

(2006) 11 RAJ CK 0009

Rajasthan High Court

Case No: Criminal Miscellaneous Petition No. 1110 of 2006

Tripti Vyas

APPELLANT

Vs

M/s Ahlers India Pvt.
Ltd.

RESPONDENT

Date of Decision: Nov. 7, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20, 21
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 2(e), 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Hans Kumar Sharma, for the Appellant; Arun Sharma, Public Prosecutor for State and Mr. Anup Singh, for the Respondent

Final Decision: Dismissed

Judgement

Harbans Lal, J.

The instant petition u/s 482 Cr.P.C. has been filed by the accused-petitioner and seeks quashing of the criminal proceedings pending in the court of learned Metropolitan Magistrate, Mumbai in Criminal Case No. 6740/55/05 "Ahlers India P. Ltd v. Tripti Vyas" for the offence u/s 138 of the Negotiable Instruments Act, 1881 (here-in-after referred to in short as "the Act of 1881"). Briefly stated, the relevant facts giving rise to this petition and necessary for its disposal are that M/s. Vivek Harsh International is a proprietorship firm. The petitioner is its proprietor. The firm is engaged in the export of different sized cobbles/stones worldwide for the last over decade for which it hires services of different transporters/ shippers to supply the cargo/material etc. to number of national as well as international destinations regularly. The accused-petitioner entered into a written agreement with M/s. Jos Marris, Belgium on 11.03.2005 for export of certain kinds of material herein it was stipulated that the entire cargo would be supplied through the

non-petitioner No. 1 for which empty containers would be made available/provided at Jaipur. It was in fact a Letter of Credit. Later on, specific agreement was entered into between the parties for supply of 58 empty containers at ICD-Kanakpura, Jaipur on March 28,2005 for which security cheques worth Rs. 16 lacs were given, but only 10 containers were provided on 02.05.2005 at ICD-Kanakpura, Jaipur while other 10 empty containers were provided at Mindra Port, Gujarat. So, the petitioner instructed its banker to stop payment of the security cheques which were presented by non-petitioner No. 1. On dishonour of the cheques, a complaint was filed in the aforesaid court u/s 138 of the Act of 1881. The case of the accused-petitioner is that payment of Rs. 6 lacs was made to the non-petitioner No. 1 towards the charges of 20 containers which were supplied vide an on-line money transfer via Standard Chartered Bank which fact was concealed in the complaint. The court took cognizance against the petitioner and issued process for securing his presence in the said court, even though the said court had no jurisdiction to entertain the complaint as no part of the cause of action had arisen in its local jurisdiction in as much the agreement was entered into between the parties at Jaipur, the same was to be carried out at Jaipur and the cheques were also to be encashed at Jaipur. Hence, the petitioner has invoked the inherent jurisdiction on this Court to quash criminal proceedings initiated against him pursuant to the aforesaid complaint and pending in the court of learned Metropolitan Magistrate, Mumbai.

2. After notice, the non-petitioner No. 1 has inter-alia prayed for vacation of the interim stay order passed by this Court.

I have heard at length Learned Counsel for the parties and have perused the relevant documents placed before me as, well as the case law cited at the bar.

3. Relying upon [Union of India \(UOI\) and Another Vs. Ladu Lal Jain](#), Bahrein Petroleum Company Ltd. v. P.J. Pappu & Another, AIR 1996 SC 634, [Navinchandra N. Majithia Vs. State of Maharashtra and Others](#), , [Kusum Ingots and Alloys Ltd. Vs. Union of India \(UOI\) and Another](#), and [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), , Learned Counsel for the petitioner has contended that the court at Mumbai having no jurisdiction to entertain the complaint in question, has exceeded its Jurisdiction which tantamount to abuse of the process of the court and calls for and justifies exercise of inherent powers u/s 482 Cr.P.C. to quash the complaint and criminal proceedings initiated and pending against him in the court at Mumbai. Learned Counsel for non-petitioner No. 1 has vehemently opposed this contention on the ground that this petition before this Court is not maintainable as held in *Azizabai & Anr. v. St. Mother Oil Mills, Channamanglam (Kerala)*, 1996 (2) Cri 21 (Karnataka). He has also submitted that all the authorities referred to and relied upon by the Learned Counsel for the petitioner deal with civil or writ jurisdiction of the subordinate and the High Court. These do not lay down that a High Court can exercise jurisdiction u/s 482 Cr. P.C. over a subordinate court situate in the jurisdiction of any other High Court.

4. Learned Counsel has further contended that only such High Court would have jurisdiction to entertain an application u/s 227 of the Constitution of India within whose jurisdiction the order of the Subordinate Court has been passed as held in [Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others](#), . He has also submitted that the complaint was filed in the aforesaid court at Mumbai because banker"s advice was received by non-petitioner No. 1 at its Mumbai office. Therefore, part of cause of action arose within the jurisdiction of that court So, this High Court has no jurisdiction over the Court situate in the State of Maharashtra. Otherwise also, it is well settled that the challenge to jurisdiction of a court will be raised before and decided by the concerned court.

5. I have carefully considered the rival submissions made at the bar.

6. It is an undisputed fact that the petitioner has sought quashing of the criminal proceedings pending by way of criminal complaint Case No. 6740/5 5/05 before the court of learned Metropolitan Magistrate, Mumbai which is within the territorial and supervisory jurisdiction of High Court of Maharashtra are not of the Rajasthan High Court.

7. The question for consideration is whether this Court can quash the complaint or the criminal proceedings pending on the file of the criminal court situate within the territorial and supervisory jurisdiction of the High Court of another State i.e. Mumbai ?

8. As rightly contended by the Learned Counsel for the non-petitioner No. 1, all the authorities referred to and relied upon by the Learned Counsel for the petitioner deal with the civil or writ jurisdiction of the subordinate or the High Court and do not lay down that the High Court of a particular State can quash complaint or criminal proceedings pending on the file of the criminal court situate within the territorial and supervisory jurisdiction of the High Court of another State in exercise of its inherent powers and Section 482 Cr.P.C. The facts of the case referred to on behalf of the petitioner are clearly distinguishable from the facts of the instant case.

9. In the case of "Azizabai & Anr." (supra), the Karnataka High Court has clearly held that the High Court of one State cannot quash the complaint or the proceedings pending on the file of a court situated outside its territorial jurisdiction in exercise of the inherent powers u/s 482 Cr.P.C. In that case, two complaints u/s 138 of the Negotiable Instruments Act, 1881 were filed before the court of Judicial 1st Class Magistrate, Court II, Kochhi. The petitioners sought quashing of the complaints and further proceedings initiated pursuant thereto. The office raised an objection that the petitions u/s 482 Cr.P.C. were not maintainable in the Karnataka High Court. So, the petitions were posted for orders on the office objection. It was contended by the Learned Counsel for the petitioners that the words used namely "to prevent abuse of the process of any court" in Section 482 Cr.P.C. show that the Karnataka High Court had power to quash the proceedings pending on the file of "any court" anywhere in India not necessarily in the Court subordinate to the High Court of Karnataka. The Karnataka High Court held that the

definition of the High Court, according to Section 2(e) of the Cr. P.C. is in relation to any State, the High Court for that state. This shows that the territorial jurisdiction of the High Court is restricted to the territory of a particular State. It was further held that Section 482 Cr.P.C. saves the inherent power of the High Court, i.e. the High Court of that particular State. It does not confer any new power of the High Court, but merely recognizes and preserves the inherent powers previously possessed by it. Therefore, the words "any Court" used in Section 482 Cr. P.C. must be understood to mean a Criminal Court situate within the territorial and supervisory jurisdiction of the: High Court of a particular State. The petitions were, therefore, dismissed as not maintainable. The facts of that case are akin to and identical to the facts of the present case. The law laid down in the aforesaid authority squarely applies to the facts of the present case. I am in respectful agreement with the view taken by the Karnataka High Court and in this view of the matter, therefore, the present petition is also liable to be dismissed as not maintainable.

10. In *Union of India & Another v. Shri Ladulal Jain (supra)*, the suit was instituted by the plaintiff-respondent against the Union of India and the Northern Frontier Railway represented by the General Manager, having its Head quarters at Pandu for the recovery of a sum of Rs. 8,250/- on account of non-delivery of the goods which had been consigned to the plaintiff firm. The consignment of goods consisted of 134 bags of rice and was booked from Kalyanganj Station for carriage to Kanki Station, but was not delivered. Hence, the suit wherein the Apex Court held that the court of the Subordinate Judge of Gauhati within whose territorial jurisdiction the headquarters of one of the railways run by the Union was situated, had the jurisdiction to entertain the suit.

11. In *Bahrein Petroleum Company Ltd. v. P.J. Pappu & Another (supra)*, the provisions of Section 20 and 21 of the CPC were considered.

12. In *Navinchandra N. Majithia v. State of Maharashtra, (2000 (2) ACJ 401 (S.C.))*, it was held that the writ can run beyond territorial jurisdiction of the High Court, if cause of action arises within its territorial jurisdiction. In that case, a writ petition seeking inter-alia relief of quashing of FIR was filed in the Mumbai High Court. The High Court had dismissed it on the ground of want of territorial jurisdiction. It was held that the decision of High Court was unsustainable. But it is obvious from a perusal of the judgment that the Hon"ble Apex Court was dealing with the scope and extent of the writ jurisdiction of the High Court. A Constitution Bench of the Apex Court had held in the case of [Election Commission, India Vs. Saka Venkata Subba Rao and](#), that the power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond its territories and the person or authority to whom the High Court is empowered to issue writs must be amenable to the jurisdiction of the High Court either by residence or location within its territories subject to its jurisdiction. This decision of the Constitution Bench necessitated the Parliament to bring the Fifteenth Amendment to the Constitution of India by which clause (1A), was added to Article 226 which was subsequently renumbered as clause (2) by the Constitution Forty Second Amendment which runs as under:

The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power notwithstanding that, the seat of such Government authority or the residence of such person is not within those territories.

13. The cases referred to by the Learned Counsel for the petitioner being clearly distinguishable from the present case on facts are of little avail to the petitioner.

14. In view of the fore-going discussion, therefore, this petition being not maintainable in this Court, deserves to be and is hereby dismissed.