
(2015) 10 RAJ CK 0016

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2611 of 2014

Zohra Commercial Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(3), 173, 177
Penal Code, 1860 (IPC) — Section 120-B, 182, 379, 406, 420

Citation : (2015) 10 RAJ CK 0016

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : V.R. Bajwa and Manish Sharma, for the Appellant; Prakash Thakuriya, Public Prosecutor, R.P. Singh, Sr. Adv., Anirudh Singh Shekhawat and Mahesh Gupta, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Prashant Kumar Agarwal, J—The accused petitioner, a company incorporated under the provisions of the Companies Act 1956, has filed this criminal miscellaneous petition u/s. 482 Cr.P.C. with a prayer to quash and set aside FIR No. 267/2013 registered at Police Station Jalupura, Jaipur (North) for offences under sections 420, 467, 468, 471 read with section 120-B IPC at the instance of respondent Shri Kushal Chand Dugar. The petition has mainly been filed on the ground that the aforesaid police station or any other police station in the State of Rajasthan has no jurisdiction to investigate the case because the aforesaid offences or any of them has not been committed within the territorial limits of the aforesaid police station or even in the State of Rajasthan. It has been made clear on behalf of the petitioner that the petitioner at this stage of the proceedings is not challenging the fir on merit i.e. on the ground that no offence is disclosed against it even prima facie from the allegations made in the same.

2. Brief relevant facts for the disposal of this petition may be stated as below:-

1. A piece and parcel of land measuring 19200 Sq.Ft. is situated at Mirza Ismail Road, Jaipur (Rajasthan) and a three storied building commonly known as "Dugar Building" is situated upon this land and the respondent is owner of half portion of the plot and the building situated upon it.
2. The petitioner is a company incorporated under the provisions of the Companies Act having its registered office at 10, Sukhlal Johri Lane, Kolkata and Corporate Office at 88, Chandani Chowk Street, Police Station Bow Bazar, Kolkata.
3. As per contention of the petitioner, respondent agreed to sell his portion of the aforesaid property to the petitioner in lieu of sale consideration of Rs. 1,11,00,000/- and after receiving an amount of Rs. 11,00,000/- as part payment of sale consideration, he executed an agreement to sell in favour of the petitioner on 28.11.2009 incorporating therein the terms and conditions of the sale and one of the conditions is that if any dispute arises between the parties regarding said sale, the same shall be referred to a sole arbitrator named in it. It is to be noted that respondent in disputing transaction of such sale and the execution of/the aforesaid agreement claiming it to be a forged and fabricated document.
4. The petitioner company filed arbitration proceedings on or before 5.10.2010 under section 9 of the Arbitration and Conciliation Act, 1996 against the respondent before the Calcutta High Court as Arbitration Case No. 646/2010 in which it was specifically alleged that the aforesaid agreement to sell was executed between the parties at the registered office of the petitioner.
5. Hon"ble Calcutta High Court vide order dated 5.10.2010 and 25.1.2011 passed in the aforesaid arbitration proceedings appointed one Shri Nilender Bhattacharyajee as receiver directing him to prepare an inventory report about the property in dispute and in compliance of the said orders, receiver came to Jaipur on 7.2.2011 but he could not prepare inventory due to strong objection on the part of the respondent. The respondent contended before the receiver that no such agreement was ever executed by him in favour of the petitioner and it is a forged and fabricated document. In this regard, a letter dated 7.2.2011 was also given by the respondent to the receiver. The respondent claims that a copy of/the agreement was provided to him by the receiver and upon this fact of existence of agreement to sell dated 28.11.2009 came into his knowledge for the first time.
6. A written complaint was filed by the respondent on 12.2.2011 before Deputy Commissioner of Police, Jaipur (North) which was sent to SHO, Police Station, Jalupura Jaipur for necessary action. Although formal fir was not registered upon this complaint but preliminary enquiry was undertaken and it was found that no offence has been committed within the territorial jurisdiction of Police Station, Jalupura and in this regard a report dated 9.3.2011 was prepared. A letter dated 17.3.2011 along with relevant papers was sent by DCP (N), Jaipur to Commissioner of Police, Kolkata with a request to register fir and undertake necessary investigation. A Letter dated 23.11.2012 was written by the

respondent to DCP (N), Jaipur with a request to provide him details of the aforesaid communication to Commissioner of Police, Kolkata so that he can pursue the matter at Kolkata police and the accused persons may be prosecuted and punished. DCP (N), Jaipur again sent a letter dated 10.12.2012 to Commissioner of Police, Kolkata with reference to his previous letter dated 17.3.2011 with request to take necessary action and copy of this letter was also sent to respondent. It is the claim of the respondent that the aforesaid letters and papers have not reached at Kolkata and neither fir has been registered at Kolkata nor investigation has been undertaken by it.

7. The respondent filed Civil Suit No. 40/2011 before Hon"ble Calcutta High Court on 24.2.2011 against the petitioner and some other persons with a prayer to declare the aforesaid agreement to sell null & void and in para No. 16 and 30 of the plaint, it was specifically averred that the aforesaid agreement has been executed at the registered and corporate office of the petitioner situated at Kolkata, although it was also alleged that the agreement is a forged and fabricated document. It was also averred in the plaint that the petitioner and other persons named in the plaint entered into criminal conspiracy at Kolkata and as a result thereof, the aforesaid agreement was executed. It is to be noted that in the plaint no where it was averred that the agreement was executed at Jaipur.

8. In the aforesaid suit vide order dated 25.2.2011, the petitioner company was directed by the Hon"ble Court to produce the original agreement before it on or before 28.2.2011.

9. FIR No. 67/2011 came to be registered on 26.2.2011 at Police Station Vidhyakpuri, Jaipur at the instance of one Sushil Soni for offence u/s. 379 IPC with the allegation that the original agreement along with some other luggage was stolen by an auto-rickshaw driver. After investigation, final report was filed by the police in the court concerned but it is said that protest petition against the same is still pending.

10. Inventory dated 12.3.2011 was prepared by the aforesaid receiver as appointed by the Hon"ble Calcutta High Court in compliance of the orders subsequently passed by it in the aforesaid arbitration proceedings.

11. As the petitioner failed to produce original agreement before Hon"ble Calcutta High Court in the aforesaid civil suit, order dated 14.6.2011 came to be passed restraining the petitioner to place further reliance on the agreement.

12. The aforesaid arbitration case was dismissed in default by the Hon"ble High Court vide order dated 24.11.2011.

13. Another fir No. 180/2011 was registered at Police Station Vidhyakpuri, Jaipur on 2.6.2011 at the instance of Shri Sushil Soni in which initially negative final report was proposed with the finding that although luggage of the informer was found to be stolen but the accused could not be traced. It is said that the FR so proposed was not approved by the higher police officer and investigation is still

pending.

14. The respondent complainant filed complaint No. 361/2013 before Additional Chief Judicial Magistrate No. 2, Jaipur Metropolitan, Jaipur on 11.11.2013 against petitioner and other accused for offences under sections 420, 467, 468, 471 read with section 120-B IPC with the allegation that in pursuance of their criminal conspiracy the aforesaid agreement to sell was forged and fabricated at Jaipur. The complaint was sent for investigation under section 156(3) Cr.P.C. to Police Station Jalupura, Jaipur and FIR No. 267/2013 was registered on 7.12.2013 for the aforesaid offences and investigation commenced. After initial investigation, investigating Officer found that Police Station Jalupura does not have jurisdiction to investigate the case as the offences for which the fir has been registered were not committed within the local limits of the police station and with this finding negative final report No. 2/2014 was prepared on 21.1.2014 but the aforesaid finding of the Investigating Officer was not approved by the Higher Police Officers and the final report was re-opened and further investigation in the case was undertaken and subsequently investigation was handed over to CID (CB). Presently, the investigation is in the hands of CID (CB). It is to be noted that in the present complaint facts about complaint dated 12.2.2011, findings about lack of jurisdiction and communication between DCP (N), Jaipur and Commissioner of Police, Kolkata and between complaint and DCP were not mentioned.

15. Representation was submitted by the petitioner on 10.3.2014 before the investigating agency with the averment that the present police station has no jurisdiction to investigate the matter.

16. Notice dated 21.5.2014 was issued by the CID (CB) to petitioner calling him to appear before it so that he may be interrogated.

17. During the course of investigation, it has been found that the stamp paper used for preparation of the agreement to sell was issued by the treasury concerned to a stamp vendor on 30.3.2010. It is pertinent to note that the date of agreement is 28.11.2009.

18. Representation dated 22.1.2014 to Commissioner of Police, Jaipur and further representation dated 9.2.2014 to ADGP (Crime) Rajasthan, Jaipur was made by the respondent for a fair, impartial and efficient investigation in the case.

19. In compliance of the order dated 29.5.2014 passed by this court, I.O. of the case has filed her affidavit dated 9.7.2014 regarding jurisdiction of the present police station to investigate the case.

3. It was submitted by the learned counsel for the petitioner that every offence is local in the sense that it should be investigated by that police station only within whose local limits it was committed and similarly it can be inquired into and tried by the court within whose local jurisdiction it was committed. It was further submitted that as per sub-section (1) of Section 156 of Cr.P.C., an officer-in-charge of a police station may investigate a cognizable offence which a court

having jurisdiction over the local/area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of the Code. According to the learned counsel, the local limits of a police station to investigate an offence is directly interlinked with the local limits of the court within whose jurisdiction the offence has been committed i.e. if an offence has been committed within the local limits of a particular court, a police station falling within that limit only has jurisdiction to investigate that offence and to file report u/s. 173 Cr.P.C. in that court. It was also submitted that according to section 177 of the Code, an offence shall ordinarily be inquired into and tried by a court within whose jurisdiction it was committed. In the present case it is an admitted fact even by the respondent that the agreement to sell in dispute was executed at the registered office of the petitioner company situated at Kolkata and thereof each and every offence for which the aforesaid fir has been registered being committed at Kolkata, court at Kolkata within the local limits of whose jurisdiction the office is situated has jurisdiction to inquire into and try the offences so committed and similarly only that police station has jurisdiction to investigate the case within whose jurisdiction the office is situated i.e. the offences have been committed. It was pointed out that all the offences for which the fir has been registered completed as soon as in pursuance of the criminal conspiracy agreement in dispute was executed and the arbitration proceedings on that basis were initiated in the Hon"ble Calcutta High Court. It was contended that none of the offences can be said to be covered u/s. 178 of the Code, nor it can be said that the offences for which the fir has been registered are such offences which completed only by reason of anything which has been done and by some consequence which was ensued as provided u/s. 179 of the Code. It was submitted that merely because firs No. 67/2011 and 180/2011 were registered at Police Station Vidhyakpuri Jaipur, it cannot be said that the police station at Jaipur has jurisdiction to investigate the case. According to the learned counsel for the petitioner theft of the original agreement is an entirely separate and independent incident unconnected with the preparation of the forged and fabricated document. In the facts and circumstances of the case it cannot be said that the offences for which the present fir has been registered completed only when the original agreement was stolen or theft of the same was in continuation of its preparation and fabrication. It was also submitted that similarly allegation of attempt on the part of one of the accused to take forceful possession of some part of the property in dispute also at the most is a separate and independent incident for which separate fir can be lodged but merely by that reason it cannot be said that the offence of criminal conspiracy, cheating and forgery can be investigated by the police station within whose local jurisdiction the building in question is situated. It was emphasized that as per Clause (1) of Section 461 of the Code, if any Magistrate not being empowered by law, tries an offender, his proceedings shall be void. According to the learned counsel as the investigation of an offence is interlinked with its trial, investigation without jurisdiction is bad in law. It was contended that although section 462 of the Code cures defect in a finding, sentence or order caused only due to lack of local jurisdiction of the

court but it is a post trial cure and it does not mean that the objection on the ground of local jurisdiction cannot be raised at the initial stage. It was submitted by the learned counsel for the petitioner that if an objection on the ground of lack of local jurisdiction is raised at the initial stage of the inquiry, trial or other proceedings, the same cannot be overruled by saying that it is curable as provided u/s. 462 of the Code. It was also contended that although sub-section (2) of Section 156 of the Code provides that no proceedings of a police officer shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate but if the objection about the lack of power to investigate the case on the part of the police officer is raised at the initial stage of the investigation, the same cannot be discarded taking shelter under this provision. It was further pointed out that the present police station cannot have jurisdiction merely by the reason that the property in question is situated within its local jurisdiction or there is possibility that as a consequence of the agreement to sell the respondent may be divested from its title. It was contended that although it is well settled legal position that to determine the place of offence allegation made in the complaint/fir are to be looked into taking them to be true and correct but at the same time it is also well settled legal position that admitted documents of the complainant are also relevant to ascertain the place of offence and in the present case admissions made by the respondent in the plaint filed by him before the Hon'ble Calcutta High Court, it is clear that all the offences for which the fir has been registered were committed at Kolkata and they completed as soon as the agreement was executed or at the most when arbitration proceedings were initiated on this behalf. It was further submitted that initially a written complaint was filed by the respondent on 12.2.2011 on which preliminary inquiry was conducted by the present police station although without registration of formal fir and report dated 9.3.2011 was prepared to the effect that no offence has been committed within its local jurisdiction and on the basis of this report, a letter came to be sent by DCP, Jaipur (North) to Police Commissioner, Kolkata with a request to register fir and undertake investigation in the case and respondent himself sought details of the letter so that he can pursue the matter at Kolkata. In the present fir also after initial Investigation final report was proposed to be filed in the court concerned on the ground that offences have not been committed within its local limits but later on under pressure and influence of the respondent, the investigating agency changed its stand and investigation was handed over to CID (CB) and now its stand is that local police has jurisdiction to investigate the case for the reasons recorded in the affidavit filed by the Investigating Officer in compliance of the order passed by this court. It was emphasized that in the present case petitioner by way of this petition has challenged the jurisdiction of the police station at the very initial stage of the investigation, the entire exercise of investigation will stand futile if the court in which the report u/s.173 Cr.P.C. is filed finds that it has no jurisdiction to inquire into or try the offences.

4. In support of his submissions, learned counsel for the petitioner relied upon

the cases of *Lilade Sitade Pavaiya and Others Vs. State of Gujarat and Others*, (1983) CriLJ 934 : (1982) 2 GLR 734 , *T.P. Nandakumar Vs. State of Kerala and Another*, (2008) CriLJ 298 : (2007) 4 ILR (Ker) 154 : (2008) 1 KLJ 269 and *Ganga Prasad Jaiswal Vs. Chhotelal Jain*, AIR 1963 MP 128 : (1963) CriLJ 445 : (1963) ILR (MP) 559 : (1963) JLJ 170 .

5. On the other hand, it was submitted by learned counsel for the respondent that on the basis of complaint dated 12.2.2011 filed by the respondent, fir was registered neither at Jaipur nor at Kolkata, although it is said that the same was forwarded to the Commissioner of Police, Kolkata and even till date no fir has been registered there and therefore, it is irrelevant that on preliminary enquiry it was found by Police Station Jalupura that no offence has been committed within its local limits. It was further submitted that even in the suit filed by the respondent it has been averred that the forged and fabricated documents have been prepared at Kolkata and various other places both within and out side the jurisdiction of the Hon''ble Calcutta High Court and part of cause of action has arisen within the jurisdiction of the Hon''ble High Court and part of cause of action has arisen out side its jurisdiction and therefore, it cannot be said that in the present fir, for the first time, it has been alleged that the agreement in dispute was executed at Jaipur. It was also submitted that on the basis of the forged and fabricated agreement, the accused are invading or interested to invade rights of the respondent in the property which is situated at Jaipur. It was submitted that in pursuance of the criminal conspiracy already hatched at Kolkata for preparation of a forged and fabricated agreement to sell, the accused further entered into criminal conspiracy and to avoid production of the original agreement in compliance of the order dated 25.2.2011 passed by the Hon''ble Calcutta High Court, a false fir No. 67/2011 was lodged at Police Station Vidhyakpuri, Jaipur and this act on the part of the accused is in continuation of the offences already committed by them and therefore, present Police Station also has jurisdiction to investigate the case. It was emphasized not only that, the accused further entered into criminal conspiracy and in pursuance of the same, they attempted to take forceful possession of the property in dispute on 12.3.2011 in the presence of the receiver appointed by Hon''ble Calcutta High Court and by that reason also local police station has jurisdiction. A report about this incident also was immediately lodged by the respondent at Police Station Jalupura, Jaipur and the receiver also has made reference of it in the inventory dated 12.3.2011 prepared by him. It was submitted that if in pursuance of criminal conspiracy various acts are done in a series by the accused constituting different offences and they are committed at more than one place then all the offences can be investigated at any of such places. Inviting attention of the court towards section 179 of the Code, it was submitted that 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. According to learned counsel for the respondent, even if for the sake of

arguments, it is admitted that the agreement in dispute was prepared at Kolkata but even then as the accused in consequence thereof and on its strength attempted to take forceful possession of the property at Jaipur, the court at Jaipur also has jurisdiction to inquire into and try all the offences and by that reason police station within whose local limit property is situated has jurisdiction to investigate the same. It was pointed out that if in one series of acts so connected together as to form the same transaction more offences than one are committed by more than one person, all of them can be charged with and tried together in one trial for every such offence. On the basis of sub-section (2) of Section 156 of the Code, it was submitted that no proceedings of a police officer at any stage can be called in question on the ground that the case was one which such officer was not empowered to investigate and therefore, this court is not empowered u/s.482 Cr.P.C. of the Code to quash the fir, merely by the reason that offences for which the fir has been registered were not committed within the local limits of the police station who has undertaken the investigation. According to learned counsel, the words "at any stage" includes initial stage of the investigation also.

6. In support of his submissions, learned counsel for the respondent relied upon the cases of Rajiv Modi Vs. Sanjay Jain and Others, (2009) CLT 1509 : (2009) 9 JT 690 : (2009) 9 SCALE 535 : (2009) 13 SCC 241 : (2009) 11 SCR 34 , Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, AIR 1999 SC 3596 : (1999) 3 Crimes 157 : (1999) 3 CTC 537 : (1999) 2 DMC 512 : (1999) 8 JT 25 : (1999) 6 SCALE 323 : (1999) 8 SCC 728 : (1999) 3 SCR 348 Supp : (1999) AIRSCW 3607 : (1999) 8 Supreme 447 , State of M.P. Vs. Suresh Kaushal and Another, (2001) 2 DMC 102 : (2001) 4 SCALE 233 : (2003) 11 SCC 126 , Gajjan Singh Vs. State of Madhya Pradesh, AIR 1965 SC 1921 , Trisuns Chemical Industry Vs. Rajesh Agarwal and others, AIR 1999 SC 3499 : (1999) CriLJ 4325 : (1999) 6 JT 618 : (1999) 5 SCALE 609 : (1999) 8 SCC 686 : (1999) 2 SCR 686 Supp : (2000) 1 UJ 392 : (1999) AIRSCW 3492 : (1999) 8 Supreme 53 , Naresh Kavarchand Khatri Vs. State of Gujarat and Another, AIR 2008 SC 2180 : (2008) 8 SCC 300 : (2008) AIRSCW 3340 : (2008) 4 Supreme 410 and few more judgments of different High Courts.

7. I have considered the submissions made on behalf of the respective parties and the material made available on record as well as the case diary and the relevant legal provisions and the case law.

8. Sub-section (1) of Section 156 of the Code of Criminal Procedure provides that any officer in charge of a police station may, without order of the Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII, whereas according to sub-section (3), no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. As per section 177 of the Code

every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Section 179 Cr.P.C. provides that 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.

9. Learned Single Bench of Gujarat High Court in case of *Lilade Sitade Pavaiya and Ors. vs. State of Gujarat & Ors.* (supra) has held that:-

"Under Section 156(1) two statutory requirements] are provided by the legislature before the concerned officer can investigate into a cognizable case -(i) he must be the officer-in-charge of the concerned police station and (ii) he must have territorial jurisdiction to investigate into the concerned cognizable case meaning thereby that the officer-in-charge of the police station must have competences to investigate into the offence and which competence can be culled out from the nature of the jurisdiction of the court over the concerned local area as can be gathered from the relevant provisions of Chapter XIII. In other words, local jurisdiction of the concerned court over the area in which the alleged offence is committed would run parallel to the corresponding local jurisdiction of the concerned police station situated in that area to investigate into the offence. Thus, both the jurisdiction of the concerned police station officer to investigate into the offence and the concerned court to take cognizance of the offence are conterminous and they operate in the same field. The jurisdiction of the officer-in-charge of the police station to investigate into the given offence is of the same nature as the corresponding jurisdiction of the concerned court to take cognizance of the concerned offence."

10. Learned Single Bench of Kerala High Court in the case of *T.P. Nandakumar Vs. State of Kerala* (supra) has held as under:

"Territorial jurisdiction of a police station for the purpose of investigation is co-extensive with that of appropriate Court which is competent to try the offence. Section 177 Cr.P.C. enjoins that every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction such offence was committed. Where a complaint alleging the commission of a cognizable offence is made before the Station House Officer of a Police Station which does not have territorial jurisdiction over the place of crime he cannot refuse to record the information. If he does so, it would amount to dereliction of duty. The proper course in such a casern would be to record the information and forward the same to the police station having jurisdiction."

11. In the case of *Ganga Prasad Jaiswal vs. Chhotelal Jain* (supra), learned Single Bench of Madhya Pradesh High Court has held as under:

"It is not every consequence which may flow from a crime which confers jurisdiction on the Court within whose local limits it ensued. The word "consequence" occurring in S. 179 connotes only that consequence which is an

integral part of the offence and not a consequence which is not material to the culpability of the accused in relation to that particular offence."

12. In the case of *Rajiv Modi vs. Sanjay Jain* (supra), Hon"ble Supreme Court has held that:

"To constitute the territorial jurisdiction, the whole or a part of "cause of action" must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts."

13. It was further held that:

"The court on the basis of the averments made in the complaint, if it is prima facie of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact."

14. In the case of *State of Bombay Vs. Narothamdas Jethabai and Another*, AIR 1951 SC 69 : (1951) 2 SCR 51 , Hon"ble Supreme Court observed that the jurisdiction of the courts depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters.

15. The case of *Satvinder Kaur vs. State (Govt. of N.C.T. of Delhi)* (supra) was a case in which fir was lodged at Delhi for offences under sections 406 and 498A IPC and the same was challenged by the accused on the ground of lack of territorial jurisdiction to investigate the case as according to him the offences for which fir has been registered were committed at Patiala.

16. Hon"ble Supreme Court on the basis of facts of the case held that the Police Station at Delhi also has jurisdiction to investigate the matter as consequences of the offences ensued at Delhi also. It was held by the Hon"ble Court that "It is true that territorial jurisdiction also is prescribed under sub-section (1) of Section 156 of the Code to the extent that Officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate." It was further held that if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the fir and/or investigate it. It was also held that Section 177 provides for "ordinary" place of inquiry or trial. Section 178 inter alia

provides for place of inquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in other and where it consisted of several acts done in different local areas, it could be inquired into or tried by a court having jurisdiction over any of such local areas. In the facts and circumstances of the case, the Hon''ble Court held that at the stage of investigation, it cannot be held that SHO does not have territorial jurisdiction to investigate the crime. In the light of the facts of the case it was stated by the Hon''ble Court that in view of section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be inquired into or tried by a court having jurisdiction over any of such local areas. It was also observed that appreciation of the evidence is the function of the courts when seized of the matter. At the stage of the investigation, the material collected by an Investigating Officer cannot be judicially scrutinized for arriving at a conclusion that police station officer of particular police station would not have territorial jurisdiction.

17. It is well settled legal position that to quash an fir or a complaint, the High Court would have to proceed on the basis of the allegations made in the complaint or documents accompanying the same per se and also the facts which are not in dispute or which are admitted by the complainant himself and at this stage it has no jurisdiction to examine the correctness or otherwise of the allegations.

18. In the case of State of M.P. Vs. Suresh Kaushal & Anr. (supra), the order of framing of charge by the trial court was quashed and set aside by the High Court solely on the ground that the Jabalpur court has no territorial jurisdiction to try the case. The order of the High Court was challenged by the State of Madhya Pradesh before Hon''ble Supreme Court. It was found by the Hon''ble Court that the complaint contains the allegation that the complainant was subjected to physical torture when she was in the family way and she had to be taken back to her parental house at Jabalpur. The miscarriage took place while she was at Jabalpur. In this fact situation in the light of Section 179 of the Code of Criminal Procedure, it was held by the Hon''ble Supreme Court that the Jabalpur court also has jurisdiction to try the case. According to the Hon''ble Court as per Section 179, the offence is triable where act is done or consequence ensues.

19. Similarly, in the case of Gajjan Singh vs. State of Madhya Pradesh (supra), the question of applicability of Section 179 of the Code of Criminal Procedure was considered and it was observed that when a person is an accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

20. In the case of Trisuns Chemical Industry vs. Rajesh Agarwal & Ors. (supra), it

was observed by Hon"ble Supreme Court that it is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal courts in enquiries and trials. That chapter contains provisions regarding the place where the enquiry and trial are to take place. Power of the court to take cognizance of the offence is laid in Section 190 of the Code. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

21. In the case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, AIR 2004 SC 4286 : (2004) CriLJ 4180 : (2004) 2 DMC 371 : (2004) 6 JT 497 : (2004) 7 SCALE 374 : (2004) 7 SCALE 26 : (2004) 8 SCC 100 : (2004) 3 SCR 604 Supp : (2004) 2 UJ 1435 : (2004) AIRSCW 4788 : (2004) 6 Supreme 207 , it was held by Hon"ble Supreme Court that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed is the general rule. But if no part of cause of action for initiation of proceedings against accused arose within the local jurisdiction of the Magistrate, he had no jurisdiction to deal with the matter. It is to be noted that the case before the Hon"ble Court was for offences u/s. 498-A and 406 IPC and Hon"ble Court found that in the facts and circumstances of the case, no part of cause of action arose within the local jurisdiction of the court in which the complaint was filed and cognizance was taken. The order of cognizance was quashed and set aside by the court only on the ground that the Magistrate concerned had no jurisdiction to deal with the matter.

22. In para 8 of the case of Naresh Kavarchand Khatri Vs. State of Gujarat and Another, AIR 2008 SC 2180 : (2008) 8 SCC 300 : (2008) AIRSCW 3340 : (2008) 4 Supreme 410 , Hon"ble Supreme Court has observed "whether an officer in charge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the officer in charge of the police station concerned which has jurisdiction to investigate in relation thereto." It is thus clear that according to Hon"ble Supreme Court jurisdiction to make investigation on the part of a police station is directly interlinked with the place where the trial for that offence can be held by the court. If the court has no jurisdiction to try offence, the police Station falling within the local limits of that court also has no jurisdiction to investigate the matter.

23. Similarly, in the cases of *Amarendu Jyoti Vs. State of Chattisgarh*, (2014) 9 SCALE 162 , *Bhura Ram and Others Vs. State of Rajasthan and Another*, AIR 2008 SC 2666 : (2008) CLT 934 : (2008) CriLJ 3494 : (2008) 4 JT 611 : (2008) 150 PLR 531 : (2008) 4 SCALE 666 : (2008) 11 SCC 103 : (2008) AIRSCW 4449 and *Manish Ratan and Others Vs. State of M.P. and Another*, (2007) 1 DMC 41 : (2006) 9 JT 630 : (2007) 148 PLR 67 : (2006) 11 SCALE 34 : (2007) 1 SCC 262 : (2006) 8 SCR 226 Supp , the question of territorial jurisdiction of court to take cognizance for offences u/s. 498A and 406 IPC was raised and the order of taking cognizance was held to be without jurisdiction on the ground that no cause of action arose within the territorial jurisdiction of the court concerned.

24. In the case of *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, AIR 1955 SC 196 : (1955) CriLJ 526 : (1955) 1 SCR 1150 , a Bench of three Hon'ble Judges of Supreme Court has observed that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation as provided in Section 190 Criminal P.C. is the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. It was further held that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby. It was also held that it does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.

25. In the case of *Mrs. Sushmita Majoomdar vs. State of Haryana* (Cr. Misc. Petition No. 26744/2007 decided on 4.11.2008), learned Single Bench of Punjab & Haryana High Court held that the Police at Rohtak has jurisdiction to investigate the case on the ground that the consequences of the offences committed by the accused were ensued at Rohtak also as he was to return the cheques at Rohtak or in any case was required to account for these cheques at Rohtak.

26. In the case of *Pramod Kumar Tekriwal vs. State of West Bengal* (WP No. 11366/2014 decided on 29.4.2014), learned Single Bench of Calcutta High Court held as under:

"Whether a police officer attached to a particular police station has the power to investigate an fir, which is registered on a written complaint, is primarily to be determined based on the allegations levelled in the complaint. If the crime appears from the complaint to have taken place within the jurisdictional limits of one particular police station, ordinarily, it is an officer attached to that police

station who an investigate upon an entrustment being made in that behalf by the officer-in-charge and there can be no doubt on its score. However, in a given case where the complaint reveals a series of criminal acts, in continuation of the initial act of crime, giving rise to the allegation of distinct offences having been committed within the jurisdictional limits of different police stations, the investigation into the complaint could be conducted by an officer attached to either of a police station depending upon where the fir is registered."

27. In the facts of the case, Hon"ble High Court held that the police station at Nasik has also jurisdiction to investigate the case as the complainant received threatening and abusive phone calls at Nasik. For his conclusion, Hon"ble Court referred sections 177, 178 and 182 of the Code.

28. It is well settled legal position that section 179 of the Code of Criminal Procedure is applicable only to such an offence which is constituted by the act of the accused and its consequence and such consequence is an integral part of the act of the accused and without such consequence the act only is not an offence. Where the consequence is not an ingredient of the offence, it will not be consequence by reason of which a person is an accused for an offence within the meaning of section 179. So far as the words "in the course of the same transaction" are concerned, they have a definite meaning. Where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction.

29. As per clause (1) of Section 461 Cr.P.C., if any Magistrate, not being empowered by law in this behalf, tries an offender, his proceedings shall be void, whereas section 462 provides that no finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions, division, district, sub-division, or other local area, unless it appears that such error has in fact occasioned a failure of justice. In the case of Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another, AIR 1966 SC 128 : (1966) CriLJ 106 : (1965) 2 SCR 894 , it was held by Hon"ble Supreme Court that: "Mere fact that the proceedings were taken in a wrong place would not vitiate the trial unless it appears that it has occasioned a failure of justice." What this provision cures is a finding, sentence or order passed by a court without there being an objection being raised on the ground of lack of territorial jurisdiction but that does not mean that the court may proceed with the trial even if the objection on the ground of lack of jurisdiction is raised at an initial stage by saying that such defect is curable u/s. 462 Cr.P.C. This provision cannot be invoked to overlook a material irregularity pertaining to local jurisdiction, when it is brought to the notice of the court before commencement of the trial. Essentially, this provision has only a post trial application and it cannot mean that objection at an initial stage also is not sustainable.

30. The legal position emerging out from the aforesaid discussion may be stated

in brief as follows:

(1) The general principle of law is that a crime is local and the jurisdiction to try a person for an offence depends upon the crime having been committed within the local area of such jurisdiction.

(2) Jurisdiction is primarily to be decided on the basis of allegations made in the complaint/fir and for that purpose, they are to be taken at their face value and considered to be true and correct. For the purpose of determination of jurisdiction documents accompanying the complaint are also relevant and must be taken into consideration. The admitted facts on the part of the complainant are also relevant for that purpose.

(3) If the objection regarding lack of territorial jurisdiction is raised at the initial stage, they same must be considered and decided first and it cannot be left to be determined at the end of the trial after the parties led their evidence.

(4) A finding, sentence or order of a criminal court cannot be set aside in appeal or revision etc. by a higher court merely by the reason that the court had no [territorial jurisdiction but such finding, sentence or order can be set aside by the higher court when it is satisfied that a failure of justice, in fact, has occasioned thereby.

(5) What section 462 Cr.P.C. cures is a defect occasioned by the reason of mere lack of territorial jurisdiction and it being occasioned without any objection at an earliest occasion but if the objection on the ground of lack of local jurisdiction is raised without any undue delay at the initial stage of the proceedings, the same cannot be overruled by saying that the defect pointed out on the ground of lack of local jurisdiction is curable under this provision.

(6) Local jurisdiction of a police station to investigate a cognizable offence as conferred u/s. 156(1) of the Code is co-extensive and directly interlinked with the local jurisdiction of a court to inquire into or try such an offence as provided under various sections of Chapter XIII of the Code.

(7) As provided u/s. 177 of the Code, every offence is to be inquired into or tried by a court within whose local jurisdiction it was committed. Corollary to it, such offence is to be investigated by a police station within whose local jurisdiction it was committed.

(8) As per section 178 of the Code, when it is uncertain in which several local areas the offence was committed or where an offence was committed partly in one local area and partly in another or where an offence is a continuing one and continues to be committed in more local areas within one or where the offence consists of several acts done in different areas, the offence can be inquired into or tried by a court having jurisdiction over any of such local areas. In such a case, the offence can be investigated by a police station falling within any of such local areas i.e. any one of several police stations located in such local areas can investigate the offence.

(9) According to section 179 of the Code, if an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence can be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. On similar footing, such offence can be investigated either by a police station where such thing was done or by a police station where the consequence ensued.

(10) Where the complaint alleging commission of a cognizable offence is made before the Station House Officer (SHO) of a police station which does not have territorial jurisdiction over the place of crime, he cannot refuse to record the information. The proper course in such a case is to record the information and forward the same to the police station having jurisdiction.

(11) If no part of cause of action for initiation of proceedings against the accused has arisen within the local jurisdiction of the Magistrate, he has no jurisdiction to deal with the matter. Thus, to have jurisdiction to deal with the offence in any local areas, it is necessary that at least some part of cause of action must have arisen within the local jurisdiction of that court. Similarly, to have power to investigate an offence, it is necessary that some part of cause of action must occur within the local jurisdiction of the police station intending to undertake investigation.

31. It is now to be seen whether the offences or any of them for which the present fir has been registered falls within the purview of section 177 of the Code or any one or more of the remaining sections of Chapter XIII of the Code. In the arbitration proceedings initiated by the petitioner before Hon"ble Calcutta High Court it was specifically claimed by it that the agreement in dispute was executed between the parties at the registered office of the petitioner at Kolkata. In the written complaint dated 12.2.2011, by which respondent claimed for the first time that the agreement is a forged and fabricated document, there is not even a whisper that agreement in question has been prepared or executed at Jaipur. As already stated, after preliminary inquiry it was found by the same police station that none of the offences has been committed within the local limits of that police station. It has not been denied by the prosecution that the letters dated 17.3.2011 and 10.12.2012 were written by DCP Jaipur (North) to Commissioner of Police, Kolkata with a request to register fir and undertake investigation in the matter as the police at Jaipur has no territorial jurisdiction to conduct investigation. At that stage, even respondent was also convinced that the case is not liable to be investigated by the Rajasthan police and that is why the letter dated 23.11.2011 came to be written by him to DCP, Jaipur (North) so that he can pursue the matter with Kolkata police. In the plaint filed by the respondent before the Calcutta High Court at more than one place it was clearly averred by him that the accused entered into conspiracy at Kolkata and in pursuance of the same, agreement to sell in dispute was forged and fabricated at Kolkata. Although, in the plaint it was also averred that part of cause of action has arisen outside the territorial jurisdiction of the High Court but it was not stated, it is

because the agreement has been prepared and executed at a place outside the jurisdiction of the Hon"ble court. In the plaint, it was not averred that any part of cause of action has arisen at Jaipur or the document in question has been forged and fabricated at Jaipur. First time in the present fir, it has been claimed by the respondent that the agreement was executed at Jaipur but no details about this claim has been stated in the fir. During the course of hearing of this petition also, learned counsel for the respondent could not satisfy the court how and on what basis the respondent is now claiming that the agreement was forged and fabricated at Jaipur and therefore, in the over all facts and circumstances of the case, merely on the basis of statement made in the present fir/complaint, it cannot be accepted that the document in dispute was prepared and forgery was committed at Jaipur. It is not the case of the respondent himself that the present police station has jurisdiction to investigate the case by the reason that the property for which the agreement has been executed is situated within its local limits. Otherwise also, the offence for which the fir has been registered cannot be investigated by a police station merely by the reason that the property in respect of which the said offences are alleged to have been committed falls within its local limits. The offences are in respect of the document so prepared.

32. So far as FIR No. 67/2011 is concerned, although it was lodged by one of the accused with the allegation that the original agreement was stolen at Jaipur on 26.2.2011 by an auto rickshaw driver but merely by that reason by any stretch of imagination, it cannot be accepted that the offences for which the present fir has been registered come within the purview of section 178 and/or section 179 of the Code. It cannot be said that the offence u/s. 379 IPC allegedly committed on 26.2.2011 at Jaipur is part and parcel of the offences u/s. 420, 467, 468 and 471 read with section 120-B IPC already committed at Kolkata. It cannot be said that the offences for which the fir has been registered were committed partly within the local jurisdiction of a police station at Kolkata and partly within the local jurisdiction of the present police station. It cannot also be said that the offences for which the fir has been registered are continuing one and they continued to be committed when offence u/s. 379 IPC was committed at Jaipur.

33. I am of the considered view that the offences were complete as soon as the document was prepared and at the most when copy of it was produced before the High Court in arbitration proceedings. If for the sake of arguments, it is admitted that to avoid production of the original agreement before the High Court, the accused further entered into criminal conspiracy and a false fir has been lodged at Jaipur, even then it cannot be accepted that it is one of the several acts done in different local areas constituting the offences for which the fir has been registered. The offence u/s.379 IPC has not been committed by the accused who have fabricated the agreement in dispute but by an unknown auto rickshaw driver. It is entirely a separate and distinct offence not connected with the offences already committed at Kolkata. If after investigation finally it is found that the fir No. 67/2011 has been falsely lodged, even then at the most the informer of that fir can be separately prosecuted for offence u/s. 182 IPC.

34. Similarly, it cannot also be accepted that the offences for which the fir has been registered is an offence by the reason that some acts to constitute the offences were done at Kolkata and they attained completion when some consequence ensued at Jaipur when the aforesaid fir for offence u/s. 379 IPC was lodged. As already stated, section 179 Cr.P.C. is applicable only to such offence which is constituted by the act of the accused and its consequence and such consequence is an integral part of the act of the accused and without such consequence the act only is not an offence. In the present case, the act of the accused to prepare the forged and fabricated agreement constituted the offences for which the fir has been registered and even in absence of fir No. 67/2011, they were complete.

35. Similarly, alleged attempt on the part of one of the accused to take forceful possession of some part of the property in dispute on 12.3.2011 in the presence of court appointed receiver is at the most a separate and distinct offence for which a separate fir can be lodged at Jaipur as the offence was committed there, but this act on the part of the accused also by any stretch of imagination cannot be held to come within the four corners of section 178 and 179 of the Code. It cannot be said that this offence is an integral part and parcel of the offences already committed at Kolkata and it was committed in a series in the course of the same transaction. For an offence to have been committed in the course of same transaction, it has to be shown that there was proximity of time or place or unity of purpose and design or continuity of action in respect of the series of acts. In the present case the offences for which the fir has been registered were complete when document was prepared at Kolkata and at the most when copy of it was produced before the High Court in arbitration proceedings. It is during the course of preparation of inventory by the receiver that one of the accused allegedly attempted to take forceful possession of the property on 12.3.2011, the offence was committed. It is true that prior preparation of the agreement prompted the accused to take forceful possession of the property and it may be treated to be in consequence of the acts of the accused which were done by them at Kolkata but it cannot be said that this act on the part of the accused at Jaipur is an integral part of the acts at Kolkata to constitute the offences.

36. In the facts and circumstances of the case, I am of the firm view that all the offences for which the present fir has been registered were committed only and only at Kolkata and not even a part of cause of action arose at Jaipur so as to empower the court at Jaipur to have territorial jurisdiction to inquire into or try them and for the same reasoning the present police station or any other police station at Jaipur has no local jurisdiction to investigate the case.

37. Now, what would be the appropriate order to be passed by this court. Although, the petitioner has prayed for quashing of the fir but the legal position appears to be that fir should not be quashed for the lack of territorial jurisdiction but the same should directed to be forwarded to the police station having territorial jurisdiction. In the present case also, it would be appropriate to pass a

similar order.

38. Consequently, the petition is partly allowed and the respondent State of Rajasthan is directed to forward the FIR No. 267/2013 registered at Police Station Jalupura to Commissioner of Police, Kolkata with a request to take necessary steps for registration of fir at the police station having territorial jurisdiction and to undertake investigation for the alleged offences. It is made clear that merits of the allegations made in the fir have not been touched by this court and observation, if any, on the merits of the offences has been made only for the limited purpose of territorial jurisdiction of the present police station to investigate the offences.