Sachin Hindurao Waze Vs Union Of India & Ors.

Court: Delhi High Court

Date of Decision: Oct. 7, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 14, 21, 226(1), 226(2), 227
Unlawful Activities Prevention Act, 1967 â€" Section 15(1), 16, 18, 20, 45, 45(1)
Indian Penal Code, 1860 â€" Section 34, 120B, 201, 286, 302, 465, 473, 506(2)
Indian Explosives Substance Act, 1908 â€" Section 4(A)(B)(i)
National Investigation Agency Act, 2008 â€" Section 6(5), 8

Hon'ble Judges: Mukta Gupta , J; Anish Dayal, J

Bench: Division Bench

Advocate: Santosh Paul, M.Shetty, Chaitanya Sharma, S.V. Raju, Kirtiman Singh, Madhav Bajan, Yash Upadhyay, Akshai Malik, Sandeep K.Sadawarte, Shrikant, Khawar Saleem

Final Decision: Dismissed

Judgement

Anish Dayal, J

1. The petitioner has filed this Writ Petition praying for striking down Section 15 (1) of the Unlawful Activities Prevention Act, 1967 (UAPA) for

being ultra vires Articles 14 and 21 of the Constitution of India or read it down to save it from being rendered unconstitutional; and to quash and set

aside the impugned order dated 2nd September, 2021 passed by the respondent no. 1 (Union of India through Under Secretary, CTCR Division,

Ministry of Home Affairs) and grant consequential reliefs.

2. A preliminary objection was raised that this Court would not have territorial jurisdiction over the subject matter of the present petition in light of

relief prayed for. Accordingly, this Court on 3rd March, 2022 directed the parties to first address this Court on the following issue:

Ã¢â‚¬Å“Whether an order rendered by Central Government granting sanction under provision of Section 45 of the Unlawful Activities

Prevention Act, 1967 can be assailed standalone per se and if so, where would the jurisdiction/ proceedings lie?Ã¢â‚¬â€‹

Submissions on behalf of the Petitioner

3. Mr. Santosh Paul, Senior Advocate addressing arguments on behalf of the petitioner canvassed that the impugned order dated 2nd September, 2021

granting sanction for prosecution under Section 45 (1) UAPA for prosecuting the accused persons (which included the petitioner charge-sheeted

under Sections 16, 18 & 20 of UAPA) was passed on the basis of recommendations received by Respondent no. 1 from the Authority constituted

under Ministry s order No Ã¢â‚¬" 11034/1/2009/IS-IV dated 3rd July, 2015 consisting of a retired judge and retired Law Secretary for making an

independent review of the evidence gathered in course of investigation. Learned Senior Counsel highlighted the fact that the Authority gave its report

to Respondent no.1 on 28th August, 2021 within a day of having received the investigation report from the National Investigation Agency (NIA)

together with a list of documents collected and witnesses examined during the course of the investigation. Therefore, addressing specifically on the

issue of territorial jurisdiction, the learned senior counsel asserted that since this decision which it was seeking to quash and set aside was taken by the

Respondent no. 1 in New Delhi based upon the report of the Authority also based in New Delhi, this Court would have jurisdiction to hear the matter.

4. Learned Senior Counsel relied upon the judgment of this Hon ble Court in Malini Mukesh Vora Vs. Union of India & Ors., 2009 SCC Online Del

1776 where this Court on a question of territorial jurisdiction held that Article 226 (1) empowered the High Court to issue writ to any person, authority

or Government located within its territorial limits irrespective of where the cause of action arose while Article 226 (2) permitted the High Court to

issue writs to persons, authorities or Governments located beyond the territories with respect to which it exercises jurisdiction, provided a cause of

action in whole or in part arose within those territories. This Court had further held that Article 226 (2) supplements and does not supplant Article

226(1). Learned Senior Counsel highlighted the view expressed in para 19 and 20 of Malini Mukesh Vora (supra) where this Court stated that

distinction has to be drawn between a challenge to a legislation and a challenge to an executive action. While in Kusum Ingots & Alloys Ltd. Vs.

Union of India, (2004) 6 SCC 254, the challenge was to an exercise of legislative power, the challenge in this case was to an executive action and

therefore it would have to be assessed differently for the purposes of territorial jurisdiction.

5. Learned Senior Counsel for the petitioner further relied upon the decision of this Court in Sonu Sardar Vs. Union of India, 2016 SCC Online Del

6206 in a challenge to orders of the President on India and Governor of Chhattisgarh rejecting the mercy petition of the petitioner therein on account

of delay, non application of mind etc. for a sentence of death, this Court held that since material to be examined was advice of the Cabinet and since

all documents pertaining to the same were in Delhi and the decision was taken in Delhi, the convict being dominus litis was free to invoke the

jurisdiction of this Court and this Court was vested with jurisdiction to entertain the petition.

6. Learned Senior Counsel for the petitioner further relied upon a judgment of a special bench of 5 Judges of this Court in Sterling Agro Industries Ltd

Vs. Union of India and Ors, 2011 SCC OnLine Del 3162 when this Court held that even if a miniscule part of cause of action arises within the

jurisdiction of this Court, writ petition would be maintainable before this Court.

7. However, this Court noted that at para 33 (a) of the reported judgement in Sterling Agro Industries (supra) this Court concluded that a cause of

action cannot be totally based on the situs of the tribunal /appellate authority/ revisional authority while completely ignoring the concept of forum

conveniens. This Court had stated in para 32 that: Ã¢â‚¬Å“the principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause

of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the court to entertain the matter.

While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum

conveniens.Ã¢â‚¬ Accordingly, this Court posited the senior counsel for the petitioner that based upon application of principles as cited in judgments noted

above, simply because the impugned decision of 2nd September, 2021 by Respondent no. 1 was passed in Delhi (based on the Authority s report

which was also in Delhi), would this Court be obligated to accept jurisdiction and ignore of the principle of forum conveniens. Prima facie, application

of the principle of forum conveniens would render the High Court of Bombay as the appropriate court considering that the substantive offence, the

incident and the ongoing investigation and trial were all at Mumbai. Therefore, except for the sanction order under Section 45 (1) of UAPA being

passed by Respondent no. 1 and the recommending Authority being in Delhi (by virtue of the statutory mandate), all other aspects of the alleged

offence and the investigation were outside the jurisdiction of this Court.

Submissions on behalf of Respondent no. 1

8. Countering the submissions advanced on behalf of the petitioner, the learned Additional Solicitor General Mr. S.V. Raju submitted that there were

three incidents which form basis of this investigation viz. (i) recovery of the vehicle on 25th February, 2021; (ii) the threat letter dated 7th February,

2021 and; (iii) the murder of the co-accused on 4th March, 2021. The learned ASG submitted that the NIA was investigating each of these aspects

since 8th March, 2021 in Mumbai, the charge-sheet was filed in Mumbai, the cognizance after the sanction order was taken in Mumbai and the trial

also was being conducted in Mumbai.

9. In response to the submission of the respondent that since the sanction order was made in Delhi and therefore this Court would have territorial

jurisdiction, the learned ASG placed reliance on Parkash Singh Badal v State of Punjab, (2007) 1 SCC 1 wherein the Hon ble Supreme Court held that

issue alleging non-application of mind sanctioning prosecution is a matter to be adjudicated by the trial court. Reliance was also placed on Central

Bureau of Investigation & Ors. Vs. Pramila Virendra Kumar Agarwal & Anr., (2020) 17 SCC 664, para 11 and Central Bureau of Investigation Vs.

Ashok Kumar Aggarwal, (2014) 14 SCC 295 para 58, both decisions relying upon Dinesh Kumar Vs. Chairman, Airport Authority of India & Anr.

(2012) 1 SCC 532. He submitted that any error if committed by the trial court can be challenged before the High Court of Bombay. The learned ASG

further submitted that the issue of sanction by the Respondent no. 1 was not significant any more since pursuant to that the trial court in Mumbai had

already taken cognizance. Hence the if this Court would at all consider quashing the sanction (on the plea of the petitioner) then issue of cognizance

would also be in its ambit. He further submitted that the challenge by the petitioner in this writ petition was effectively on non-application of mind while

issuing sanction for prosecution under Section 45(1) of the UAPA based upon recommendations by the constituted Authority and not due to an

inherent jurisdictional issue in the sanctioning order. As regards reliance of the senior counsel for the petitioner on Kusum Ingots Vs. Union of India

(supra), the learned ASG drew this court s attention to para 26 and 27 where the Supreme Court is categorical in its decision that as regards a

legislative act, the place where such an action is taken does not necessarily robe the court with territorial jurisdiction. The learned ASG further

submitted that applying the principle of forum conveniens Mumbai was the natural jurisdiction since the petitioner was resident of Maharashtra and

therefore there was no reason why he would find it convenient to challenge the order of sanction before this Court.

10. Rebutting the contention of learned ASG, learned senior counsel for the petitioner reiterated the contentions that he had advanced in detail in his

opening arguments. He underscored para 27 of the decision in Kusum Ingots (supra) where the Hon ble Supreme Court held that a challenge to a

decision by a court/tribunal/executive authority under a statue would give jurisdiction to that place since that would constitute a part of a cause of

action. The senior counsel contended that since the order according sanction was an executive order made in Delhi in accordance with the provisions

of UAPA, a part of cause of action arose in the territorial jurisdiction of this Court and therefore this writ petition would be maintainable. He further

reiterated reliance on the decision in Sterling Agro Industries (supra) and Sonu Sardar (supra) to state that the issue of forum conveniens had been

considered in those decisions. Specifically relying upon the decision of Sonu Sardar (supra) the senior counsel for the petitioner canvassed that since

all the material was located in Delhi when according sanction for prosecution, it was natural for the writ petitioner to invoke the territorial jurisdiction

of this Court.

Analysis

11. Pursuant to an assessment of documents on record, appreciation of submissions advanced by the parties through respective senior counsels and

the learned ASG, this Court is of the considered opinion that this Court would not have territorial jurisdiction over the subject matter of the present

petition for inter alia the following reasons:

(i) The relief sought in the writ petition is firstly relating to the unconstitutionality of Section 15 (1) of UAPA; and secondly to quash and set aside the

impugned order dated 02nd September, 2021 passed by the Respondent No.1 according sanction for prosecution under Section 45(1) UAPA for

prosecuting the accused (including the petitioners and others) in crime No. RC-01/2021/NIA/ME-I and taking cognizance of the said offence by the

Court of competent jurisdiction. However, this determination is restricted to the threshold issue of territorial jurisdiction of this Court as encapsulated in

the order of 3rd March 2020 (extracted above in para 2).

(ii) A perusal of the FIR No.35/2021 dated 25th February, 2021 registered at PS Gam Devi for offences punishable under Section 286/465/473/506

(2)/120 B IPC and Section 4 (A)(B)(i) of the Indian Explosives Substance Act, 1908 would categorically indicate that all events forming the basis of

the FIR had occurred in Mumbai e.g. seizure of the vehicle Mahindra Scorpio bearing registration No. MH-01-DK-9945, discovery of the explosives

in the sack found in the vehicle and discovery that the registration of the number plate was in the name of an employee of Reliance Company. The

NIA, vide RC-01/2021/NIA/Mumbai based on the said FIR, registered the case in Mumbai for further investigation. A further FIR No.12/2021 was

registered on 7th March, 2021 for offences punishable under Sections 302/201/34/120B IPC for the murder of Mr. Mansukh Hiren in Mumbai.

Accordingly, vide order dated 20th March, 2021, the Ministry of Home Affairs, Government of India directed the NIA to take up the investigation

under Section 6 (5) read with Section 8 of the NIA and investigate the offence vide FIR No.12/2021 as well, being connected with the earlier offence.

Reference in this regard is made to the order of the Ministry of Home Affairs, Government of India dated 21st May, 2021. The writ petition is further

appended with various other documents relating to police custody, remand of the petitioner in Mumbai including applications for bail, a copy of charge

sheet dated 3rd September, 2021, documents relating to the proceedings before the Special Judge, NIA at Mumbai, all proceedings being in Mumbai.

It is therefore quite indubitable that the alleged offence, the subsequent complaint and investigation, the FIRs and the RC, filing of the charge sheet

and all proceedings relating thereto including custody of the accused have all taken place in Mumbai.

(iii) The only peg on which the petitioner wishes to hang and support its plea before this Court is on the order of sanction which was by the Authority

constituted under the order of the Home Ministry No.11034/1/2009/IS-IV dated 3rd July, 2015. Therefore, even as per the petitioner, in the full canvas

of the matter the only event which has happened in the jurisdiction of this Court is this impugned decision. In the considered opinion of this Court the

mere fact that the authority which awards sanction for prosecution under UAPA is located in Delhi, will not give this Court the jurisdiction to grant

relief to quash that order sans the fact that all possible ingredients, events and proceedings in relation to the said matter are taking place in Mumbai.

(iv) The contention of the learned ASG that finally the cognizance of the charge-sheet have been taken now by the Special Court in Mumbai and trial

has to commence thereafter, which trial court would be competent to also adjudicate upon the challenge that the petitioner may have to the sanctioning

order, also finds favor with this Court.

12. On a broad holistic assessment of decisions cited by the petitioner would show that there are practically two elements which have to be considered

by any court while accepting jurisdiction to decide a writ petition under Article 226 of the Indian Constitution Ã¢â‚¬" firstly, if any part of the cause of

action arises within its territorial jurisdiction; and secondly if the said court is the forum conveniens. Only a mere shred or an iota of a cause of action

potentially clothing a particular High Court with jurisdiction [per Article 226(2) of the Constitution of India] to adjudicate a writ petition, ought not to

encourage a court to accept such jurisdiction completely divorced and dehors an assessment of forum conveniens. This has been categorically

articulated in decisions of this Court. A Special Bench comprising 5 judges of this Court [Chief Justice Dipak Misra, Vikramajit Sen, J. A.K. Sikri, J.

Sanjiv Khanna, J. and Manmohan, J.] in Sterling Agro (supra) after traversing the law relating to territorial jurisdiction in context of Article 226 of the

Constitution of India emphasized that the High Court must not only advert to the existence of a cause of action but also remind themselves about the

doctrine of forum conveniens also. In this regard the following paragraphs of the judgment of the Special Bench are instructive which are reproduced

as under for easy reference:

Ã, Ã¢â‚¬Å“30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black s Law Dictionary, forum

conveniens has been defined as follows: ""The court in which an action is most appropriately brought, considering the best interests and

convenience of the parties and witnesses.

31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the

parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law

relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary

aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots

(supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while

opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction

of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising

jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum

conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has

expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated

as the forum conveniens. We are unable to subscribe to the said view.

(emphasis added)

Accordingly, in para 33 of the reported judgement in Sterling Agro Industries (supra) this Court concluded that a cause of action cannot be totally

based on the situs of the tribunal /appellate authority/ revisional authority while completely ignoring the concept of forum conveniens, and that the High

Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

13. Reference was also made to a decision of the Division Bench of this Court in Sonu Sardar Vs. Union of India (2016) SCC Online Del 6206 where

this Court while noting the decision in Sterling Agro (supra) examined issue of jurisdiction of this Court in a matter where the petitioner had impugned

the orders of the President of India and the Governor of Chhattisgarh rejecting the mercy petition of the petitioner who had been sentenced to death.

In Sonu Sardar (supra), this Court while adverting to the concept of cause of action drew a distinction between a situation where criminal investigation

was pending and where criminal proceedings had attained finality and the challenge was merely to an executive action, as in the case of a mercy

petition. Para 21 of the judgment of this Court in Sonu Sardar (upra) is extracted under for ease of reference:

Ã¢â‚¬Å“The concept of cause of action in respect of criminal proceedings cannot apply sensu stricto to the present proceedings as the same are

not a continuation of the judicial proceedings but premised upon executive orders. Accordingly, the judgments of the Supreme Court in

Navinchandra N. Majitha (Supra) and Manoj Kumar Sharma (Supra) do not come to the aid of the applicant as in both the cases the

criminal investigation was pending; while the present proceedings have arisen as a consequence of executive actions and by no means can

be said to be an extension of the criminal proceedings, which have attained finality.Ã¢â‚¬â€‹

Thereafter, this Court noted the decision in Kusum Ingots (supra) and Sterling Agro (supra) on the application of principle of forum conveniens and

stated as under:

Ã¢â‚¬Å“27. In view of the aforegoing, it is clear that the courts should generally decide disputes upon which they have jurisdiction. They may

decline to exercise such jurisdiction only if there are compelling reasons for not doing so. In doing so, the courts must apply a balancing

test and reject to exercise jurisdiction only if there are compelling reasons keeping the Latin maxim Judex tenetur impertiri judicium suum in

mind.Ã¢â‚¬â€‹

14. Learned counsel for the petitioner relied upon the reasoning by this Court in para 30 of Sonu Sardar (supra) that since material to be examined is

the advice tendered by the Cabinet and all documents and records were in Delhi, the decision was taken in Delhi and therefore, this Court has

jurisdiction to entertain the writ petition. However, this Court notes that this reasoning was premised upon the observation in para 29 of the said

decision where this Court noted that the scope of judicial review in rejection of mercy petitions is limited and it extends only to the material upon which

the decision is based, i.e., whether all relevant material was considered before arriving at a conclusion. This decision will not come to the aid of the

petitioner, since in the considered view of this Court, firstly this Court drew a distinction between a petition challenging an issue relating to criminal

proceedings which were ongoing as opposed to a situation of a mercy petition where criminal proceedings had attained finality and what has to be

examined in isolation was the executive action; secondly, this Court was fully cognizant of the law laid down in the line of decisions from Kusum

Ingots (supra), Ambica Industries Vs. Commissioner Of Central Excise, (2007) 6 SCC 769, Sterling Agro (supra) where the court is obliged to

consider not only existence of part of cause of action but also balancing it by applying the principle of forum conveniens.

15. The concept of forum conveniens is well articulated in the said decision and therefore this Court finds no basis or occasion to take a divergent

view from the decision taken by the special Bench comprising of five judges of this Court. Having considered the facts and circumstances of the

matter and the obvious forum conveniens for the petitioner, being a resident of Mumbai, seeking relief relating to proceedings underway in Mumbai,

the special courts and authorities investigating and adjudicating the matter located in Mumbai, this Court finds no reason to clothe itself with territorial

jurisdiction to adjudicate the relief sought in this petition.

16. Considering that prayer (b) of this writ petition [quashing of the impugned order of the Respondent no. 1] is the dominant and effective relief for

which the petitioner seeks immediate redress, the generic prayer (a) [regarding unconstitutionality of provisions of UAPA] can be considered as

concomitant and conjunctive to prayer (b), as framed by the petitioner in the writ petition. Therefore, there is no reason why prayer (a) should be

severed and considered in isolation to prayer (b).

Conclusion

17. For the aforesaid reasons, this Court is of the considered view that the order passed by Respondent no. 1 granting sanction for prosecution under

Section 45 (1) of the Unlawful Activities (Prevention) Act, 1967 would have to be considered along with and in conjunction with investigations and

proceedings which it relates to and therefore the courts at Mumbai would have the natural and logical jurisdiction to decide issues challenged in this

writ petition. The issue framed by this Court on 3rd March, 2022, is answered accordingly.

18. In light of the foregoing, the Writ Petition is therefore dismissed for lack of territorial jurisdiction to adjudicate the relief sought.

CRL.M.A. 959/2022 CRL.M.A. 960/2022 CRL.M.A. 1449/2022, CRL.M.A. 1450/2022, CRL.M.A. 2095/2022, CRL.M.A. 2096/2022

19. In view of dismissal of the writ petition, the aforementioned applications are disposed of as infructuous.