

GAHC010130042013



2024:GAU-AS:9064

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2779/2013

CANDID DRUG DISTRIBUTORS and 2 ORS
A PARTNERSHIP FIRM INCORPORATED AND REGISTERED UNDER THE
PROVISIONS OF THE INDIAN PARTNERSHIP FIRM ACT, 1932, AND HAVING
ITS REGISTERED OFFICE AT M.L. NEHRU PATH, PANBAZAR, GUWAHATI-
781001, ASSAM, BEING REP. BY ITS PARTENERS PRANAB KUMAR
BANERJEE AND SHRI GAUTAM BANERJEE.

2: PRANAB KUMAR BANERJEE

3: GAUTAM BANERJEE
BOTH PERTNERS OF PETITIONER NO. 1 FIRM AND R/O- M.L. NEHRU
ROAD
PANBAZAR
GHY- 1
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, HOME
DEPTT., DISPUR- 781006, ASSAM.

2:THE STATE OF MAHARASTRA
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF MAHARASTRA
HOME DEPTT.
MANTRALAYA
MADAM CAMA ROAD
NARIMAN POINT
MUMBAI- 400021
MAHARASTRA.

3:THE COMMISSIONER OF POLICE
MUMBAI

POLICE COMMISSIONER'S OFFICE
OPP. CRAWFORD MARKET
MAIN BUILDING
D.N. ROAD
MUMBAI G.P.O.
MUMBAI- 400001.

4:UNICHEM LABORATORIES LTD.
REP. BY SHRI PRAKASH AMRUT MODY
CHAIRMAN CUM MANAGING DIRECTOR
HAVING ITS REGISTERED OFFICE AT UNICHEM BHAVAN
PRABHAT ESTATE
S.V. ROAD
JOGESHWARI EAST
MUMBAI- 400012

Advocate for the Petitioner : MR.I LAHIRI, MR. I BORTHAKUR,MR. D GOGOI,MR.N J KHATANIAR,MR.P SENGUPTA,MR.P N GOSWAMI,MR.I CHOWDHURY,MR.D DAS

Advocate for the Respondent : GA, ASSAM, MR.Z ISLAM,MRR BARMAN,MR.B D GOSWAMI,MR.M DAS,DR.ASHOK SARAF,MR.A TALUKDAR,MR.P BARUAH,MR.K CHOUDHURY,MR.A GOYAL

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner : MR. I BORTHAKUR, MR. P N GOSWAMI, MR. N J KHATANIAR, MR. D DAS, MR. P SENGUPTA, MR. D GOGOI, MR. I CHOWDHURY, MR.I LAHIRI

For the Respondent(s) : MR. T R GOGOI, JR. GOVT. ADVOCATE FOR R-1; MR. A GOYAL, MR. B D GOSWAMI, MR.M DAS, MR. A TALUKDAR, DR. ASHOK SARAF, MR. K CHOUDHURY, MR. Z ISLAM, MR. P BARUAH, MR. R BARMAN

Date on which judgment
is reserved : **N/A**

Date of pronouncement
of judgment : **16.06.2026.**

Whether the pronouncement
is of the operative part
of the judgment ? : **No.**

Whether the full judgment
has been pronounced : **Yes.**

JUDGMENT & ORDER

Heard Mr. I Borthakur, learned counsel for the petitioners. Also heard Mr. T. R. Gogoi, learned Government Advocate, Assam for the respondent No. 1 as well as Mr. A Goyal, learned counsel for the respondent No. 4.

2. By way of this petition under Article 226 (2) of the Constitution of India, the petitioners are seeking, *inter alia*, quashing of the impugned FIR dated 07.12.2012 lodged by the respondent No. 4 before the Oshiwara Police Station in the district of Mumbai (Maharashtra) registered as C.R. No. 376/2012 under Sections 409/420/468/471/34 of the IPC.

3. It appears from the order dated 28.07.2025 passed in the connected M.C. No. 88/2024 that service of notice is complete in respect of the respondent Nos. 2 & 3. However, there is no representation on behalf of the aforesaid respondents on call.

4. Since the matter has been pending since 2013, the same is accordingly taken up for final disposal.

5. Pertinent that this Court by order dated 08.11.2013 initially stayed the further proceedings in C.R. No. 376/2012 till 13.11.2013. Subsequently, though the same have been extended, however on 25.01.2019 this Court in terms of the ratio laid down by the Apex Court in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. -Vs- Central Bureau of Investigation**, reported in **AIR 2018 SC 2039** declined to extend the stay thereafter. Notwithstanding that the investigation remained suspended since then.

6. The primary contention of the petitioners is that the police authorities of Oshiwara Police Station has no jurisdiction to entertain the FIR lodged by the respondent No. 4, inasmuch as, in the present case, not a single event has taken place at Mumbai, Maharashtra in respect of the allegations contained in the FIR and if at all any offence has been committed by the petitioners, the same has been committed within the jurisdiction of Guwahati. It is the further contention of the petitioners that the case of the respondent No. 4, as alleged in the FIR, is entirely a civil dispute in nature and can at best be a case of mere breach of contract and an arbitration proceeding in respect of the same matter is also pending before the Arbitral Tribunal at Mumbai. In the aforesaid premises, the present writ petition has been filed, praying for:

“In the premises aforesaid, it is, therefore, respectfully prayed that Your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the Respondents to show cause as to why a Writ in the nature issued not of Mandamus be directing the police authorities at Mumbai. Oshiwara Police Station to act in accordance with law and/or why Writ in the nature of Certiorari should not be issued setting aside and quashing the FIR dated 07-12 2012 lodged by the Respondent No 4 before the Oshiwara Police Station in the district of Mumbai (Maharashtra registered as CR No 376 of 2012 under Section 409/420/468/471/34 of the Indian Penal Code and further for a direction to refrain from carrying out any investigation on the basis of the said FIR and/or causes being shown and in case the Hon'ble causes being Court find that there is any ingredient of any offence the may be criminal complaint transferred to an

appropriate police station at Guwahati and upon hearing the parties and on perusal of the records be pleased to make the Rule absolute by providing adequate relief to the Petitioners and/or pending disposal Your Lordships may be pleased to protect the by Petitioners interest staying/suspending the operation of the impugned FIR dated 07 12 2012 lodged by the Respondent No 4 before the Oshiwara Police Station in the district of Mumbai (Maharashtra) registered as CR No 376 of 2012 under Section 409/420/468/471/34 of the Indian Penal Code and further direct the police authorities to refrain/forbear from contemplating any action/further investigation on the basis of the aforesaid FIR against the Petitioners and/or pass any such. order/s as Your Lordships may deem fit and proper.”

7. Mr. I Borthakur, learned counsel appearing for the petitioners submits that the investigation pending at Mumbai lacks territorial jurisdiction and is filed with malicious intention only to harass the petitioners. He further submits that no charge-sheet has been filed after more than a decade. In support of his prayer for quashing the FIR, he relies upon decisions of the Apex Court in the cases of ***Navinchandra N. Majithia -Vs- State of Maharashtra & Ors.***, reported in ***(2000) 7 SCC 640***, ***Sailesh Kumar Singh @ Shailes R. Singh -Vs- State of Uttar Pradesh & Ors.***, reported in ***(2025) 7 SCR 2161*** and a decision of the Co-ordinate Bench of this Court in the case of ***Sri Devendra Kumar Yadav -Vs- State of Assam and Ors***, passed in ***Crl. Pet. 1030/2025***.

8. Per contra, Mr. A. Goyal, learned counsel appearing for the respondent No. 4, submits that the allegations contained in the FIR prima facie disclose the commission of cognizable offences and, therefore, the investigation ought not to be interdicted at its threshold. He further contends that the respondent No. 4 has its registered office at Mumbai; the consignment agency agreement forming the basis of the relationship between the parties was executed at Mumbai; and meetings were also held at Mumbai in an attempt to resolve the disputes relating to the outstanding dues. According to the learned counsel, these facts furnish a sufficient territorial nexus with Mumbai and, consequently, the investigation undertaken by the Mumbai Police cannot be said to be without jurisdiction.

9. I have heard the learned counsels for the contending parties and perused the materials available on record. I have also duly considered the case laws cited at the bar.

10. It appears that a Consignment Agent Agreement was entered into between the petitioners and respondent No. 4 on 01.09.2001, which was subsequently renewed on 01.09.2004. Under the said arrangement, the petitioners' firm, having its place of business at Guwahati, was appointed as consignment agent for warehousing, storage and onward distribution of pharmaceutical products manufactured and marketed by respondent No. 4 in the North-Eastern region.

11. The FIR alleges that one Sri Malay Dey, an employee working under the petitioners' establishment at Guwahati, made a statement on 03.08.2011 admitting that fictitious invoices had been generated against duplicate lorry receipts. The FIR further alleges that forged invoices, forged transporter receipts, false debit notes, false credit notes and fabricated electronic entries were generated and uploaded by the petitioners while acting as consignment agents from Guwahati. The allegations concerning diversion of stock, non-delivery of goods and misappropriation of sale proceeds are likewise attributed to activities undertaken in Assam and other States of the North-Eastern region.

12. The FIR further reveals that officials of respondent No. 4 visited stockists situated in Nagaon, Guwahati, Barpeta, Silchar, Agartala, Aizawl, Imphal and other locations within the North-East to verify alleged discrepancies. Inquiries were conducted with transporters operating from Guwahati. The alleged forged transporter documents were also stated to be documents pertaining to transport operations undertaken from Guwahati. Thus, the entire factual foundation of the allegations emerges from transactions, inquiries and events occurring within the State of Assam and neighbouring States.

13. It is also not in dispute that a meeting was convened on 04.08.2011 at the office

of the petitioners at Guwahati in connection with the alleged discrepancies. Correspondence exchanged thereafter and the disputes which subsequently arose between the parties likewise stemmed from the commercial relationship being operated from Guwahati.

14. Section 177 CrPC embodies the general rule governing territorial jurisdiction and provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The expression "ordinarily" indicates that Sections 178 to 184 constitute exceptions to the general rule. The primary inquiry therefore is to identify the constituent ingredients of the alleged offence and ascertain where such ingredients occurred.

15. Section 178 applies where it is uncertain in which local area an offence was committed, where the offence is committed partly in one area and partly in another, where it is a continuing offence, or where it consists of several acts done in different local areas. Section 179 applies where an act becomes an offence by reason of a consequence which has ensued, and such consequence forms part of the offence itself.

16. Territorial jurisdiction under criminal law is conceptually distinct from territorial jurisdiction under civil law. In civil proceedings, jurisdiction may arise wherever a material part of the cause of action accrues, including places where the legal injury is suffered. Under the CrPC, however, the relevant inquiry is where the offence was committed, namely, where the constituent ingredients of the alleged offence occurred. The focus remains on the situs of the offence and not merely the place where the consequences are ultimately experienced.

17. The Apex Court in ***Y. Abraham Ajith & Ors. -Vs- Inspector of Police, Chennai & Anr.***, reported in ***(2004) 8 SCC 100*** held that the crucial question is whether any part of the cause of action, understood in criminal law as the place where the offence was committed, arose within the jurisdiction of the Court concerned. The

Court explained that while the expression "cause of action" is ordinarily employed in civil law, in criminal law it essentially refers to the bundle of facts constituting the offence. What is material is the place where the acts constituting the offence occurred and not the place where the complainant subsequently experiences the effect of such acts.

18. The same principle was reiterated in *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*, reported in **(2009) 1 SCC 720**. The Apex Court observed that Section 177 is the governing rule and Sections 178 and 179 are exceptions thereto. The Court cautioned that every fact connected with a dispute cannot be treated as a jurisdiction-conferring fact. A distinction must be maintained between facts constituting ingredients of the offence and facts which are merely consequential thereto. Jurisdiction is attracted only where a constituent ingredient of the offence itself occurs within the territorial limits of the Court concerned.

19. Applying the aforesaid principles to the allegations contained in the FIR, this Court finds that the offences alleged are under Sections 409, 420, 468 and 471 IPC.

20. Insofar as Section 420 IPC is concerned, the ingredients are deception, dishonest inducement and consequential delivery of property or alteration of a valuable security. The alleged deception pleaded in the FIR arises from invoices, transporter receipts and electronic records allegedly generated by the petitioners from Guwahati. No act of deception is alleged to have originated from Mumbai.

21. For an offence under Section 409 IPC, the essential ingredients are entrustment and dishonest misappropriation or conversion of entrusted property. The entrustment pleaded in the FIR pertains to pharmaceutical stock supplied to the petitioners for distribution within the North-Eastern region. The alleged failure to account for the goods and the alleged misappropriation are stated to have occurred in Assam. No act constituting misappropriation is alleged to have occurred at Mumbai.

22. The allegations under Sections 468 and 471 IPC relate to preparation and use of

forged invoices, forged transporter receipts and falsified records. The FIR itself attributes such acts to the petitioners while functioning as consignment agents from Guwahati. The creation of the documents, their use and their deployment in support of transactions with stockists are all alleged to have occurred outside Mumbai.

23. Thus, the FIR itself places every constituent ingredient of the alleged offences at Guwahati or other locations within the North-Eastern States. The preparation of invoices, uploading of electronic records, handling of stock, alleged diversion of goods, interaction with stockists, alleged misappropriation of sale proceeds and use of transporter documents are all pleaded to have occurred outside Mumbai.

24. The respondents have sought to justify the institution of the FIR at Mumbai on the ground that the registered office of respondent No. 4 is situated there; that the agreement was executed there; that negotiations took place there; and that losses were ultimately reflected in the books of account maintained there. However, none of these facts constitute ingredients of the offences alleged. Execution of the agreement at Mumbai is not an ingredient of cheating, criminal breach of trust or forgery. The situs of the complainant's registered office is likewise irrelevant unless an ingredient of the offence occurred there. The fact that the complainant ultimately suffered financial loss at Mumbai cannot by itself convert Mumbai into the place where the offence was committed.

25. Consequently, this Court is satisfied that no constituent ingredient of the offences alleged in the FIR is shown to have occurred within the territorial limits of Mumbai. The allegations, taken at their face value and accepted in their entirety, disclose that the alleged acts of deception, forgery, use of forged documents, falsification of records, diversion of stock and misappropriation of entrusted property were committed within the State of Assam and other North-Eastern States.

26. Having arrived at the aforesaid conclusion, the next question that arises is whether this Court can grant relief in exercise of its jurisdiction under Article 226 of

the Constitution.

27. Article 226 of the Constitution confers upon every High Court wide powers of judicial review. Clause (1) empowers the High Court to issue appropriate writs, directions and orders for enforcement of fundamental rights and for any other purpose. Clause (2), which assumes particular significance in the present case, provides that the power under Article 226 may be exercised if the cause of action, wholly or in part, arises within the territorial jurisdiction of the High Court, notwithstanding that the seat of the Government, authority or person against whom relief is sought is situated outside such territorial limits. The provision reads 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.”

The amplitude of the power under Article 226 is constitutional in character and is intended to ensure that public authorities act within the bounds of law. While such power is to be exercised with circumspection, it remains available whenever intervention becomes necessary to prevent abuse of process, remedy jurisdictional error or secure the ends of justice.

28. In ***Navinchandra N. Majithia -Vs- State of Maharashtra & Ors.***, reported in **(2000) 7 SCC 640**, the Apex Court held that the maintainability of a writ petition under Article 226(2) depends upon whether the cause of action, wholly or in part, has arisen within the territorial jurisdiction of the High Court concerned. While dealing with criminal proceedings instituted at Shillong, the Apex Court recognized that where allegations of mala fide institution of criminal proceedings at a distant forum are raised, constitutional Courts are competent to examine the issue and grant

appropriate relief. Significantly, the Apex Court observed that the institution of criminal proceedings at a place having no nexus with the alleged offence may itself constitute a circumstance warranting constitutional scrutiny. Having regard to the peculiar facts of that case, the Apex Court, instead of relegating the parties to a prolonged jurisdictional contest, directed transfer of the investigation to the investigating agency possessing the closest territorial nexus with the alleged offence. The decision thus affirms that the powers of judicial review under Article 226 are sufficiently wide to prevent abuse of the criminal process and to ensure that investigation is conducted by the authority having lawful jurisdiction over the alleged occurrence. Relevant paragraphs of the aforesaid judgment read as under:

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

23. This Court in case of K Bhaskaran v Sankaran Vaidhyan Balan³ considered the question of territorial jurisdiction of the courts relating to the offence under Section 138 of the Negotiable Instruments Act In that case on 29-1-1993 the respondent, S. presented a cheque for the amount of Rs 1 lakh bearing the signature of the appellant. B at the Kayamkulam (Kerala) Branch of the Syndicate Bank for encashment. The cheque was returned by the bank unpaid, because of the insufficiency of funds in the account of B S issued a notice by registered post on 2-2-1993 The notice was returned to S on 15-2-1993 with the endorsements "addressee absent for three dates and "intimation served on addressee's house" for 6-3-1993 The postal article remained unclaimed till 15-2-1993 and was then returned to the sender. S. with the endorsement "unclaimed" S. filed a complaint on 4-3-1993 before the Court of the Judicial Magistrate. Ist Class. Adoor (District Pathanamthitta) against B under Section 138 of the Negotiable Instruments Act. 1881 B denied that the court had territorial jurisdiction on the basis that the cheque had been dishonoured in Kayamkulam District.

24. This Court held (at SCC p. 517. para 11) that under Section 177 of the Criminal Procedure Code "every offence shall ordinarily be inquired into and tried in a court within whose jurisdiction it was committed The locality where the bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. The offence under Section 138 of the NI Act would not be completed with the dishonour of the cheque It attains

completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. This Court further held that Section 178 of the Criminal Procedure Code suggests that if there is uncertainty as to where, among different localities, the offence would have been committed the trial can be had in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case where the offence was committed partly in one local area and partly in another local area the court in either of the localities can exercise jurisdiction to try the case. Further again, Section 179 of the Code stretches its scope to a still wider horizon.

25. In the case of *Satvinder Kaur v State (Govt. of NCT of Delhi)* the question of quashing of FIR on the ground of lack of territorial jurisdiction of the police to investigate the offence came up for consideration. Construing the provision of Sections 154, 162, 177 and 178 of the Criminal Procedure Code this Court held that if the investigating officer finds that the crime was not committed within his territorial jurisdiction he can forward the FIR to the police station concerned, but this would not mean that in a case which requires investigation the police officer can refuse to record the FIR and/or investigate it. Disapproving the order of the Delhi High Court quashing the FIR at the investigation stage on the ground of lack of territorial jurisdiction this Court observed. (SCC p. 736, para 14).

"14 Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se, it has no jurisdiction to examine the correctness or otherwise of the allegations.

26. In case of *HV Jayaram v Industrial Credit & Investment Corpn of India Ltd* this Court considered the question where the offence under Section 113(2) of the Companies Act, 1956 is completed. Taking note of Section 113 and Section 207

of the said Act this Court held, *inter alia*, that the cause of action for default of not sending the share certificates within the supulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted.

27. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a *mala fide* move on the part of the complainant to harass and pressurize the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition, gist of which has been noted earlier, it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court.

28. The next question for consideration is regarding a proper order to be passed in the case.

29. Considering the peculiar fact-situation of the case, we are of the view that setting aside the impugned judgment and remitting the case to the High Court for fresh disposal will cause further delay in investigation of the matter and may create other complications. Instead, it will be apt and proper to direct that further investigation relating to complaint filed by JB Holdings Ltd should be made by the Mumbai Police.

30. Accordingly, we allow the appeal, set aside the judgment under challenge and dispose of the writ petition with the direction that the complaint lodged by JB Holdings Ltd at Shillong which is presently being investigated by the Special Superintendent of Police, CID, Shillong shall be transferred to the Mumbai Police for further investigation through its Economic Offences Wing, General Branch, CID, or any other branch as the competent authority of the Mumbai Police may decide in accordance with law.”

29. In the present case, the FIR itself furnishes the jurisdictional facts necessary for invocation of Article 226(2). According to the complainant’s own version, the acts

constituting entrustment, storage of goods, issuance of invoices, uploading of electronic records, generation of alleged forged transport documents and diversion of stock were undertaken from Guwahati and other places within the North-Eastern region. It is these very acts which constitute the foundation of the offences alleged in the FIR. Consequently, not merely a fraction but the entirety of the alleged criminal transaction, as pleaded by the complainant, is rooted outside Mumbai and substantially within the territorial jurisdiction of this Court. The petitioners' grievance that criminal proceedings have been initiated before an investigating agency lacking territorial nexus with the alleged offences therefore furnishes a clear and substantial cause of action for invoking the writ jurisdiction of this Court under Article 226(2) of the Constitution.

30. The contours of such jurisdiction were further elucidated by the Apex Court in ***Asit Bhattacharjee v. Hanuman Prasad Ojha***, reported in **(2007) 5 SCC 786**. While distinguishing the facts before it, the Court observed that ***Navinchandra (Supra)*** was a case where allegations of mala fide institution of proceedings at an inappropriate forum formed an integral part of the challenge. The Apex Court further reiterated that where an investigating agency arrives at a conclusion that the alleged crime was not committed within its territorial jurisdiction, the FIR may be forwarded to the police station having jurisdiction. Relevant paragraphs of the aforesaid judgment read as under:

“30. The High Court has placed strong reliance upon a decision of this Court in Navinchandra N Majithia v State of Maharashtra wherein this Court held. while considering a contention that the High Court of Bombay was not correct in not entertaining the application for quashing of a complaint petition filed by the complainant in Shillong, went into the merit of the matter and instead of remitting the matter back to the High Court directed (SCCP 651. para 29).

‘29. Considering the peculiar fact-situation of the case we are of the view that setting aside the impugned judgment and remitting the case to the High Court for fresh disposal will cause further delay in investigation of the matter and may create other complications. Instead, it will be apt and proper to direct that further investigation relating to complaint filed by J.B. Holdings Ltd. should be made by the Mumbai Police.’

31. This Court arrived at the finding that the High Court should have issued a writ of mandamus directing the State of Meghalaya to transfer the investigation to Mumbai Police taking note of the averments made in the writ petition that the complaint petition filed at Shillong was mala fide.

32. No such explicit prayer was made by the respondents in their writ petition, although a prayer for issuance of a writ in the nature of mandamus, directing the State of West Bengal to transfer Case No 381 to the State of UP, had been made the question of the State of West Bengal's having a legal duty in that behalf did not arise Only in the event an investigating officer having regard to the provisions contained in Sections 154, 162, 177 and 178 of the Code of Criminal Procedure had arrived at a finding that the alleged crime was not committed within his territorial jurisdiction, could forward the first information report to the police having jurisdiction in the matter.

33. *Stricto sensu* therefore, the High Court should not have issued such a direction. Assuming, however, that the High Court could mould the relief, in our opinion, it was not a case where on the face of the allegations made in the complaint petition, the same could be said to be mala fide. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever.”

31. The decision in ***Rhea Chakraborty -Vs- State of Bihar & Ors.***, reported in **(2020) 20 SCC 184** also merits consideration. The Apex Court observed that transfer of investigation is not ordinarily traceable to Section 406 CrPC and ultimately exercised jurisdiction in the peculiar facts of that case under Article 142 of the Constitution. However, the present case stands on a different footing.

32. This Court undoubtedly is not exercising a power analogous to Article 142. The source of jurisdiction is Article 226 itself. Once territorial jurisdiction under Article 226(2) is attracted, the powers of judicial review conferred upon the High Court are plenary and constitutional in nature. The Court is not exercising a statutory power of transfer under the Code but a constitutional power to ensure that public authorities act within the bounds of law and to prevent abuse of legal process.

33. It is true that Courts ordinarily refrain from interfering with investigations at the threshold and that the principles reiterated in ***Satvinder Kaur -Vs- State (Govt. of NCT of Delhi) & Anr.***, reported in **(1999) 8 SCC 728**, as subsequently

affirmed in ***Neeharika Infrastructure Private Limited -Vs- State of Maharashtra & Ors.***, reported in ***(2021) 19 SCC 401***, mandate considerable judicial restraint while exercising powers of judicial review in criminal matters. Equally, however, judicial restraint cannot be elevated into judicial helplessness. The constitutional duty of a writ Court to prevent abuse of process and to ensure that public authorities act within the confines of law remains undiminished. Where the averments contained in the FIR itself unmistakably demonstrate that the constituent acts alleged to constitute the offences occurred outside the territorial limits of the investigating agency and yet the criminal process is consciously set in motion before an investigating agency situated in a distant State having no discernible territorial nexus with the alleged crime, the matter transcends a mere technical objection relating to jurisdiction and enters the realm of abuse of process. In such circumstances, intervention by the writ Court does not entail an examination of the truthfulness of the allegations nor does it trench upon the merits of the investigation. It merely ensures that the investigation proceeds before the authority having lawful jurisdiction in accordance with the scheme of the Code. The principles governing non-interference at the stage of investigation cannot therefore be construed as an absolute bar where continuation of the proceedings before an authority lacking any real nexus with the alleged occurrence would itself result in manifest injustice. The writ Court, in such a situation, cannot remain a silent spectator.

34. In the present case, the petitioners have not merely sought quashing of the FIR. They have specifically sought a writ of mandamus directing transfer of the investigation to the police station having territorial jurisdiction. The petitioners have further pleaded that the FIR was lodged at Mumbai solely to harass them and to compel them to submit to the dictates of respondent No. 4 despite the fact that all transactions were carried on from Guwahati.

35. The principles laid down in ***State of Haryana & Ors -Vs- Bhajan Lal & Ors.***, reported in ***1992 Supp (1) SCC 335***, though ordinarily invoked while

considering the exercise of power to quash criminal proceedings, assume considerable significance in the facts of the present case. Category (7) illustratively recognizes situations where a criminal proceeding is manifestly attended with mala fides or has been instituted maliciously with an ulterior motive for wracking vengeance, causing harassment, or exerting undue pressure upon the accused. The principle underlying the said category is that the criminal process must not be permitted to be employed for a collateral purpose unconnected with the legitimate investigation of crime.

36. This Court is conscious that allegations of mala fides are not to be accepted lightly. Mere existence of a civil dispute or pendency of arbitration proceedings cannot establish mala fides. However, where the FIR itself places every constituent act of the alleged offences within one State and criminal law is nevertheless set in motion before an investigating agency situated in a distant State having no nexus with the alleged crime except that the complainant maintains its registered office there, the plea of abuse of the justice system cannot be brushed aside as wholly unfounded.

37. Viewed cumulatively, the facts of the present case disclose a situation where the continuation of the investigation at Mumbai bears no rational nexus with the situs of the alleged offences. To permit continuation of such proceedings despite the absence of any jurisdictional foundation would result in unnecessary harassment of the petitioners and would amount to permitting criminal process to be employed in a manner inconsistent with the scheme of Sections 177 to 179 CrPC.

38. The further contention advanced on behalf of the petitioners that the dispute is purely civil in nature and that arbitration proceedings arising out of the underlying agreement are pending at Mumbai does not, in the facts of the present case, furnish a ground for quashing the FIR. The law is well settled that the mere existence of a contractual relationship or availability of civil remedies does not exclude criminal liability where the allegations, taken at their face value, disclose the commission of cognizable offences. In ***Indian Oil Corpn. -Vs- NEPC India Ltd & Ors.,*** reported

in **(2006) 6 SCC 736**, the Apex Court held that a commercial transaction may simultaneously give rise to civil consequences and criminal liability. Likewise, in ***Mohammed Ibrahim & Ors. -Vs- State of Bihar & Anr.***, reported in **(2009) 8 SCC 751**, it was observed that while courts must guard against attempts to give a criminal colour to purely civil disputes, criminal proceedings cannot be interdicted merely because the parties are also pursuing civil remedies.

39. In the present case, the FIR contains allegations of fabrication of invoices, falsification of electronic records, forgery of transporter receipts, dishonest diversion of goods and misappropriation of entrusted property. Whether such allegations are ultimately established is a matter for investigation. At this stage, this Court is not concerned with the correctness, reliability or sufficiency of the allegations. The Court is only required to proceed on the basis of the averments contained in the FIR. Viewed thus, it cannot be said that the allegations are ex facie confined to a breach of contractual obligations alone.

40. Equally, the pendency of arbitration proceedings at Mumbai cannot operate as a bar to criminal investigation if the allegations otherwise disclose cognizable offences. However, the existence of arbitration proceedings does not advance the respondents' case on the question of territorial jurisdiction. The issue before this Court is not whether the FIR should survive, but whether the investigation should continue before the Mumbai Police despite the absence of any pleaded ingredient of the alleged offences within that jurisdiction.

41. It is also relevant to note that the matter is still at the stage of investigation. No charge-sheet has been filed till date, primarily because further investigation remained stayed pursuant to the interim orders passed by this Court. Therefore, this is not a case where a completed investigation, a filed police report, or cognizance taken by a criminal court would be unsettled by an order of transfer. On the contrary, directing investigation by the police station having territorial jurisdiction at this stage would

subserve the interests of justice, avoid duplication of proceedings and ensure that the allegations are investigated by the agency having the closest nexus with the alleged occurrence.

42. The question before this Court is therefore not whether the FIR discloses a cognizable offence. In the considered view of this Court, it undoubtedly does. Nor is the issue whether the allegations are ultimately true, for that is a matter to be determined upon a lawful investigation. The real issue is whether the criminal process can be permitted to continue before an investigating agency which, on the face of the FIR itself, lacks any territorial nexus with the constituent ingredients of the alleged offences. Having regard to the discussion hereinabove, this Court is of the considered opinion that continuation of the investigation at Mumbai would amount to an abuse of the process of law. The allegations contained in the FIR unmistakably locate the alleged acts of entrustment, deception, forgery, falsification of records, diversion of goods and misappropriation within the State of Assam and other North-Eastern States. The only connecting factors pleaded in support of the Mumbai jurisdiction are the location of the complainant's registered office, execution of the agreement and the financial consequences allegedly suffered there. As already held, none of these facts constitute ingredients of the offences alleged. In such circumstances, compelling the petitioners to face investigation before an agency having no territorial nexus with the alleged occurrence would amount to permitting the criminal process to be employed for a collateral purpose.

43. The present case, therefore, falls within the broad parameters of category (7) enumerated in ***Bhajan Lal*** (Supra), where judicial intervention becomes necessary to prevent abuse of process and secure the ends of justice. Once a part of the cause of action for invoking constitutional remedies has arisen within the territorial jurisdiction of this Court, Article 226(2) cannot be rendered ineffective by requiring the Court to remain a passive spectator to a manifestly arbitrary exercise of investigative jurisdiction. The constitutional power of judicial review exists precisely to ensure that

public authorities act within the bounds of law and that criminal process is not utilized in a manner inconsistent with the statutory scheme governing territorial jurisdiction.

44. Accordingly, while this Court is not persuaded to quash the FIR itself, it is satisfied that continuation of the investigation by the Mumbai Police would perpetuate the very abuse of the process noticed above. The ends of justice would be served by directing that the FIR and all records pertaining thereto be transmitted to the police station having territorial jurisdiction within the State of Assam for investigation in accordance with law.

45. In view of the foregoing discussion, this writ petition stands partly allowed.

46. The prayer for quashing FIR being C.R. No. 376 of 2012 registered at Oshiwara Police Station, Mumbai under Sections 409/420/468/471/34 IPC is declined. The allegations contained therein disclose cognizable offences warranting investigation in accordance with law.

47. However, this Court having held that no constituent ingredient of the alleged offences is disclosed to have occurred within the territorial jurisdiction of Mumbai and that continuation of the investigation by the Mumbai Police would amount to an abuse of process, the respondent authorities in the State of Maharashtra are directed to forthwith transmit the FIR together with the entire case diary, records and materials collected till date, if any, to the Director General of Police, Assam, or such authority as may be designated by him for entrustment of the investigation to the police station having territorial jurisdiction over the alleged occurrence.

48. Upon receipt of the records, the competent authority in the State of Assam shall ensure that the investigation is entrusted to the jurisdictional police station/investigating agency and shall thereafter proceed in accordance with law from the stage at which the proceedings presently stand.

49. It is clarified that this Court has expressed no opinion on the merits of the allegations contained in the FIR and all questions of fact and law are left open to be

examined by the investigating agency and, if occasion so arises, by the competent criminal Court.

50. The Registry shall forthwith communicate a copy of this judgment and order to the Director General of Police, Maharashtra, the Commissioner of Police, Mumbai and the Officer-in-Charge, Oshiwara Police Station, Mumbai, who shall ensure compliance with the directions contained hereinabove. A copy shall also be transmitted to the Director General of Police, Assam, for taking consequential steps in terms of this judgment.

51. Before parting with the records, this Court deems it appropriate to place on record its appreciation for the assistance rendered by the learned counsel appearing for the parties. The comprehensive submissions advanced and the precedents cited have greatly assisted the Court in examining the questions arising for determination in the present case.

JUDGE

Comparing Assistant

Pranab
Kumar
Deka

Digitally signed
by Pranab

Kumar Deka

Date:

2026.06.18

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