transfer the investigation from UP to Haryana in the given facts and circumstance?

7. After taking into consideration the entire facts and circumstances in which the petitioner, who alleged to have cheated the residents of UP while purchasing paddy and not making payment and has further sold his company to another company, which has also registered FIR against the petitioner and its company for cheating, merely because the goods have been transported from UP to Haryana would not give them a cause of action to seek a direction from this Court under Article 226(2) of the Constitution of India for the purpose of transfer of the investigation from UP to Haryana and insofar as the judgment in the case of Navinchandra N. Majithia (Supra) is concerned, the major portion of the offence was committed in Bombay whereas the FIR was registered at Shillong and in that background, it was ordered to be transferred by the Supreme Court. In this regard, paragraphs No.11, 12, 13 and 34 of the judgment in the case of Navinchandra N. Majithia (Supra) are read as under: -

"11. 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 that 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.

12. In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIRs have been taken place at Bombay. It is necessary to repeat those events over again as Mohapatra, J. has adverted to them with precision and the needed details.

13. In the aforesaid situation it is almost possible 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.

34. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. 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 pressurize 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 arise within the territorial jurisdiction of Bombay High Court."

8. In view of the aforesaid facts and circumstances much less the act and conduct of the petitioner, I do not find any reason to interfere in this petition and the same is hereby dismissed.