

U.B.C. Vs. Govarthanam

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Court : Kerala

Decided On : Mar-16-2005

Reported in : [2005]127CompCas506(Ker); 2005(2)KLT461

Judge : Cyriac Joseph, Ag. C.J. and; K.K. Denesan, J.

Acts : Negotiable Instruments Act - Sections 138; [Constitution of India](#) - Articles 226 and 227

Appeal No. : W.A. No. 1281 of 2004

Appellant : U.B.C.

Respondent : Govarthanam

Advocate for Pet/Ap. : K. Jaju Babu and; M.U. Vijayalakshmi, Advs.

Disposition : Appeal dismissed

Judgement :

K.K. Denesan, J.

1. Would it be proper for this Court to entertain Writ Petitions to quash the proceedings of a Subordinate Court under the superintendence of another High Court? This question has come up for consideration in the background of the following facts.

2. Appellants are accused in Calendar Case No. 388 of 2002 on the file of the Court of the Judicial First Class Magistrate-II, Erode in the State of Tamil Nadu and the respondent is the complainant in that case. Learned Magistrate took cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act. First accused is a partnership firm having its office at Ernakulam in the State of Kerala. Other accused are residents of Ernakulam, They filed W.P.(C) No. 19816 of 2004 before this Court under Article 226 of the [Constitution of India](#) to quash the complaint in the above calendar case. Writ Petitioners contended that the allegations made in the complaint are false, the entire episode had taken place at Ernakulam in Kerala State and therefore the complaint filed before the Court at Erode was liable to be quashed. According to the appellants, what exactly happened was that a gang of persons accompanied by a police officer from Tamil Nadu came to Kerala, trespassed into their house, forcibly took away cheque leaves and foisted a false case misusing those cheque leaves with the malicious intention of dragging the appellants/accused to face prosecution proceedings before a Criminal Court situated in the State of Tamil Nadu where no part of the alleged cause of action has arisen. The Writ Petition was, however, dismissed by the learned Single Judge as per judgment dated 6.7.2004 holding that (i) for appreciating the contention of the writ petitioners evidence was needed and (ii) evidence in that regard can be taken only by the Trial Court. This Writ Appeal is directed against the above judgment.

3. Appellants contended that the pleadings in the Writ Petition are sufficient to establish that the impugned proceedings are as per se illegal and therefore the learned Single Judge ought not to have dismissed the Writ Petition. Before the learned counsel for the appellants proceeded to elaborate the contention of the appellants on the above ground, we interrupted and requested the learned counsel to dispel a doubt entertained by us touching the very propriety of entertaining a Writ Petition under Article 226 of the [Constitution of India](#) to quash the proceedings of a subordinate Court situated within the territorial jurisdiction of another High Court.

4. Shri. Jaju Babu, counsel for the appellants, contended that the power of the High Court under Article 226 of the Constitution of India to quash criminal

proceedings pending before the authority whether within or outside the State is no more res integra in the light of the dictum laid down in Navinchandra N. Majithia v. State of Maharashtra and Ors. AIR 2000 SC 2966. The Apex Court has held that the maintainability of the Writ Petition in the High Court depends on the existence of conditions mentioned in Clause

(1) of Article 226 or the conditions mentioned in Clause

(2) thereof. As per Clause

(2) of Article 226 High Court can exercise jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of the power to issue directions, orders or writs to any Government, authority or person, irrespective of the fact that the seat or residence of such Government or authority or person as the case may be, is not within those territories. Therefore, when Clause

(1) confers jurisdiction on the existence of the fact that the seat of the Government or authority or the residence of the person to whom writs, orders or directions are issued, Clause

(2) of Article 226 confers power on the High Court to issue writs upon the existence of cause of action arising wholly or in part, within the territories over which it is competent to exercise jurisdiction. Counsel invited our attention to the decision of a Division Bench of this Court in Krishnakumar Menon v. Neoteric Informatique (P) Ltd., 2001

(3) KLT 689, and sought to distinguish the same on the ground that the legal position explained therein was in relation to Section 482 of the Code of Criminal Procedure. Learned counsel, however, submitted that the appellants can make use of certain observations made by the Division Bench in Krishnakumar Menon's case.

5. We have considered the contentions of the learned counsel in the light of the decisions cited by him and the relevant provisions of the Constitution and are of the view that it is not proper for this Court to exercise the discretionary jurisdiction

under Article 226 of the [Constitution of India](#) to call for the records and examine the legality or otherwise of the proceedings of a subordinate Court under the superintendence of another High Court under Article 227 of the Constitution. In our view, the parties involved in the case pending before the Criminal Court at Erode can more appropriately invoke the jurisdiction of the High Court of Madras either under Article 226 or under Article 227 or under both the Articles.

6. No doubt if the dictum laid down in Navinchandra's case (supra) is applicable to the factual situation here, we are bound to follow the law laid down therein and cannot refuse to entertain this Writ Appeal to hold that the appellants shall invoke the jurisdiction of the High Court of Madras. It is pertinent to note that in Navinchandra's case (supra) the Apex Court was concerned with the prayer made to quash the first Information Report registered by the police and the investigation into the crime. The action impugned was that of the police officers at Shillong in the State of Meghalaya. The challenge on the ground of lack of jurisdiction was repelled holding that part of the cause of action had arisen within the territorial jurisdiction of the High Court of Bombay and therefore Writ Petition filed under Article 226 of the [Constitution of India](#) before that High Court for quashing the complaint filed at Shillong ought not to have been dismissed as not maintainable. It does not appear from the judgment of the Supreme Court in Navinchandra's case that the prayer therein was to quash the proceedings pending before a subordinate Court within the jurisdiction of the High Court of Guwahati. It is also not seen from the judgment of the Apex Court that any Court Subordinate to the High Court of Guwahati had taken cognizance of the offences so as to attract the jurisdiction of the High Court of Guwahati under Article 227 of the Constitution. There was no occasion, in that case, for the Supreme Court to consider the likelihood of one High Court exercising power under Article 226 and another High Court exercising the very same power or the power under Article 227 of the [Constitution of India](#). But in the case on hand, there is the possibility of a clash of power under Article 226 exercisable by one High Court and power under Article 227 exercisable by another High Court.

7. As the provisions with which we are concerned are Clause (2) of Article 226 and Clause (1) of Article 227 of the [Constitution of India](#), those provisions are extracted

hereunder for easy reference:

'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'.

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

8. In the very nature of the jurisdiction conferred on the High Courts by the aforesaid provisions of the Constitution, the self same proceedings of a subordinate Court can become the subject matter of two or more proceedings; one filed before the High Court having jurisdiction under Clause (2) of Article 226 seeking to quash the lower Court proceedings on the plea that the cause of action, wholly or in part, arose within the territorial jurisdiction of that High Court and the other filed before the High Court within whose jurisdiction the seat of the subordinate Court is situate and thus having jurisdiction under Clause (1) of Article 226 as also under Article 227 of the Constitution. It is possible that in a wide range of disputes, parties may seek reliefs in respect of the very same subject matter between the same parties, invoking Article 226 or/and 227 of the Constitution. In *Surya Dev Rai v. Ram Chander Rai*, 2003 (3) KLT 490 = (2003) 6 SCC 675, this aspect was noticed by the Hon'ble Supreme Court, while considering the scope and ambit of Section 115 of the Code of Civil Procedure as amended and the remedy provided under Articles 226 and 276 of the Constitution. *Surya Dev Rai* was decided by the Apex Court upon a review of decided cases and survey of the decisions wherein the High Courts have exercised jurisdiction to command a writ of certiorari under Article 226 or to exercise supervisory jurisdiction under Article 227 in a variety of cases. Supreme Court in *Surya Dev Rai* observed that the distinction between the two jurisdictions stands almost obliterated in practice and that probably, this is the reason why it has become customary with the lawyers

labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements.

9. It is sound thinking that neither the provisions of the Constitution nor the laws intend that two or more courts, though having concurrent jurisdiction, shall take cognizance of disputes between the same parties in regard to the same subject matter, hold parallel proceedings and render verdicts touching the merits of the issues to resolve the dispute. However, such an undesirable result is likely to emerge if this Court proceeds to entertain the Writ Petition seeking to quash under Article 226 the proceedings of the Criminal Court at Erode over which the High Court of Madras is competent to exercise the power under Article 226 and 227 of the Constitution. If that is so, which of the High Courts among the two shall be conceded the power to exercise the jurisdiction in relation to the proceedings of the subordinate Court

10. Examined in the facts and circumstances of this case, the aggrieved party has the option to approach the High Court of Madras or the High Court of Kerala. If the facts stated by the appellants are true, the High Court of Kerala has got jurisdiction to issue orders or directions or writs in terms of Clause (2) of Article 226 of the Constitution. It has to be emphasised that this Court gets jurisdiction only if the plea made by the appellants regarding the place of occurrence is true. Otherwise, not. Now, let me consider the extent of jurisdiction of the High Court of Madras in relation to the impugned proceedings of the Judicial Magistrate of the First Class-II, Erode. Firstly, the High Court of Madras has the power of superintendence over the above Criminal Court at Erode by virtue of Article 227 of the Constitution. Secondly, it would be competent for the High Court of Madras to exercise the power under Article 226 also, by virtue of the fact that the seat of the authority, namely, the subordinate Court whose proceedings are under challenge, is within the territorial limits over which the High Court of Madras has jurisdiction in terms of Clause (1) of Article 226. Yet another factor also may confer jurisdiction on the High Court of Madras. Suppose, the fact is that part of the cause of action had arisen within the State of Kerala and the other part within the State of Tamil Nadu, it will be competent for the High Court of Madras to entertain the Writ Petition on

the basis of Clause (2) of Article 226 of the Constitution as well.

11. Appellants have approached this Court with the plea that no part of the cause of action had taken place within the State of Tamil Nadu. Assuming that the above statement of the appellants is true, would it in any way affect the jurisdiction of the High Court of Madras under Article 227 or Clause (1) of Article 226 of the Constitution? The answer must be in the negative. Added to the above jurisdictional factors, the High Court competent to exercise the power conferred under Section 482 of CrI.P.C. and to quash the proceedings of the Criminal Court at Erode so as to prevent failure of justice or abuse of the process of that subordinate Court, is the High Court of Madras. If the subordinate Court commits jurisdictional errors, the High Court having the power of superintendence can step in and exercise the supervisory jurisdiction under Article 227 appropriately. It is settled law that interference under Article 227(1) can be suo motu as well. Notwithstanding the forum chosen by the aggrieved party to challenge the proceedings of the subordinate Court, the High Court having the power of superintendence can suo motu exercise its power under Article 227 of the Constitution. Therefore, even in a case where the cause of action has arisen wholly within the territorial limits of another High Court, the High Court having the power of superintendence over that subordinate Court which has initiated proceedings or taken cognizance or otherwise proceeds with, in respect of a matter the cause of action of which has arisen within the jurisdiction of another Court can exercise the power to issue writs under Article 226(1) as also the power of superintendence under Article 227 and undo or set right the illegality. Therefore, among the two High Courts mentioned above, the High Court which is more appropriate would be the one within whose jurisdictional limits the particular subordinate Court is situated so that the powers conferred under Articles 226 and 227 of the [Constitution of India](#) as also the power under Section 482 CrI.P.C. can be exercised, as situation demands. This is the rationale and logical basis for us to hold that the Writ Petition filed to quash the proceedings of the Criminal Court at Erode need not be entertained by this Court. That apart, the inconvenience and practical difficulties likely to be caused by the calling of records of the subordinate Court situated in another State can also be avoided and the jurisdiction can be exercised more effectively. Of course, appellants would contend that filing cases in

a High Court outside the native State will cause inconvenience and hardship to them. On the contrary the de facto complainant would say that defending the case as respondent in a Writ Petition instituted in a High Court away from his native State will cause hardship and inconvenience to him. Therefore, the convenience of the parties cannot be given much importance.

12. Now, we shall advert to the decision of this Court in Krishnakumar Menon v. Neoteric Informatique (P) Ltd., 2001 (3) KLT 689. The question for consideration in Krishnakumar Menon's case was whether complaint filed before the Additional Chief Metropolitan Magistrate's Court, Mumbai, could be quashed or set aside by this Court in exercise of the inherent power provided under Section 482 Cr.P.C. A Division Bench of this Court while affirming the judgments of the Single Bench in Chellappan v. Chandulal, 1980 KLT 411 and Sreethara Kamath v. Jawala Prasad Guptha, 1970 KLT 45, held that 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. or the power of superintendence under Article 227 of the [Constitution of India](#). While laying down the law as above, the Division Bench observed that the matter may be different in a petition under Article 226 is concerned, where part of the cause of action has arisen in the State where the High Court is having jurisdiction. But this was made as a passing observation, because the Division Bench was not considering in Krishnakumar Menon's case the propriety of entertaining a Writ Petition filed under Article 226 of the Constitution to quash the proceedings of a subordinate Court situate in another State over which the Kerala High Court does not have the supervisory jurisdiction. Hence the above observations will not advance the contention of the appellants, in the facts and circumstances of this case.

13. For the above reasons we hold that it would not be proper for this Court to entertain the Writ Petition filed by the appellants and exercise the discretionary jurisdiction under Article 226 of the jurisdiction of India to quash the proceedings of the Judicial First Class Magistrate Court-II, Erode which is under the supervisory jurisdiction of the High Court of Madras.

14. In the result this Writ Appeal is dismissed, without prejudice to the right of the appellants to invoke the jurisdiction of the High Court of Madras. We make it clear that we have not expressed anything regarding the merits of the calendar case pending before the Judicial First Class Magistrate Court-II, Erode.

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