IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL WRIT PETITION NO.1549/2001

Date of Decision : April 29, 2003

DR. SUBRAMANIAN SWAMY .... Petitioner

Through Dr. Subramanian Swamy with Ms. Roxna Swamy, advs.

$ UNION OF INDIA AND OTHERS … Respondent

Through Mr. K.K. Sud, Additional Solicitor General with

Mr. Neeraj Jain, adv for UOI.

Mr. Suman Batra with Mr. Lov Malhotra, advs for IDBI.

Mr. Viraj Datar with ms. Kalyani Vadlamani for SEBI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.K. SIKRI, J

i. Whether Reporters of local papers may be allowed to see the judgement.
ii. To be referred to the reporter or not ?
iii. Whether the judgement should be reported in the Digest ?

B.C. PATEL, C.J. (Oral)

The petitioner has filed this petition inter alia praying that the offences disclosed in the petition be expeditiously investigated and / or adjudicated in accordance with law and to appoint Special Commissioners and / or officers of unimpeachable integrity and competence to investigate and report to this Hon'ble Court.

It may be noted that the violations are attributed to respondent no.5 for which it is specifically stated that respondent no.4 was required to take action in accordance with law but has failed to take action. Respondent no.4 as well as respondent no.5 have their offices at Mumbai. Learned counsel for respondent no.5 submitted that the address is wrongly given, it had its registered office at Jamnagar and the said company has merged with Reliance Industries Limited which has its registered office at Mumbai. The offences are alleged to have been committed by respondent no.5 which are made punishable under the Companies Act.

Section 10(1)(a) of the Companies Act, being relevant is reproduced hereunder :-

> "the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent of which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2);"

Thus keeping this aspect in mind, the court which is required to be approached, is the court where the registered office of the company is situate. In the instant case it is the case of the petitioner that offences are committed under the Companies Act. On the record, list has been placed pointing out that the offences which are alleged to have been committed have been compounded for which compounding fees have also been imposed. This is so stated in the affidavit dated 10th March, 2003 filed by Mr. B.K. Bansal, Joint Director (Inspection), the details of which, are given in Annexure 1. This position is also accepted by the petitioner. However, it is contended by him that there are some offences which are compoundable. Section 621 A (1) is required to be

perused for that purpose. Section 621 A(1) reads as under : -

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by –
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> a. the Company Law Board, or
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> b. where the maximum amount of fine which may be imposed for such offence does not exceed five thousand rupees, by the Regional director, on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, as the case may be, may specify :
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> Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:
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> Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under the sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account."

If the complaint is required to be filed for the alleged offences or the police is required to file charge sheet in case the offences are committed, the same will have to be filed at Mumbai or where the alleged offence is committed. We have dealt with this aspect earlier in C.W.No. 2047 of 2003, decided on March 21, 2003. In that case also offences alleged were committed at Bombay. In the instant case also, the company is situated outside the limits of Delhi. Either a prosecution or a charge sheet is to be filed, the same will have to be filed within the

territorial limits of the court where offence is alleged to have beer committed. No act or omission is attributed to the respondents anywhere within the territorial limits of Delhi.

In a petition under Article 226 as filed, really speaking, the court has to see where the cause of action has arisen. Other aspects such as company's office, Registrar of Companies office, availability of record must be borne in mind. Considering these, when no cause of action has arisen within the territorial limits of Delhi, one must consider where to initiate action.

In this connection, we may also note the decision of the Supreme Court in the case of ***Union of India and Ors. Vs Adani Exports Ltd and another, (2002) 1 SCC 567*** wherein, while considering the question of territorial jurisdiction of the High Court, the Supreme Court observed as under : -

> " 17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgement that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

In the case of Oil and Natural Gas Commission vs Utpal Kumar Basu and others (1994) 4 SCC 711, the question of territorial jurisdiction came to be considered by the Apex Court. In that case, in response to advertisement inviting tenders at Delhi for works to be executed in Gujarat, the petitioner sent its tender to Delhi from Calcutta. He made representations from Calcutta against non-consideration of its offer. Court pointed out that such averments in the petition did not disclose that even a part of the cause of action arose within the territorial jurisdiction of Calcutta High Court.

The Apex court in the said case considered the case of Subodh Kumar Gupta vs Shrikant Gupta and others reported in (1993) 4 SCC 1. We reproduce para 9 of the Apex Court judgement in case of ONGC (supra):

> "In Subodh Kumar Gupta case, the facts revealed that he had instituted a suit in the Court of Senior Judge, Chandigarh, for dissolution of the firm in which he as partner had 20% share along with his father, brothers and one another. The head office of the firm was situate in Mumbai where the firm was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff-petitioner was also residing in Mandsaur till 1974 when he shifted to Chandigarh. He, however, visited Mandsaur often in connection with the business of the firm. The case. Pleaded by him was that after he shifted to Chandigarh he used to call for an received the statements of account of the business carried on at Mandsaur. He had got letterheads printed indicating that the branch office of the firm was at Chandigarh and he claimed that he also booked orders for the firm at Chandigarh. It was also pleaded that certain disputes had arisen regarding the management of the partnership firm and in regard to the correctness of the accounts which were discussed at the meeting in Bhilai at the end whereof an agreement was drawn up for the dissolution of the partnership and for

> distribution of assets amongst the partners to which the plaintiff was a signatory. The suit filed in the Chandigarh court was resisted on the preliminary contention that no part of the cause of action had arisen at Chandigarh and therefore that court had no jurisdiction. The Chandigarh court upheld the contention and this Court affirmed the said view. While dealing with the averment that the plaintiff was carrying on business of the firm from Chandigarh where the branch office of the firm was situate this court held that there is no averment that the branch at Chandigarh was started with the consent of the other partners and intimation thereof was given to the Registrar of Firms as required by Section 61 of the Partnership Act; the mere printing of stationery was neither here nor there and therefore no part of the cause of action could be said to have arisen within the territorial jurisdiction of the Chandigarh Court."

Thus it is very clear that the High Court at Delhi will have no jurisdiction when cause of action has arisen outside the territorial limits of Delhi and within the territorial limits of other State, namely in the instant case, State of Maharashtra. The Apex Court deeply regretted and deprecated the practice of exercising jurisdiction and passing interlocutory orders in the matters where it lacked territorial jurisdiction and while allowing the appeal preferred by ONCG directed NICCO to pay the cost of Rs.50,000/-.

In the case of Navin Chandra N. Majithia vs State of Maharashtra and others 2000 (7) SCC 640, the Apex Court was also required to consider the same question. The Apex Court in Para 21 considered the decision of the Apex Court in case of ONGC (supra) and after referring Article 226(2), the court pointed out :

> "On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by part III of the Constitution or for any other purpose if the cause of

> action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the territories."

The Apex Court in the case of Navin Chandra N. Majithia (supra) pointed out in para 22 as under in so far as the territorial jurisdiction with reference to the criminal offence is concerned:

> "So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed."

In para 41 in the case of Navin Chandra N. Majithia (supra), the Apex Court considered the case of *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217 in the case of ONGC (supra) the observations are made as under :

> "It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P Jeevan Reddy, J., utilized the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations. (SCC p.722 para 12).
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> "If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the court would be willing to exercise

> jurisdiction on the plea that some event, however, trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

In para 43, in the case of Navin Chandra N. Majithia (supra), the Court pointed out as under :

> "43. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisidiction. It depends upon the facts in each case."

The Court pointed out that large number of events have taken place at Mumbai in respect of allegations contained in FIR registered at Shilong. If the averments in the writ petition are correct then major portion of the facts which led to registering of FIR have taken place at Mumbai. Ultimately, the court held that it is almost impossible to hold that not even a part of the cause of action has arisen in Mumbai so as to deprive the High Court of Mumbai of total jurisdiction to entertain the

writ petition filed by the petitioner.

In the instant case, it is clear from the petition itself that CBI, Mumbai was investigating, the properties are situated at Mumbai, the acts are alleged to have been committed by the private respondents at Mumbai and therefore this Court will have no jurisdiction to entertain the petition.

In the case of ***Union of India vs Adani Exports Ltd (2002) 1 SCC 567*** passbook was issued at Chennai by designated authority at Chennai and transaction concerning the said passbook were made from Chennai port. In that case, the respondent carried on their business of export and import from Ahmedabad. Their orders of export and import were placed from and were executed at Ahmedabad; documents of export and import were sent / made at Ahmedabad; credit of duty claimed in respect of exports were handled from Ahmedabad; credit of duty claimed in respect of exports were handled from Ahmedabad; non-granting and denial of utilization of the credit in the passbook will affect the respondent's business at Ahmedabad; the respondents executed bank guarantee through their bankers at Ahmedabad as well as a bond at Ahmedabad, where the grounds taken for having jurisdiction over the subject in Gujarat State. Thus, it is very clear that where cause of action arose is required to be seen. At least, part of the cause of action must have arisen within the territorial limits where the court is required to take cognizance of the matter. In the above decision, we have considered the Apex Court judgements.

In view of the fact that in the instant case, registered offices of the companies are situated outside the territorial limits of Delhi and offences alleged to have been committed outside the territories of Delhi, the complaint which is required to be filed cannot be filed within the territorial limits of Delhi and, therefore, prima facie this court is of the opinion that this court will have no jurisdiction to entertain the petition.

It may not be misunderstood that we have said anything on the merits of the case with regard to non compoundable offences.

The writ petition is accordingly disposed of.

CHIEF JUSTICE

A.K. SIKRI. J

APRIL 29, 2003