

(2001) 07 KL CK 0053

High Court Of Kerala

Case No: Criminal R.P.No. 418 of 2000

Mohandas

APPELLANT

Vs

Jayarajan

RESPONDENT

Date of Decision: July 3, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 180, 181
- Evidence Act, 1872 - Section 92
- Penal Code, 1860 (IPC) - Section 34, 417, 420

Citation: (2001) 2 ALT(Cri) 213 : (2001) CriLJ 3853 : (2001) 3 ILR (Ker) 129 : (2001) 4 RCR(Criminal) 519

Hon'ble Judges: R. Rajendra Babu, J

Bench: Single Bench

Advocate: M.N. Sukumaran Nayar, P.V. Kunhikrishnan and Mary Anne Joseph, for the Appellant; Alan Papali, J. Jose and O.V. Maniprasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Rajendra Babu, J.

Jayaran, the first respondent herein, filed the complaint before the Judicial First Class Magistrate Court-IV, Kozhikode alleging the commission of offences under Ss. 417 and 420 read with S. 34 IPC by the revision petitioners/accused. The court below took cognizance of the above offences, issued summons to the accused, the revision petitiones and they had entered appearance. On the side of the complainant PWs. 1 to 3 were examined. When the case reached the stage of framing charge, the revision petitioners (accused) filed CMP No. 3193/2000 under S. 182 Cr.P.C. raising a contention that the court below had no jurisdiction to try the above offence. After hearing both sides, the court below found that the court had jurisdiction to try the offence and accordingly the above CMP was dismissed. The above order is under

challenge in this revision at the instance of the accused.

2. Heard the learned senior counsel for the petitioners and the learned counsel for the respondent.

3. The facts of the case in brief are the following: "Brinda Estate", having an extent of 728.44 acres of plantation with coconut, cardamom, pepper, etc. in Madurai District, owned by 34 person including the petitioners, was offered for sale. The complainant was interested in the purchase of the above estate. It was alleged in the complaint that he had informed his desire to purchase the estate and the petitioners have personally come to Calicut to finalise the transaction and the complainant had agreed to purchase the estate and to execute a sale agreement at Cumbum where all the 34 owners of the estate reside. The accused had made the complainant to believe that the accused had the authority from all the owners to finalise the deal and the complainant took the same for granted and a sale agreement was drafted at Calicut and a token nominal advance of Rs. 10,000/- was paid to the accused as conclusion of the deliberations regarding the price and other formalities and agreed to execute an agreement by the first week of April, 1994 at Cumbum. Accordingly, on 8.4.1994 the complainant had gone to Cumbum and an advance amount of Rs. 5 lakhs was paid towards part of sale consideration and an agreement was signed in the presence of the witnesses. Later, the accused had shown reluctance in performing their part of the contract and the situation worsened and it was revealed that the accused and entered into the agreement for sale without the knowledge of the other co-owners and that the complainant was fraudulently induced to part with Rs. 5 lakhs as advance and thus deceived. Accordingly, the complaint was filed before the court below alleging the commission of offence under Ss. 417 and 420 read with S. 34 IPC.

4. The learned senior counsel for the petitioners submitted that no transaction had occurred within the jurisdiction of the court below at Calicut and as such the court below had no jurisdiction to entertain the above complaint and the allegation of preparing the draft of the agreement and the payment of Rs. 10,000/- towards token advance at Calicut were made only to attract jurisdiction for the court below to entertain the complaint. It was further submitted that the agreement for sale (Annexure B) was entered into between the parties at Cumbum and as per the above written agreement an amount of Rs. 5 lakhs was paid at the time of executing the agreement and that the above agreement did not disclose of the payment of Rs. 10,000/- at Calicut or the preparation of a draft of the agreement and any evidence for the purpose of altering or varying or adding or contradicting or subtracting from the terms of the written agreement was hit by S. 92 of the Evidence Act and as such the allegation in the complaint that Rs. 10,000/- was paid at Calicut as part of the sale consideration cannot be considered at all.

5. The learned counsel for the respondent (complainant) submitted that the "Brinda Estate" was offered for sale and even prior to the execution of Annexure B

agreement at Cumbum the accused were contacted through the agents of the complainant regarding his desire to purchase the estate, inspections were made by visiting the estate and there were discussions and negotiations between the parties and the execution of Annexure B agreement at Cumbum was the result of the above earlier negotiations and the decisions. It was further submitted that the decision for purchase of the estate was taken at Calicut where the petitioners made the complainant to believe that they had the authority, on behalf of all the co-owners, for entering into an agreement for the sale of the properties and the complainant had been deceived at Calicut and thereby the above court had jurisdiction to entertain the complaint wherein part of the alleged offence had been committed. In this context, it would be relevant to consider the allegations in the complaint. In paragraphs 3 and 4 of the complaint it was alleged:

"On the complainant informing the Accused through agents about his desire to purchase the estate necessary inspections were held, proper enquires made and the Accused personally came over to Calicut to finalise the transactions. It was agreed that the complainant would buy the estate and sale agreement would be signed at K.G. Patti, Cumbum, Madurai Dt. where all the 34 owners of the estate reside.

4. The accused person made the complainant believe that they have authority to finalise the deal of the estate from all its owners and the Complainant took the same for granted. Subsequently, a sale agreement was drafted at Calicut and a token nominal advance of Rs. 10,000/- was received by the accused, as conclusion of the deliberations regarding price and other formalities for smooth transfer of Ownership. This was concluded at the Complainant's business premises at Vyapara Bhavan, Calicut on 30.3.1994. The accused returned to K.G.Patti, Cumbum directing the Complainant to reach Cumbum during the first week of April, 1994 for signing a formal deed of sale agreement. On 8.4.1994 the complainant went to Combum, an advance for 5,00,000/- was paid to the Accused who received the same and an agreement which was got ready by the Accused was signed in the presence of witnesses".

It is settled law that the complaint has to be read as a whole and for the sake of deciding the question of jurisdiction a single sentence alone cannot be taken out of the entire allegations and be interpreted. The allegations as a whole would clearly reveal that negotiations had taken place at Calicut and the decision for the purchase of the Estate was taken by the complainant at Calicut as he was made to believe at Calicut that the petitioners had the authority of the rest of the owners of the property to enter into the dealings for sale of the property. It was only later came to know that the petitioners did not have the authority of the rest of owners and in fact the deception starts when the complainant had been deceived by making him believe that the petitioners had the authority to enter into an agreement for sale of the property on behalf of other co-owners also. The evidence of PW 1 (complainant) also is to that effect. The Supreme Court, in [M/s. Medchl Chemicals and Pharma P.](#)

[Ltd. Vs. M/s. Biological E. Ltd. and Others,](#) held that the intention of deceive should be there even at the time of making the promise for attracting an offence under S. 420 IPC. The nature of allegations in the complaint would indicate that the complainant had a case that the petitioners had the intention to deceive even from the initiation of the transaction regarding the sale of the property. As such the argument advanced by the learned counsel for the respondent that part of the offence had been committed at Calicut has only to be accepted. Even if the allegation in the complaint that Rs. 10,000/- was paid as a token advance at Calicut is discarded and found untrue, the other allegations in the complaint and the evidence would reveal that part of the alleged offence had taken place within the jurisdiction of the court below at Calicut.

6. S. 177 Cr.P.C. says that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. S. 178 Cr.P.C. deals with the jurisdiction of the courts when it is uncertain as to the local area where an offence has been committed or part of the offence has been committed. S. 178 Cr.P.C. reads:

"178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas".

S. 182(1) Cr.P.C. reads:

"Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person."

Chapter XIII Cr.P.C. deals with the jurisdiction of Criminal Courts in inquiries and trial. S. 177 Cr.P.C. stipulates General Rule of jurisdiction whereas Ss. 178 to 182 Cr.P.C. embodies the exceptions. The general principle of law is that all crimes are to be tried by the court within the jurisdiction in which the offence had been committed. But, S. 178 Cr.P.C. says that when it was uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another area, the court having jurisdiction over any one of such local area has the jurisdiction to try the offence. It means that the cases can be tried before either of the courts and it is an exception to the General Rule envisaged in S. 177 Cr.P.C. S. 182 Cr.P.C. is more specific regarding governing of the

venue of trial in cases of cheating leading to delivery of goods. But, it does not say that the court wherein the property has been delivered alone have the jurisdiction to try the offence. It would indicate that the Court, within the jurisdiction of which the property had been delivered also have jurisdiction to try the offence. By specifying the jurisdiction of a court by S. 182(1) Cr.P.C. the jurisdiction conferred on different courts in view of S. 178 Cr.P.C. is not at all constrained or taken away. When part of the offence had been committed within the jurisdiction of one court and the remaining part within the jurisdiction of another court, both the courts have jurisdiction to try the offence in view of S. 178 Cr.P.C. The provisions of the statute should be read as to harmonise one another and one Section cannot be used to defeat another. The court has to give a harmonious construction to both the provisions so that the full effect may be given to both without one excluding the other there being no seeming conflict or repugnancy in the two. When it was uncertain in which of several local areas an offence was committed or the offence has been committed partly within one local area and partly in another local area, both courts have jurisdiction to try the offence. An identical matter had been considered by the Delhi High Court in [Bhola Nath Arora and Another Vs. The State](#), There the Delhi High Court held:

"In a case of cheating it could not be contended that S. 182 being a more specific provision would only govern the venue of trial in cases of cheating leading to delivery of goods and as such it would exclude the general principle of jurisdiction under S. 177. On a mere juxta-position of the two Ss. 177 and 182 it is manifest that the latter provisions supplements and does not supplant the general rule. Therefore it is the duty of the court to give a harmonious construction to both the provisions so that full effect may be given to both without one excluding the other, there being no seeming conflict or repugnancy in the two. Hence, when S. 177 conveys a clear meaning it is not permissible to construe the same with reference to another Section ie. 182 for the purpose of controlling or diminishing the efficacy of the former."

In [K. Satwant Singh Vs. The State of Punjab](#), the question that had come up before the Supreme Court was whether the case can be tried either before the Lahore Court or before the Simla Court where the misrepresentation by the accused was at Simla and the consequence was at Lahore as the Government of Burma was induced by the misrepresentation to deliver property at Lahore. There the Supreme Court held that the offence of cheating by the accused could have been tried either at Lahore or at Simla. In [Satvinder Kaur Vs. State \(Govt. of N.C.T. of Delhi\) and Another](#), the Supreme Court held:

"A reading of Ss. 177 and 178 Cr.P.C. would make it clear that S. 177 provides for "ordinary" place of enquiry or trial. S. 178, inter alia, provides for place of enquiry 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 another and

where it consisted or several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas."

In view of S. 178 (a) and (d) Cr.P.C. when it is uncertain in which of several local areas an offence was committed or where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas. In the decision reported in [Navinchandra N. Majithia Vs. State of Maharashtra and Others](#), the Supreme Court had considered whether the Bombay High Court had jurisdiction to quash the complaint filed in Shillong. There the Supreme Court held that as part of the cause of action had occurred within the jurisdiction of the Bombay High Court, the Bombay High Court had the jurisdiction to quash the proceedings.

7. As part of the offence, namely, deception was practised and inducement was made to the respondent for entering into an agreement relating to the purchase of the estate at Calicut, the Court below has jurisdiction to take cognizance of the offence and to try the case in view of S. 178 Cr.P.C. The court below had considered the entire aspects in the proper perspective and dismissed the petition. The court below had not committed any error so as to interfere with the order under revision. Hence, this revision has only to be dismissed.

8. In the result, this revision petition is dismissed.