Samarudeen Vs. Assistant Director of Enforcement and ors.

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Court : Kerala

Decided On : Dec-09-1995

Reported in : 1995CriLJ2825

Judge : D.J. Jagannadha Raju, J.

Acts : Foreign Exchange Regulation Act - Sections 9; Foreign Jurisdiction and Extradition Act, 1879 - Sections 8 and 9; Indian Penal Code (IPC) - Sections 3 and 4; Code of Criminal Procedure (CrPC) , 1974 - Sections 2, 4, 156 and 188; Constitution of India - Article 226

Appeal No. : O.P. No. 15432 of 1994

Appellant : Samarudeen

Respondent : Assistant Director of Enforcement and ors.

Advocate for Def. : ACGSC and; George Poonthottam, Adv. for R. 1 and; G.P.

Advocate for Pet/Ap. : T.M. Abdul Latiff, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

D.J. Jagannadha Raju, J.

1. This O. P. is filed by the petitioner who was formerly residing in Saudi Arabia at Daman. He prays for a writ of mandamus to direct the first respondent, the Assistant Director of Enforcement, Trivandrum, to conduct investigation, enquiry and such other proceedings for violations of the Foreign Exchange Regulation Act committed by respondents 4 and 5, and for prosecuting them for the violations. He also prays for the consequential relief of recovering 95,000 Riyals which were illegally converted and brought to India through un-known source and ultimately came to be deposited in the bank account of the fifth respondent. He prays that adjudication proceedings and prosecution should be launched against respondents 4 and 5. He also prays for & direction to respondents 2 and 3, the Director General of Police, and the Circle Inspector of Police, to conduct investigation and complete it expeditiously and file a charge sheet before the concerned Magistrate on the basis of the complaint given by him. He further prays for a writ of mandamus directing the first respondent to consider and dispose of Ext. P5 petition.

2. The facts pertinent for decision of this Original Petition may be briefly stated as follows. The petitioner was employed as a salesman in Daman in Saudi Arabia. The fifth respondent is his paternal uncle. The fourth respondent is the unemployed son of the fifth respondent. The petitioner has been in Saudi Arabia for a sufficiently long time. He was well employed and he was earning a very decent salary. On the request of the fifth respondent, he took the fourth respondent at his own expenses to Saudi Arabia with a view to secure him employment. As he could not secure proper employment for the fourth respondent, the petitioner secured 95,000 Riyals with a view to start a hotel so that he can employ the serviced f the fourth respondent. As the fourth respondent was staying with the petitioner, he was fully aware of the fact that the petitioner was keeping 95,000 Riyals in the table drawer. The fourth respondent had a spare key for the premises of the petitioner. During the month of Ramzan in April, 1992, all Muslim establishments would remain closed during the day time and they would be functioning from 8 p. m. to 12.30 p.m. in the night. The petitioner locked the table drawer and went to the workspot. At about 1a.m. when he returned to the house, he found that the outer door of the flat was open, and after entering the premises he found that the lock of the table drawer was broken and money was missing. As

the fourth respondent has a spare key, the petitioner suspected the fourth respondent. He immediately wanted to report the matter to the police. He took the fourth respondent along with him in car to go to the polite, station. The movements of the fourth respondent were suspicious. When they were going to the police station, the fourth respondent was driving the car. The fourth respondent created an accident by dashing the car against a parked vehicle, and it created an incident. The fourth respondent ran away. The petitioner made his best efforts to trace the fourth respondent. He could not trace him. His suspicion got confirmed and he had a feeling that the fourth respondent would have escaped to India. Immediately, the petitioner came to India and reached his native place on 11-4-1992. The fourth respondent came to India one week later, with two bags of foreign articles and 40 sovereigns of gold. The enquiries made by the petitioner revealed that the entire money stolen from the petitioner was arranged to reach India through tube money (through hawala transactions). The petitionerfiled complaints before respondents 2 and 3 for registering a criminal case against the fourth respondent and to recover the theft property which was stolen in Daman. It was found that respondents 4 and 5 were spending lavishly and investing money in various businesses. They do not have resources to spend so much money. When police started investigating into the case, various Cri. M. Cs. were filed to thwart the investigation. In Cri. M. C. No. 699 of 1994, this Court passed an order to the effect that if a notice is given, the petitioners (respondents 4 & 5 herein) shall appear before the investigating officer and allow to be interrogated. But they shall not be arrested except with the permission of the Court. Respondents 4 and 5 filed O. P. No, 2338 of 1994 and obtained interim orders in C. M. P. No. 4339 of 1994, to the following effect:

'There shall be an interim direction to respondents 1 and 2 not to compel the petitioners to pay the amount claimed by the third respondent (the present petitioner).'

That order was later modified. The O. P. was disposed of on 10-8-1994 indicating that the second respondent may proceed with the investigation of the crime, if any crime is registered against the present respondents 4 and 5. Ext. P4 judgment directing investigation is not implemented. The investigation has not been done

and no charge-sheet is filed. On the other hand, respondents 4 and 5 are at large and they are conducting business using the money stolen from the petitioner. A complaint was given to the first respondent to proceed against respondents 4 and 5 for violations of the Foreign Exchange Regulation Act, especially Sections 9 arid 63. The first respondent neither investigated into the matter, nor did he recover the money. He never took steps to attach the properties of respondents 4 and 5. Hence the present writ petition, with the various prayers mentioned supra.

3. The first respondent filed a couffter affidavit stating that the first respondent is unnecessarily made a party to this O. P. The theft of Riyals took place outside India and the department cannot make any inquiry based on the petition averments, unless there is documentary evidence. If independent investigation discloses violation of Foreign Exchange Regulation Act appropriate action will be taken against those who are involved in the matter, and if necessary, action will be taken against the present petitioner as well. At any rate on the basis of the averments niade in the petition, the first respondent is not in a position to take any further action. On going through the petition, the first respondent found that there is no justification for taking action under Foreign Exchange Regulation Act. The various allegations are based upon misconceptions of the powers of the first respondent. The first respondent cannot exercise powers of a police officer. If the first respondent obtains credible and valuable information regarding the violations, he would certainly take action as per the Foreign Exchange Regulation Act.

4. On behalf of the respondents 2 and 3, the third respondent filed a counter and resisted the petition. It was stated that on 7-9-1993, regarding a theft allegedly committed by the fourth respondent a report was given by the petitioner with the Additional Director General of Police (Crimes). The petitioner was endorsed to Mr. C. Devarajan, the Detective Inspector. When he started making preliminary enquiries, the fourth respondent filed various criminal miscellaneous cases and Court issued orders stating that respondents 4 and 5 should not be arrested and at that time, the Additional Director General of Police took the stand that no crime has been-'jegistered for non-bailable offence. Various allegations made in the complaint and in this O. P. are not fully correct. In Crl. M. C. No. 699 of 1994, respondents 4 and 5 were directed by this Court to appear before the Investigating

Officer and to allow them to be questioned. But they should not be arrested except with the permission of this Court. In this counter filed by the third respondent, Investigating Officer, no mention is made about the O. P. filed by the fourth respondent and the stand taken by the police in that O. P.

5. Respondents 4 and 5 filed a counter affidavit to the effect that the O. P. is not maintainable. The facts stated in O. P. are not true. The police has no statutory power to investigate the crime which took place, according to the O. P., outside India. The Central Government has not given any sanction for investigation. Hence investigation, enquiry and trial cannot be conducted by the local police, who have no jurisdiction. It is claimed by the fourth respondent that in Saudi Arabia he had no contact with the petitioner and that the petitioner lost his employment due to some fraud committed with his employer. The petitioner left Saudi Arabia without any valid travel documents or passport. His passport was deposited with his employer. In view of the fraud committed by him he escaped without any valid documents. The petitioner could not have saved 95,000 Riyals. His monthly salary was only 650 Riyals. After the petitioner escaped from Saudi Arabia, the Saudi Arabia CID police started harassing the fourth respondent to reveal the whereabouts of the petitioner as the fourth respondent is closely related to him. Unable to bear the harassment of the police in Saudi Arabia on 23rd April, 1992, the fourth respondent left Saudi Arabia and reached India. The petitioner actually left Saudi Arabia in February, 1992 after committing the fraud. Even the entry of the petitioner into India without a valid travel document is illegal. In Saudi Arabia there was a complaint against the petitioner for misappropriation of 95,000 Riyals. The present complaint to the police was given by the petitioner 22 months after he reached India. All the while, the police harassed respondents 4 and 5 to pay the amount to the petitioner. In such a background the fourth respondent had to file M. C. No. 192 of 1994, M. C. No. 219 of 1994, and Crl. M. C. No. 699 of 1994, and also a Writ Petition, O. P. No. 2338 of 1994. In the O. P. this Court directed the police not to harass and to compel the fourth respondent to pay the amount. The petitioner having committed a crime in Saudi Arabia now wants to escape the liability by giving a petition against respondents 4 and 5. Various other allegations in the petition are false. The petition allegations about the fourth respondent driving a car when going to the police station and then the fourth respondent

causing an accident by hitting against another car and then escaping are all false. The fourth respondent did not bring any gold. He did not steel any money from the petitioner. He did not bring any money into the country through hawala transactions. The petitioner did not file a complaint to the police immediately after his arrival. He filed the complaint 22 months after he arrived in India. The fourth respondent filed O. P. No. 2338 of 1994 when the police started continuously harassing and compelling him to pay the money to the petitioner. The various Court orders passed do not decide whether the local police has got power to investigate into the alleged crime. The fourth respondent has not violated any of the provisions of the Foreign Exchange Regulation Act. The money in the bank account of the fifth respondent is obtained through lawful sources. This was explained to the Crime Branch as well as the first respondent. They were satisfied about the genuineness of the accounts and did not proceed further. The O. P. may be dismissed with costs.

6. The petitioner's counsel relied heavily upon two decisions of this Court and claimed that though the offence was committed outside India, as the offender is a citizen of India and as he is now found within the local jurisdiction of Kerala, the local police has jurisdiction to investigate the case. The two decisions relied upon are Remia v. S. P. of Police, 1993 (1) KLT 412 : (1993 Cri LJ1098); and Muhammed v. State of Kerala, 1994 (1) KLT 464 (DB). The correctness of the interpretation of law in these two decisions is one of the important aspects that will have to be considered in this O. P. It is contended on behalf of the respondents that as the crime was committed outside India, the local police has no jurisdiction to investigate and at the most they may derive the power to investigate only when the Central Government grants sanction. Without obtaining the sanction of the Central Government the crime cannot be investigaged. It is also urged on behalf of the respondents that while exercising jurisdiction under Article 226 of the Constitution, this Court cannot issue a writ regarding a cause of action which arose outside the territorial limits of the Kerala State. The respondents rely heavily upon two decisions of the Supreme Court in Election Commission v. Venkata Rao, : [1953]4SCR1144 and Oil and Natural Gas Commission v. Utpal Kumar Basu, : (1994)4SCC711 . It is also contended on behalf of the first respondent that the first respondent did not find adequate material to take action under the Foreign

Exchange Regulation Act, and as and when they got genuine information apart from the ipse dixit of the petitioner, they would certainly take action against all concerned, if they find that there is any violation of the Foreign Exchange Regulation Act.

7. It is a well established proposition of law that under Article 226 of the Constitution of India, a High Court cannot issue a writ so as to have the effect outside the territorial jurisdiction of the High Court and when cause of action did not arise in Kerala State. The Supreme Court in Election Commission's case, : [1953]4SCR1144 , dealt with the history of the law of writs in India. This particular aspect was dealt with in paragraphs 6,7,8 and 17. In paragraph 6, the Court observed that by virtue of the introduction of Article 226 all High Courts in India were brought on the same footing with regard to the power to issue writ and that a two fold limitation was placed upon theirexercise. In the first place, the power is to be exercised throughout the territories in relation to which it exercises jurisdiction, that is to say the writ issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be within those territories, which clearly implies that they must be amenable to to its jurisdiction either by residence or location within those territories. In pargraph 7 it was pointed out that these characteristics of the special form of remedy rendered it necessary for its effective use that the persons or authorities to whom the Court was asked to issue these writ should be within the limits of its territorial jurisdiction. We are unable to agree with the learned Judge, below that if a tribunal or authority permanently located and normally carrying on its activities elsewhwere exercise jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as functioning within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226. In paragraph 17 the Court gave its conclusion that the High Court was not competent under Article 226 to issue any prerogative writ to the appellant, Election Commission, and accordingly quashed the writ issued by the High Court.

8. In the present case on hand, the crime was committed outside India in Saudi Arabia. The issuing of a writ to the local officials functioning in Kerala would be

authorising them to investigate an offence which was committed outside India. Even according to the O. P., the alleged theft took place at Daman in Saudi Arabia. Only the allegation about bringing in some of the stolen money through unauthorised sources to India partly took place in India. The counter affidavit of the first respondent clearly indicates that they were unable to get any authentic material to establish this allegation. The first respondent categorically stated in the counter that as and when they get genuine material regarding the petition allegations, they would certainly take action against all persons concerned for violation of the Foreign Exchange Regulation Act.

9. Oil and Natural Gas Commission's case, : (1994)4SCC711 , is a case where a writ petition was filed in the Calcutta High Court on the ground that the writ petitioner saw the notification calling for tenders at Calcutta, submitted a tender from Calcutta, with regard to the tenders which are to be opened at Delhi and with regard to work which has to be carried on in Gujarat. The Calcutta High Court taking the view that a part of the cause of action aroses within the jurisdiction of the Calcutta High Court by reason of the notification being seen and the tender submitted from Calcutta, granted the writ. When the matter was taken to the Supreme Court, the Supreme Court came down heavily upon the High Court and passed severe strictures. At page 717vvhile dealing with the objection of lack of territorial jurisdiction, the Court observed as follows:-

'In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition....

The learned counsel for ONGC contended that on these averments no part of the cause of action had arisen within the jurisdiction of the Calcutta High Court and hence the writ petition filed by NICCO and another was not cntertainable by that High Court....'

at page 719 the Court observed as follows:

'...Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action... it can not be said that a part of the cause of action arose within thejurisdiction of the Calcutta High Court.'

Then the Supreme Court dealt with the origin of Article 226 and the subsequent amendment made by way of introducing Clause (1 A) which was later renumbered as Cliiuse (2) of Artiple 226, and referred to the decision of the Supreme Court in Seka Venkata Subba Rao's case, : [1953]4SCR1144 (supra). In the last paragraph of the judgment, the Supreme Court indicated its deep displeasure and deprecated the practice prevalent in the High Court of Calcutta of exercising jurisdiction and passing interlouctory orders in matters where it lacked territorial jurisdiction. It further pointed out that inspite of the strictures made on several occasions, they are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction. It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made, time and again, some of the learned Judges continue to betray that tendency. A Calcutta based-firm instituted proceedings in the Calcutta High Court and the High Court exercised jurisdiction where it had none whatsoever. It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. 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. Ultimately, the Court allowed the Writ petition, and set aside the writ issued by the Calcutta High Court.

10. It is quite clear that writ petition does not lie in the Kerala High Court because the cause of action arose outside its territorial limits.

11. I shall now deal with the question as to whether on the basis of the allegations in the petition, the police of Kerala State has the power to investigate the crime reported by the petitioner to respondents 2 and 3. A learned Single Judge of this Court in Remla v. S.P. of Police, 1993(1) KLT 412 : (1993 Cri LJ 1098), dealt with a case where one Sulaiman died on 21-6-1992 at Sharjah in United Arab Emirates. The mother, widow and brother of the decesaed suspected that one Ali was responsible for committing the murder. When Ali was in Kerala, a report was given to the Sub Inspector of Police, Tanu in Malappuram Dist. The police did not accept the report and it did not register a crime. Then O. P. No. 13589 of 1992 was filed. The learned Single Judge relied upon Section 188 of the Cr. P. C. and Sections 3 and 4 of the IPC came to the conclusion in the following terms:-

'No doubt Section 188 concerns as to how to deal with a person who has committed an offence outside India. Since the proviso casts an obligation to obtain previous sanction of the Central Government to inquire into and try such person, the section has a message that for the pre-inquiry stage no such sanction is needed. If during pre-inquiry stage any offender can be dealt with (without such sanction) what could be the contours of that stage? I have no doubt that pre-inquiry stage substantially relates to investigation stage.'

In view of this conclusion, the learned Single Judge gave his opinion in paragraph 7 in the following terms:

'The up shot is that Sub Inspector of Tanur Police Station can conduct investigation in to the offence notwithstanding the place of occurrence being Sharjah because the person on whom the focus of suspicion turns is said to be a

citizen of India.'

'I therefore direct the Sub Inspector Tanur Police Station to record the statement of one of the petitioners regarding the death of Sulaiman, within one week from the date of receipt of a copy of this judgment and prepare an FIR register the crime and proceed with investigation steps in accordance with law.'

Reading the entire judgment, I am afraid, this statement of the law cannot be accepted as correct. The learned Single Judge has not given due importance to the scheme of the Cr. P. C. and various other Section in Cr. P. C. It should be remembered that Section 188 Cr. P. C. reads as follows:

'188. Offence committed outside India:-

When an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

He may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.'

Section 188 comes within Chapter 13 of the Cr. P. C. It is interesting to see that in the proviso the significant words used are 'notwithstanding anything in any of the preceding sections of this Chapter', no such offence shall be inquired into or tried in India, except with the previous sanction of the Central Government. The proviso does not mention the words 'notwithstanding anything in any of the other provisions of this Code.'

The proviso confines itself to the provisions of Chapter! 3 only. Chapter 12 of the Code deals with investigation. The sub-heading of Chapter 12 'Information to the Police and their powers to Investigate' is very significant. Section 156 assumes a lot of importance. This section deals with powers of the Police Officers to

investigate cognizable case. It reads as follows:

'156. Police Officer's power to investigate cognizable case:- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter III....'

With utmost respect to the learned Single Judge I have to point out that the learned Judge never adverted to Section 156 of the Cr. P. C. and the prerequisite of the Court having jurisdiction over the local area. The learned Judge simply referred to Section 3 and 4 of the IPC which come within Chapter I. Section 3 deals with punishment of offences committed beyond, but which by law may be tried within India. This section only contemplates that if a person committed offence beyond India and if he is triable under any Indian law, he can be tried in India. Section 4 deals with extension of the Indian Penal Code to extra-territorial offences. It should be remembered that these two sections relate to substantive law. They do not relate to procedure. Without referring to the scheme of the Cr. P. C. and without refering to the various definitions given in Section 2(e), 2(g) and 2(h) the learned Judge presumed that pre-enquiry stage refers to investigation stage. The Court also over looked Section 156 Cr. P. C. It is, significant to remember that Section 2(h) defines investigation in a particular manner. 'Investigation!' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. This definition also pre-supposses that the concerned Magistrate has the jurisdiction, to inquire into or try the case. The local jurisdiction is defined in Section 2(j). The assumption of the learned Judge that a pre-enquiry stage substantially relates to investigation stage is based upon a wrong understanding of the scheme of the Code and the various definitions given in the Cr. P. C. It is my unpleasant task to point out that the view expressed by the learned Judge is not correct. It overlooks the several provisions of the Cr. P. C.

12. The decision in Muhammed's case, 1994(1) KLT 464, is a Division Bench decision of this Court, wherein the learned Judges after referring to various well-noted text books, but without referring to the scheme of the Cr. P. C, have come to the conclusion that Section 188 of the Cr. P. C. authorises investigation by the local police for a crime committed outside India by a person who is now a citizen of India and found in India, even without obtaining the sanction of the Central Government. In paragraph 28 the learned Judges pointed out that they are in agreement with the views of Thomas, J. in Remla v. S. P. of Police, 1993 (1) KLT 412 : (1993 Cri Lj 1098). There also the crime took place in United Arab Emirates. On the basis of the arguments, two points were framed for consideration in paragraph 5 at page 466; (1) What are the principles applicable in regard to extra-territorial jurisdiction of Criminal Courts in respect of an offence by an Indian citizen which is assumed to have been completed in a foreign country? and (2) What is the scope and effect of Section 4 of the Indian Penal Code read with Section 4, 188, 2(g) and 2(h) of the Cr. P. C? The learned Judges quoted very reputed text books and dealt with the question under the territorial principle, the protective or security principle, nationality or citizenship princple and universality principle. We are not concerned with the learned discussions given in paragraphs 6 to 16, because they are only a survey of the general principles relating to extra-territorial jurisdiction of criminal offences. They pointed out that Section 4 of the IPC incorporates a nationality principle. At the end of paragraph 14, the Court observed as follows:

'Indeed, Section 4 of the Indian Penal Code which deals with offences committed by Indian citizens abroad, incorporates the Nationality principle. The principle while it is good for the country of origin, it must at the same time, be ensured that so far as the accused is concered, there is no double jeopardy.

I am afraid, this statement is too much of generalisation. On the basis of the allegations in the present Original Petition, if respondents 4 and 5 are to be tried and convicted in India they are certainly subject to the double-jeopardy, because the Saudi Arabia Penal Laws would be applicable to the fourth respondent and Saudi Arabia Government would be entitled to prosecute the fourth respondent and convict him as the offence took place at Damam in Saudi Arabia.

13. The Division Bench discussed point No. 2 in paragraphs 17 to 27 of the judgment. A reading of these paragraphs indicates that the Bench never dealt with the provisions in Chapter 12 of Cr. P. C. which deals with investigation. Narayanan v. Emperor, AIR 1935 Bom 437, which was referred to in paragraph 18 is a case dealing with trials in British India for offences committed outside India applying Section 188 Cr. P. C. and Section 4 of the IPC. The Court only pointed out that these provisions are taken from Section 8 and 9 of the Foreign Jurisdiction and Extradition Act, 1879. That decision did not deal with the capacity or legality of the police in British India, to investigate the crime committed outside. It only dealt with trials which can certainly be conducted, if the Central Government gives sanction as contemplated under Section 188 Cr. P. C. In paragraphs 20 and 21 the Court referred to Section 4 of the IPC and Section 188 of the Cr. P. C. Then after referring to the definition of 'inquiry' in Section 2(g) and 'investigation' defined in Section 2(h), and Section 4 Cr. P. C, referred to the argument of learned counsel in paragraph 22. It was specifically urged before the Division Bench that even if it is assumed that the substantive provisions in Section 4 IPC could apply, if facts are proved, Section 188 Cr. P. C. which permits a Criminal Court in India to deal with the matter does not apply to enable investigation by Indian police. According to him, even if the petitioner is said to have been found in India as required by Section 188 Cr. P. C. still inasmuch as Section 188 is in Chapter 13 dealing with inquiry and trial and inasmuch as the proviso to Section 188 also refers to inquiry and trial of extra-territorial offences, no section in Chapter 13 much less Section 188 can permit investigation into such extra-territorial offences. It is aruged that investigation envisaged in Section 2(h) Cr. P. C. is different from inquiry as defined in Section 2(g) Cr. P. C. and trial. Reliance is also placed on Section 4 Cr. P. C. to say that the words 'dealt with' in Section 188 Cr. P. C. do not include investigation, inquiry or trial. Inspite of the specific arguments the Division Bench did not refer to the provisions in Chapter 12 which deals with investigation and gave significance to the definition of 'local jurisdiction' defined under Section 2(j) of the Cr. P. C. The Court jumped to the conclusion in the following terms:-

'...We cannot presume that in Section 188 Cr. P. C. the Legislature used the words 'dealt with' by restricting the meaning to something other than investiagtion, inquiry or trial. The Supreme Court in Ajay Agarwal's case, (1993) SCC Crl. 961 : (1993

Cri LJ 2516), has observed that Section 188 Cr. P. C. creates a statuory fiction by using the words 'as if. The section confers jurisdiction on the Court where the alleged offender is found, for the purpose of 'dealing' with the offence.'

Then the Bench pointed out in paragraph 24 as follows:-

'The words 'deal with' in the main part of Section 188 Cr. P. C, in our view, are used in a wide sense, while the proviso to Section 188 Cr. P. C. required sanction of the Central Government for purpose of 'inquiry' and 'trial', the words 'deal with' in the main part must necessarily include at least 'inquiry' and 'trial1. The words 'deal with' in Section 4 of the Cr. P. C. referred to above as amounting to something other than 'investigation', 'inquiry' and 'trial', therefore fall to the ground..In view of the decision of the Supreme Court (Delhi Admn. v. Ram Singh, : [1962]2SCR694 , the words 'dealt with' in Section 188 Cr. P. C. must be held to include 'investigation' also, apart from 'inquiry' and 'trial'. For purposes of 'investigation' into offences committed abroad, sanction of the Central Government is not necessary.'

14. With utmost respect to the judges of the Division Bench the conclusion arrived at is based upon a cursory examination of only a few provisions of the Cr. P. C. and overlooking the provisions of Cr. P. C. in Chapter 12 and the definition of 'local jurisdiction' in Section 2(j) and 'investigation' in Section 2(h) Cr. P. C. It should also be remembered that the Criminal Procedure Code contains several Sections which provide for the Court 'dealing with' people for various types of actions. It does not mean that the pre-enquiry stage necessarily means investigation. The Court failed to see that Section 188 does not have overriding effect over the provisions of Chapter 12. Inspite of the Court's attention being specifically drawn to the fact that Section 188 does not cover investigation envisaged in Section 2(h) the Court did not go into Chapter 12 which alone deals with investigation. With utmost respect to the learned Judges the interpretation of law that the main part of Section 188 does not require sanction of the Central Government and only for the purpose of inquiry and trial mentioned in the proviso, the previous sanction of the Central Government is required, is an erroneous view, ignoring several vital provisions of the Cr. P.C.

15. Section 188 occurs in Chapter 13 which deals with jurisdiction of Criminal Courts in Inquiries and Trials. Even the sub heading of this Chapter would have indicated to the Court that it did not cover investigation. It should also be remebered that proviso to a section qualifies the entire section and the language of the proviso in Section 188 is very significant. It reads as follows:-

'Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.'

It is significant to remember that the overriding effect is given to the section only with regard to inquiry and trial. It does not cover investigation. If we examine the language of the main section, we find that obviously the words 'he may be dealt with in respect of such offences'are used in the sense in which the proviso refers to them as in Chapter 13. It is significant to remember that Section 188 is not given overriding effect over other provisions in other Chapters of the Cr. P. C, particularly the provisions in Chapter 12.

16. Considering the fact that this Division Bench decision dealt with the matter without referring to various other provisions of the Cr. P. C, as pointed out supra. I am of the view that this decision does not have the effect of binding precedent; hence I steer clear of. It looks as if the learned Judges were more influenced by the law propounded by a learned Single Judge of this Court in Remla v. S. P. of Police, 1993 (1) KLT 412:(1993 Cri LJ 1098) and they did not bother to examine the matter in proper perspective and in depth. May be the relevance of Chapter 12 Cr. P. C. and its provisions were not brought to the notice of their Lordships. With utmost respect to the learned Judges who dealt with the decisions in Remlav.S. P. of Police, (1993) 1 KLT412:(1993 Cri LJ 1098), and Muhammed v. State of Kerala, (1994) 1, KLT 464,1 am of the view that they are not binding precedents, and they are not applicable to the facts of the present case. I am conscious of the fact that Single Judge of this Court is bound by a decision of the Division Bench; and still I am deviating from the Division Bench decision as adecision rendered without reference toall the relevant provisions of the statute does not have the legal effect of a binding precedent.

17. In view of the provisions of Chapter 12 and the language of Section 188 Cr. P. C. it necessarily follows that even for the purpose of investigation, even if it is deemed to come within the ambit of the phrase 'dealt with' used in Section 188, it requires previous sanction of the Central Government.

18. It is significant to remember that Section 3 IPC deals with any person liable by any Indian law to be tried for an offence committed beyond India. It does not deal with the power of the Indian police to investigate acrimecommittedoutsidelndia.lt should also be remembered that Sections 3 and 4 of the IPC are provisions of the substantive law, and they have nothing to do with the procedural law. In my considered opinion the statement of law in the decision in Remla's case, (1993) 1 KLT 412 : (1993 Cri LJ 1098), and in Muhammed's case, (1994) 1 KLT464 is not a correct statement of law. The local police has no jurisdiction to investigate the offence alleged t6 have been committed by the fourth respondent at Damam in Saudi Arabia.

In the result, this Court has no jurisdiction to issue the writ as prayed for, both on the ground of want of jurisdiction as the offence was committed outside the territorial limits of this Court, and also on the ground that Section 188 Cr. P. C. does not clothe the local police to investigate the crime. The Original Petition is dismissed. Each party to bear its own costs.