

Om Prakash Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-23-2001

Reported in : 2001CriLJ4385

Judge : O.P. Garg and ;Onkareshwar Bhatt, JJ.

Acts : Negotiable Instruments Act - Sections 138; ;Code of Criminal Procedure (CrPC) - Sections 156(3), 177 and 220; Indian Penal Code (IPC) - Sections 215, 420, 467, 468 and 511; Constitution of India (Fifteenth Amendment - 1963, Forty Second Amendment - 1976) - Articles 226 and 227

Appeal No. : Cri. Misc. Writ No. 3073 of 2001

Appellant : Om Prakash

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Rajiv Gupta and ;Dilip Kumar, Advs.

Disposition : Petition dismissed

Judgement :

O.P. Garg, J

1. This writ petition Under Article 226 of the Constitution of India has been preferred with unusual prayers that the proceedings in complaint cases Nos. 627 of 2000, 42 of 2001, 36 of 2001 and some others Under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') instituted by opposite parties Nos. 2 and 3 in respect of which the petitioner has received summons for appearance in the Court of Judicial Magistrate II, Salem, State of Tamil Nadu be stayed; the concerned Magistrate be prohibited from taking cognizance of the said complaint cases; the said cases may be required to be transferred to the concerned Criminal Court at Varanasi and appropriate investigating agency at Varanasi be directed to register the First Information Report of the petitioner on the basis of his various applications, copies of which have been annexed as Annexures VI, VII, IX and XV to the writ petition.

2. The woodcut profile of the case as is disclosed from the various averments made in the writ petition is that the petitioner and the opposite parties Nos. 2 and 3, who originally lived at Varanasi had thick bond of friendship and family ties; they had acquired joint properties and extended helping hand to each other in business and trade. Incidentally, they were also the neighbours. The petitioner has engaged himself in the business of electronic goods and other articles and carries on the business in the name and style of M/s. Dhanwantri Electronic Visheshwarganj, Varanasi. He borrowed a sum of Rs. Six lacs from the opposite parties Nos. 2 and 3 for developing his business of electronic goods, but paid it back. Besides the above specific instance of advancement of loan, according to the petitioner, other money transactions between him and the opposite parties Nos. 2 and 3 had taken place.

3. The petitioner went on to state that on account of certain financial constraints and the fact that the opposite parties Nos. 2 and 3 owed a substantial amount to certain other persons and under the pressure of demand of money from them, they (opposite parties Nos. 2 and 3) disappeared in November, 1999 and for some time, their whereabouts were not known. On 26-1-2000, it is stated, the petitioner received a call from the opposite party No. 2 that he should visit Chennai for darshan of holy shrine Tirupathi Balaji. The petitioner was not much eager to go but ultimately, as averred by him, he left for Chennai via Delhi by air on 2-6-2000

and on arrival at Chennai, he was received by the opposite party No. 2 and one Shiv Kumar Aggaral also known as Babuji. After darshan of Tirupathi Balaji, the petitioner came to stay at Salem with opposite parties Nos. 2 and 3. He stayed there during the period 4th June to 9th June, 2000.

4. Thereafter the story with regard to the alleged criminal activities of opposite parties Nos. 2 and 3 proceeds. It is stated that the petitioner was subjected to wrongful confinement in a room of the house, threatened, tortured, assaulted by use of criminal force and was induced and intimidated to make payment of the heavy amounts; he was pressurised to send for the money from Varanasi. Finding no alternative to get himself released from the tight clutches of the opposite parties Nos. 2 and 3, he had, of necessity, to contact on phone his partner Vinod Kumar at Varanasi and ask him to send a Demand Draft for a sum of Rs. Six lacs and also to despatch the two cheque books one belonging to his personal account and the other pertaining to the account of the firm M/s. Dhanwantri Electronics. In response to the telephonic call, Vinod Kumar purchased a draft for Rs. 2 lacs from State Bank of Bikaner and Jaipur, Varanasi on 6-6-2000 in the name of Smt. Jaya Agarwal opposite party No. 3 payable to State Bank of Mysore, Salem and was despatched through courier service. Likewise, the cheque books were also received. It is alleged that under the threat and coercion, while the petitioner was under wrongful confinement, he was required to put his signatures on at least 25 cheques of different denominations. He was also required to put his signatures on a numerous blank stamp papers but he refused to oblige at the risk of physical torture.

5. The petitioner has further narrated the story about the manner in which he had been successful in escaping from house of the opposite parties Nos. 2 and 3 in Salem and reached Varanasi via Erode and Andheri West, Mumbai where he was assisted by the contact persons or friends. The hangover of the torture and other criminal activities to which the petitioner was allegedly subjected continued for a couple of days and when he felt composed he wrote two letters to the Branch Manager, State Bank of Bikaner and Jaipur, Varanasi on 16-6-2000 informing him of the entire episode and directed to stop the payment of all the cheques which may be presented by the opposite parties Nos. 2 and 3 for encashment. An

attempt was also made to stop the payment of the Demand Draft. This action of the petitioner incensed the opposite parties Nos. 2 and 3 who threatened the petitioner of dire consequences on telephone. The petitioner made repeated attempts to lodge F.I.R. about the above episode at Varanasi but was not successful. His report was refused to be incorporated on the ground that the offences as narrated by him have taken place at Salem in the State of Tamil Nadu. The petitioner moved an application Under Section 156(3) of the Code of Criminal Procedure before the Vth Additional Chief Judicial Magistrate, Varanasi who by his order dated 4-8-2000 rejected the same, meaning thereby refused to get the case registered and investigated primarily on the ground that on the facts stated no offence has been committed within the local jurisdiction of Varanasi Court. It is in these circumstances that it is prayed by the petitioner that a direction be issued to the local police. C.B.C.I.D./C.B.I, to register his F.I.R. and to investigate the entire episode.

6. It appears that on account of the non-encashment of the cheques issued by the petitioner, the opposite parties Nos. 2 and 3 have filed various complaints against him Under Section 138 of the Act in the Court of Judicial Magistrate II, Salem, Tamil Nadu. These complaint cases are complaint case Nos. 627/2000, 43/2001, 6/2001 and as is further disclosed in the supplementary affidavit, complaint case Nos. 54/2001 and 55/ 2001. The Judicial Magistrate II, Salem has issued summons to the petitioner for appearance. The supplementary affidavit further indicates that on the basis of the application, Annexure XV to the writ petition, in which it was alleged that the opposite parties Nos. 2 and 3 have committed forgery by making interpolations in the amount of the cheques issued by the petitioner under coercion, a preliminary enquiry was made and a case Crime No. 25-A/2000 Under Sections 215/420/467/468/511, I.P.C. has been registered on 8-3-2001 at Police Station Kotwali, Varanasi against the opposite parties Nos. 2 and 3 as well as Shiv Kumar Agarwal, son of Moti Ram.

7. On the strength of the above facts, the petitioner has taken the stand that if he is required to appear before the Court at Salem in different criminal cases on different dates, he would not only be unnecessarily harassed but his life and liberty may be seriously jeopardised as he apprehends serious mischief at the hands of

the opposite parties Nos. 2 and 3. It is in the wake of this apprehension that the present writ petition has been filed before this Court for restraining the Judicial Magistrate II, Salem from taking cognizance of complaints made by the opposite parties Nos. 2 and 3; for compelling the appearance of the petitioner at Salem; and from proceeding with the complaint cases. It is also prayed that since a case has been registered against the opposite parties Nos. 2 and 3 and another at Police Station Kotwali, Varanasi, the complaint cases be also directed to be transferred for being enquired into and tried by the Court at Varanasi.

8. Heard S/Sri Dilip Kumar and Rajiv Gupta, learned counsel for the petitioner as well as learned A.G.A. The Investigating Officer Sri Jang Bahadur, who is investigating the case against the opposite parties Nos. 2 and 3 was also summoned with the case diary.

9. The crux of the various prayers made by the petitioner is that Court of Judicial Magistrate, Salem be prohibited from proceeding with the complaint cases filed by the opposite parties Nos. 2 and 3 against him Under Section 138 of the Act. In the context of this prayer and the backdrop of the alleged facts and circumstances, as narrated above, the crucial point, which arises for consideration and determination is : whether or not a writ of this Court Under Article 226 of the Constitution of India would run beyond its territorial limits.

10. In this connection, the scope, extent and context of Article 226 of the Constitution of India are required to be scrutinized. Article 226, as it was originally incorporated in the Constitution, conferred on all the High Courts very wide powers in the matter of issuing writs which they never possessed before. The exercise of this power was originally subject to two specific limitations, firstly - that it is to be exercised 'throughout the territories in relation to which it exercises jurisdiction' that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; and secondly, that the person or authority to whom the High Court is empowered to issue the writs 'must be within those territories' and this implies that they must be amenable to the jurisdiction of the Court either by residence or location within those territories. Though divergent views were taken by different High Courts the above limitations were upheld and approved by a

Constitution Bench of the Apex Court in *Election Commission India v. Saka Venkata Subbarao*, 1953 SCR 1144 : AIR 1953 SC 210; *Rashid K.S. and Sons v. Income-tax Investigation Commission* (1954) SCR 738 : AIR 1954 SC 207; *Khajoor Singh v. Union of India*, AIR 1961 SC 532 and *Collector of Customs v. E.I. Commercial Company*, AIR 1963 SC 1124. As a result of the view taken by the Apex Court in the aforesaid cases, particularly in the case of *Saka Venkata Subbarao* (supra), it was location or residence which gave territorial jurisdiction to a High Court under Article 226 of the Constitution of India. The situs of the cause of action was considered as immaterial for this purpose. The various other High Courts have taken the divergent views of the matter. In *Ranganathan v. Madras Electric Company*, AIR 1952 Mad 659; *Aswini v. Dy. Collector*, AIR 1952 Assam 91; *Rashid Ahmed K.S. v. Income-tax Investigation Commission*, AIR 1951 Punj 74 and host of other decisions, the view taken was that the factum of accrual of cause of action even beyond the territories subject to the jurisdiction of a particular High Court cannot be ignored. To overcome the difficulty, Clause (1-A) had been inserted by the Constitution (Fifteenth Amendment) Act, 1963. Clause (1-A) was subsequently renumbered as Clause (2) by the Constitution (Forty Second Amendment) Act of 1976. The amendment was made with a view to supersede the view taken by the Apex Court in *Saka Venkata Subbarao* AIR 1953 SC 210 (supra) and other cases which fell in line with the said decision. Now the position as it has emerged, after the incorporation of Clause (2) by way of amendment is that a High Court has the power to issue directions, orders or writs to any Government or authority or person located beyond its territories within which the cause of action, wholly or in part, arises for the exercise of such power. To be more precise and specific, the provisions of Clause (2) of Article 226 may be reproduced as follows :

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 or authority or the residence of such person is not within those territories.

Thus, the power conferred on the High Courts Under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territory and limitations of the jurisdiction of that High Court. As held in *Navinchandra N. Majithia v. State of Maharashtra*, (2000)4 All WC 3040 : AIR 2000 SC 2966 amendment is thus aimed at widening the width of the area or reaching the writs issued by different High Courts.

11. Sri Dilip Kumar took pains to argue that in spite of the fact that cause of action has arisen at Salem, Tamil Nadu, part of the cause of action has also arisen at Varanasi and, therefore, this Court has power and jurisdiction to issue a writ, order or direction to be operative beyond its territorial jurisdiction and, therefore, it can throttle the proceedings in the various complaint cases filed in the Court of Judicial Magistrate, Salem, Tamil Nadu against the petitioner. At the first flash, the argument of Sri Dilip Kumar appeared to be quite attractive but on diving deep into the matter and analysing the facts and circumstances of the case, we find that it is fraught with danger and is not so simple as has been innocently pressed into service. In *Navinchandra's case* (supra), the Apex Court has dwelt on the issue of cause of action and taking clue from its various earlier decisions, particularly, in the case of *State of Rajasthan v. Swaika Properties* (1985) 3 SCC 217 : AIR 1985 SC 1289 and three-Judges Bench decision of the Apex Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu* (1994) 4 SCC 711: 1994 AIR SCW 3287, it observed that it is well settled that the expression 'cause of action' means that bundle of facts, which the petitioner proves if traversed to entitle him to a judgment in his favour. The wide meaning given to the expression 'cause of action' was, however, restricted by making certain observations in paragraph 13 of the report, which read as follows:

13. 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 jurisdiction. It depends upon the facts in each case.

12. Navinchandra's case AIR 2000 SC 2966 (supra) is not of universal application. In that case a writ petition was filed before Bombay High Court to quash the complaint lodged by M/s. J.B. Holdings Ltd., or in the alternative to issue a writ of *manamus* directing the State of Meghalaya to transfer the investigation being conducted by the officers of the C.I.D. at Shillong to the Economic Offences Wing, General Branch of the C.I.D., Mumbai or any other investigating agency of the Mumbai Police and to issue a writ of prohibition or any other order or direction restraining the Special S.P. Police C.I.D., Shillong and/or any investigating agency of the Meghalaya Police from taking any further step in respect of the complaint lodged by the M/s. J.B. Holdings Ltd., with the Police authorities at Shillong. The Bombay High Court dismissed the petition by observing that one cannot say that the part of cause of action has arisen wherever Police goes for the purpose of investigation. If that be so, then no investigation by any Police in India can be successfully carried out because any absconding accused can go to any corner of India and challenge the prosecution where he was staying. The Apex Court found that since the entire transaction upon which the complaint is purportedly based had taken place at Mumbai and not at any other place outside Mumbai, much less at Shillong or any other place in the State of Meghalaya, the complaint could not/ought not to have been entertained by the police at Shillong. It was in these circumstances that it was ordered that the police/Courts in Mumbai could investigate/ enquire into the contents of the complaint and the action taken by the police authorities of Shillong in entertaining the complaint and taking up investigation on the basis of the same was oppressive. Accordingly, the complaint lodged by M/s. J.B. Holdings Ltd., at Shillong was transferred to the Mumbai Police for further investigation through its Economic Offence Wing, General Branch, C.I.D. or other Branch as the competent authority of the Mumbai Police may decide, in accordance with law.

13. It appears that taking inspiration from the various observations made in Navinchandra's case AIR 2000 SC 2966 (supra), the present writ petition has been founded. In our view, reliance on the aforesaid decision is clearly misplaced and, as a matter of fact, the said decision goes against the petitioner for one simple reason that the series of events, which have been disclosed by the petitioner himself, indicate that the various alleged offences were committed at Salem in Tamil Nadu and not at Varanasi. Till the petitioner reached Salem on the so-ailed invitation/request or call of the opposite parties Nos.2 and 3, there had been no offence of any kind. A large number of events which have been specified above and need not be repeated all over again, had taken place at Salem in Tamil Nadu. The petitioner was wrongfully confined and sub-jected to various criminal acts, as mentioned above, for the first time at Salem. He made a call from Salem to his partner Vinod Kumar to send a Demand Draft and the cheque books. The Demand Draft was payable to State Bank of Mysore, Salem. The cheques which are said to be interpolated and the payment of which was later on stopped were signed by the petitioner at Salem and the amount covered by the cheques was to be paid to the opposite parties Nos. 2 and 3, admittedly residing at Salem. The cheques were required to be sent to Varanasi for collection purpose but the encashment had to take place at Salem. A bare reading of the averments made in the writ petition and various applications which have been annexed with the writ petition clearly indicate that cause of action wholly arose at Salem and no part of cause of action had arisen at Varanasi. What the petitioner did at Varanasi was that on return from Salem he sent two letters to the Bank Manager stopping the payment of the cheques issued by him and the Damand Draft payable at Salem. Besides this, he moved various applications and made attempts to lodge the F.I.R. Certain phone calls made by the petitioner from Salem were undoubtedly received by Vinod Kumar, his partner pursuant to which cheque books and Demand Draft were sent from Varanasi through courier. Now these stray facts are so negligible, immaterial and irrelevant to infer that a part of cause of action had arisen at Varanasi. If, on the pleadings of the petitioner, cause of action, in part, is accepted to have arisen at Varanasi, in that event, there may be a gross misuse of the provisions of Article 226 of the Constitution of India and the very purpose for which Clause (2) was inserted would be rendered otiose. The Apex Court was conscious of the fact that

the provisions of Clause (2) may be misused and, as a matter of fact, when it was misused in a particular case, it had to make the lamentation on the situation. The three Judges Bench in Utpal Kumar Basu's case 1994 AIR SCW 3287 (supra) had cautioned 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 and convenience. The apprehension of misuse or the meaning given to the expression 'cause of action' came to be dispelled by the Apex Court in the following words which may be taken as a reminder for a cautious approach:

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, howsoever, 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.

As said above, in the case in hand, as a matter of fact, no part of cause of action had arisen within the territory of this Court. Therefore, the prayer for restraining the Judicial Magistrate in Salem from proceeding with the complaint cases is ridiculous. In the circumstances, our writ should not run beyond the specified territorial limits.

14. Let us also examine the matter from the angle of the opposite parties Nos. 2 and 3. Shorn of all superfluities, admittedly, the Demand Draft payable to State Bank of Mysore, Salem was sent. The opposite parties Nos. 2 and 3 were to receive payment of the said draft at Salem. Cheques signed by the petitioner were delivered to the opposite parties Nos. 2 and 3 at Salem and the payment covered by the cheques was to be made at Salem. Consequent upon stopping of the

payment of the cheques and the Demand Draft, the opposite parties Nos. 2 and 3 who are the aggrieved persons had the right to invoke jurisdiction of the local criminal Court at Salem by filing separate criminal complaints Under Section 138 of the Act. By no stretch of imagination, it can be said that the cause of action had not accrued to file the complaints at Salem. The complaints filed by the opposite parties Nos. 2 and 3 at Salem are in accordance with law and those complaints have to be tried and brought to a logical conclusion at Salem. The petitioner has been rightly summoned in those complaint cases and the remedy which is available to him is to appear and put forth his defence before that very Court. Issue of a direction to Salem Court to keep its hands off the cases, lawfully instituted would not only be unlawful but highly oppressive to the complainants.

15. Sri Dilip Kumar further argued that since the interpolation in the cheques resulting in forgery on the part of the opposite parties Nos. 2 and 3 is part of the same transaction, and therefore, the complaint cases should be transferred from Salem to Varanasi so that the veracity of the allegations made therein may be investigated along with the case crime No.25-A/2001 Under Section 215/420/467/468/511 I.P.C. registered against the opposite parties Nos. 2 and 3 as well as Shiv Kumar Agafwal at Police Station Kotwali, Varanasi. A Reference was made to the provisions of Sections 177 and 220 of the Code of Criminal Procedure. Our attention was invited to the two decisions of the Apex Court in *Satvinder Kaur v. State (Government of N.C.T. of Delhi)* 2000 (1) JIC 1 : AIR 1999 SC 3596 (S.C.) and *Mohan Baitha v. State of Bihar* (2001) 42 All Cri C 860 : 2001 AIR SCW 1332. Reference to both these decisions is wide off the mark for one simple reason that they have no relevance to the facts of the present case. In *Satvinder Kaur's* case (supra), it has been laid down that F.I.R. can be lodged at any Police Station. But if investigating officer arrives at the conclusion that crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to Police Station having jurisdiction over the area in which crime is committed. It was further observed that the Court should not interfere with investigation merely on the ground that investigating officer has no territorial power to investigate. Section 178 deals with the place of enquiry or trial when it is uncertain in which of several local areas, the offence was committed or in some other specified circumstances. In such cases, offence may be enquired into or

tried by the Court having jurisdiction over any of such local area. In Mohan Baitha's case (supra), the provision of Sections 177 and 220 Code of Criminal Procedure were considered and the expression 'same transaction' came to be interpreted. The criteria laid down by the Apex Court is : the proximity of time unity or proximity of place, continuity of action and community of purpose or design? These factors, it was held, can necessarily be considered and determined whether the acts form part of the same transaction or not. The two decisions relied upon are limited to its own facts. The principle of law laid down does not support the feeble and untenable submission of the learned counsel for the petitioner. Therefore, whatever observations have been made in the aforesaid decisions, are not of any help to the petitioner in the present case. Section 177 of the Code of Criminal Procedure and other cognate provisions simply say that ordinarily every offence should be tried by a Court within whose local jurisdiction, it was committed. In the present case, undoubtedly, as per averments made in the writ petition and the other applications, various alleged offences if at all have been committed by the opposite parties Nos. 2 and 3 at Salem and, therefore, the petitioner has, of necessity, to approach the authorities at Salem for investigation. He cannot whittle down the trial of the complaint cases at Salem by adopting certain machinations and setting up cause of action at Varanasi, on the basis of the allegations which are insignificant and ignorable.

16. Before parting, we would not miss an opportunity to take note of the following observations made by the Apex Court in *State of Kerala v. O.C. Kuttan* (1999)¹ JT (SC) 486 : AIR 1999 SC 1044, with regard to the scope of power of this Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India:

Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate

into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court to sift the materials or to weigh materials and then come to the conclusion one way or the other. In the case of *State of U.P. v. O.P. Sharma*, (1996) 2 JT (SC) 488 : 1996 All LJ 601, a three Judges Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power Under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three Judges Bench of this Court in the case of *Rashmi Kumar v. Mahesh Kumar Bhada* (1996) 1 JT (SC) 175, where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole.

17. In the conspectus of the above facts, we are of the firm view that since opposite parties Nos. 2 and 3 have rightly filed complaints Under Section 138 of the Act against the petitioner in the Court of Judicial Magistrate, Salem who alone has the jurisdiction to entertain the same and the fact that virtually no part of cause of action has arisen within the territorial jurisdiction of this Court, the present writ petition for the prayers, as aforesaid, is not only devoid of any merit and substance but misconceived.

18. The writ petition is accordingly dismissed.