

Krishnakumar Menon Vs. Neoteric Informatique (P) Ltd.

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Court : Kerala

Decided On : Sep-20-2001

Reported in : 2002CriLJ706

Judge : J.B. Koshy and; K. Padmanabhan Nair, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 138 and 482; [Constitution of India](#) - Articles 226, 226(2), 227 and 227(1); Constitution (Fifteenth Amendment) Act, 1978; Negotiable Instruments Act - Sections 141 and 142; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 20

Appeal No. : Crl. M.C. Nos. 759, 960 etc. of 2001

Appellant : Krishnakumar Menon

Respondent : Neoteric Informatique (P) Ltd.

Advocate for Def. : P.M. Mohammed Shiraz and; Thomas M. Jacob, Adv.

Advocate for Pet/Ap. : K. Ramachandran, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

Koshy, J.

1. An important question of law regarding jurisdiction of this Court was referred to the Division Bench by a Learned Single Judge(Justice N. Krishnan Nair) after noticing contrary views expressed by this Court in Sreethara Kamath v. Jawala Prasad Guptha (1970 KLT 45) and Chellappan v. Chandulal (1980 KLT 411) on one side and J.C. Augustine v. Omprakash Nanakram (2001(2) KLT 638 = 2001 (2) KLJ 57) on the other side. The common question arising for consideration in these cases is whether this Court can quash a criminal complaint pending in a court outside the Kerala State in a petition filed under S. 482 of the Code of Criminal Procedure?

2. As far as the facts of these cases are concerned, petitioner is the partner of a firm named 'Online Instruments' functioning in Kochi. Various complaints were filed before the Additional Chief Metropolitan Magistrate's Court, Mumbai under Section 138 read with Section 141 & 142 of the Negotiable Instruments Act against the petitioner, the firm 'Online Instruments' and some of the partners of the firm. It is the case of the petitioner that the Additional Chief Metropolitan Magistrate has no jurisdiction to deal with the case as no part of the cause of action arose in the jurisdictional area of the Court. All the accused arrayed as parties are living in Kerala. It was further contended that even if the allegations in the complaint were correct, there is no case made out against the petitioner as legal requirements before filing the complaint against the petitioner were not satisfied by the respondents/complainants. It is also stated that petitioner has not signed the cheques, and no notice was received by him regarding dishonour of the cheques. He pleads total ignorance of the issuance of the cheques in question. Petitioner has also got a case that one of his partners must have taken the cheque leaves of the Company and misused it and therefore he wants quashing of the complaint so far as it is against him.

3. We quote the order of reference before answering the same:

'The common question arising for consideration is whether the High Court can quash a complaint pending in a court outside the Kerala State. As early as 1970 this Court in Sreethara Kamath v. Jawala Prasad Guptha (1970 KLT 45) observed that it is doubtful if the Kerala High Court has power to set aside an order or quash

a proceeding of a Court outside its jurisdiction or area of superintendence. Again in *Chellappan v. Chandulal* (1980 KLT 411) the question came up for consideration before a learned Single Judge of this Court. It has been held in that case that the jurisdiction of this Court is confined to the territory of Kerala and its powers of control, judicial and administrative, are limited to courts, subordinate to it, Kerala. In other words, the learned Single Judge in the decision referred to above held that the High Court cannot under Section 482 quash a complaint pending in a court outside the Kerala State. But a contrary view is taken by a learned Single Judge of this court in *J.C. Augustine v. Omprakash Nankram* (2001(2) KLT 638= KLT 57). In that case the accused in C.C. No. 1093/97 on the file of the Metropolitan Magistrate's Court No. 16, Ahmedabad filed a petition under Section 482 of the Cr.P.C. for quashing a complaint and further proceedings pursuant thereto. This Court held that since the part of the cause of action arose within the jurisdiction of this Court, this Court has jurisdiction to entertain the petition. The learned Single Judge relied on the decision of the Supreme Court in *Navinchandra N. Majithia v. State of Maharashtra* (2000) 7 SCC 640). that was a case where the Supreme Court had considered whether the Bombay High Court had jurisdiction to quash an FIR registered at Shillong. It has held by the Supreme Court that from the provision in Clause(2) of Article 226 it is clear that the maintainability or otherwise of the Writ Petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court. The Supreme Court's decision relied on by the learned Single Judge was concerned with the power of the High Court under Article 226 of the Constitution. The Supreme Court had no occasion to consider the question whether the High Court in one State can under Section 482 quash the proceedings pending before a court outside the State. Therefore, in my view the question whether the High Court can quash the proceedings pending before a Court outside the State requires to be considered by a Division Bench.'

4. The Supreme Court in *Navinchandra N. Majithia v. State of Maharashtra* (AIR 2000 SC 2966) held that the power conferred on the High Court under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the

jurisdiction of that High Court. In paragraphs 7 and 8 of the above judgment it is held as follows:

'7. The object of the amendment by inserting clause(2) in the Article was to supersede the decision of the Supreme Court in *Election Commission v. Saka Venkata Subba Rao* (AIR 1953 SC 210) (supra) and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High Court under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts.

8.'Cause of action' is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words 'cause of action wholly or in part arises' seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts. As per that Section the suit could be instituted in a court within the legal limits of whose jurisdiction the 'cause of action wholly or in part arises'. Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean 'the bundle of facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.'

Here in this case there is no dispute that part of the cause of action or majority of the cause of action arose in the State of Kerala. The drawee Bank is in Kerala. Cheques were dishonoured in Kerala. Accused are living in Kerala.

5. The Supreme Court in *Bhaskaran v. Balan* (1999(3) KLT 440 (SC)), held that following are the components of the offence under Section 138 of the Negotiable Instruments Act:

'(1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice.'

Supreme Court held that if the five different acts were done in five different localities, any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. Therefore, in the is case except issuance of the notice all other instance happened in Kerala State and there is no dispute that part of the cause of action arose in Kerala State. Therefore, under Article 226 of the [Constitution of India](#) this Court maybe able to deal with the matter in view of the decision reported in AIR 2000(3) SC 2966 (supra). Whether there are grounds to quash the complaint, even if this Court has jurisdiction is a different issue.

6. The question to be considered in this case is not the power of the High Court under Article 226, but jurisdiction under Section 482 Cr.P.C. Section 482 Cr.P.C. reads as follows:

'Saving of inherent powers of High Court:- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.'

For the purpose of Criminal Procedure Code, High Court is defined under Section 2(e) of the Cr.P.C. as follows:

'2(e) High Court' means,-

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court:

(iii) in relation to any Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.',

Therefore, 'High Court' mentioned in Section 482 of the Cr.P.C. shows only its relation to the State. Hence under Section 482 Cr.P.C. High Court can quash only complaints filed in the State. This Court's powers control and supervision, both judicial and administrative are limited to courts in Kerala. For this proposition we get support from the decisions of this Court in Chellappan v. Chandulal (1980 KLT 411) and Sreethara Kamath v. Jawala Guptha (1970 KLT 45). Article 366(14) of the [Constitution of India](#) defined 'High Court' as follows:

'366(14):- 'High Court' means any Court which is deemed for the purpose of this Constitution to be a High Court for any State and includes-

(a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitutions;'

Here territorial jurisdiction of the High Court established is clear. A pending matter in a court under the jurisdiction of another High Court cannot be quashed by the Kerala High Court by using inherent powers provided under Section 482 Cr.P.C. Similar is the powers under Section 227 of the [Constitution of India](#). Article 227(1) of the [Constitution of India](#) reads as follows:

'227(1):- Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction'.

Matter may be different if a petition under Article 226 is concerned, where part of the cause of action arose in the State where the High Court is having jurisdiction. The jurisdiction of the High Court under Article 226 & 227 are separate and independent. A similar provision as contained in Article 226(2) is absent in Section 482 or Article 227. Article 226(2) reads as follows:

'226(2):- 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.'

The above clause was inserted by the Constitution (Fifteenth Amendment) Act, 1978. By insertion of this clause, if whole or part of the cause of action arose in a State, High Court of that State will get jurisdiction. The position is well explained by the Supreme Court in *Oil & Natural Gas Commission v. Utpal kumar Basu* (1994) 4 SCC 711). The aspect whether a complaint pending in another State outside the territorial jurisdiction of a High Court can be quashed under Section 482 Cr.P.C. instead of Article 226 was not considered in the decision in *Augustine v. Omprakash Nanakram* (2001(2) KLT 638). We affirm the judgments in *Chellappan v. Chandulal* (1980 KLT 411) and *Sreethara Kamath v. Jawala Prasad Guptha* (1970 KLT 45).

7. The learned counsel for the petitioner submitted that in that case this Court can convert those petitions under Article 226 of the Constitution if Section 482 Cr.P.C. is not attracted and can give relief under Article 226. In support of the above proposition we refer to the decision of the Supreme Court in *M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate* (AIR 1998 SC 128). In paragraph 26 it was observed by the Court as follows:

'26 Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.'

The Court did not consider the territorial jurisdiction of the High Court under S.482 Cr.P.C. in the above case. Criminal complaint was filed in Ghazipur, Utter Pradesh

State. For quashing the complaint a Writ Petition Article 226 and 227 was filed before the Allahabad High Court which got territorial jurisdiction. An objection was raised that case can be filed only under Section 482 Cr.P.C. There the Supreme Court held that even if case can be filed under Section 482 Cr.P.C., jurisdiction of the Court under Article 227 can be exercised as High Court has got power to correct the errors that are committed by the subordinate courts. However, complaint quashed was pending in the U.P. State itself where the Allahabad High Court can exercise jurisdiction under Section 482 Cr.P.C. as well as Article 227. In the case the Additional Chief Metropolitan Magistrate's Court Mumbai is not under the jurisdiction of this Court for the purpose of Article 227 or Section 482 Cr.P.C. and in view of the above circumstance, it is not possible to convert the petition filed under Section 482 Cr.P.C. as filed under Article 226 of the [Constitution of India](#). Position may be different if a petition is filed under Section 482 of Cr.P.C. in respect of a matter pending in a court subordinate to this Court and this Court has territorial jurisdiction. In such cases this Court can grant relief under Article 226 or 227 if it cannot grant relief under Section 482 of the Cr.P.C. if the circumstances of the case warrant in the interest ignoring the nomenclature. Existence of jurisdiction cannot be ignored. Of course under Article 226 of the Constitution High Court will interfere in pending matters in a court only for compelling reasons in rare occasions.

Therefore, without going into the merits of the matter, we dismiss these petitions as not maintainable without prejudice to the right of the petitioner in approaching the court under Article 226 of the [Constitution of India](#), if petitioner is advised so.

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