*** THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+ WRIT PETITION No.11440 of 2021

% 23.08.2022

Kakulamarri Kalyan Srinivasa Rao,
R/o.No.8-2-416, F.No.F.B,
Road No.4, Banjara Hills, Hyderabad-34.

…. Petitioner

Vs.

$ Central Bureau of Investigation,
Bank Securities & Fraud Cell 36,
Bellary Road, Ganga Nagar,
Bangalore-560032 and another

….. Respondents

!Counsel for the Petitioner : Ms. Mogili Anageni

Counsel for the Respondents : Ms. Anjali Agarwal
Special Public Prosecutor of CBI

Sri Ch. Siva Reddy

<Gist :

>Head Note:

? Cases referred:

1. **(2000) 7 SCC 640**
2. **(2009) 11 SCC 286**
3. **(1992) Supp 1 SCC 335**
4. **(2019) 9 SCC 148**
5. **(2015) 8 SCC 293**
6. **Crl.Appeal No. 125 of 2020**
7. **(2009) 3 SCC 78**
8. **2006 (3) SCC 658**
9. **2009 (11) SCC 286**
10. **(2014) 9 SCC 129**
11. **2015 SSC Online Mad 51**
12. **WP No. 9128 of 2019**
13. **2013 Law Suit (Ker) 1479**
14. **(1994) 4 SCC 711**
15. **(2007) 11 SCC 335**
16. **MANU/TN/7063/2020**
17. **2017 (4) KLJ 390**

THE HON'BLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION No.11440 OF 2021

ORDER:

This writ petition is filed to issue a Writ of Certiorari, order or direction, calling for the records in C.C. No. 3449 of 2018 pending on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the charge sheet in RC No.4 of 2016 including the order dated 8-5-2018 passed by the ACMM, Egmore, Chennai in CC No. 3449 of 2018.

2. Heard Sri S. Nagamuthu, learned Senior Counsel representing Ms. Anaveni Mogili, counsel on record for the petitioner and the Sri Surya Karan Reddy, learned Additional Solicitor General of India for respondent No. 1, CBI and the learned counsel for Central Bank of India representing the respondent No.2.

3. The facts of the case leading to filing of the present case are:

In the year 2010, M/s. Best & Crompton Engineering Projects Ltd. (BCEPL) (A2) had availed credit facilities from a consortium of Banks led by the Central Bank of India. The Central Bank of India sanctioned Rs.120.00 Crores for fund based and non-fund based working capital limit to BCEPL on 21.10.2010 secured by immovable property as well as

corporate guarantee. The Andhra Bank had sanctioned credit limit to a tune of Rs.60 Crores and the Corporation Bank sanctioned credit limit to a tune of Rs.120 Crores to BCEPL meeting a total requirement of Rs.300 Crores. A2 failed to make the required payments to the consortium of banks. The Asst. Manager, Central Bank of India, Corporate Finance Branch filed a complaint with the investigating agency. The Central Bureau of Investigation (CBI), Bangalore office, Respondent No. 1 registered a case in RC No.04/E/2016-CBI/BS&C/BLR on 01.02.2016 against A2 company under Section 120-B read with Sections 420, 468 and 471 IPC. The petitioner, who was the Managing Director of BCEPL, was arrayed as A1. The case of the prosecution was that all the accused were a party to a criminal conspiracy hatched among themselves in Hyderabad and Chennai and other places during the years 2010-13 in defrauding and cheating the consortium of banks led by the Central Bank of India. In furtherance of the said criminal conspiracy, the accused persons induced Central Bank of India, Corporate Finance Branch, Chennai, by submitting fraudulent letter of credit documents without any physical movement of goods and unlawfully availed credit facilities for which they were not eligible and diverted the loan amount for the purposes other than which it was sanctioned. As on 19-11-2013, they had caused a wrongful loss to a tune of

Rs.133.31 Crores and corresponding unlawful gain to themselves. A charge sheet was filed under Section 120-B read with 420, 465 & 471 IPC arraying the petitioner as accused No. 1.

3.1. The learned counsel for the petitioner contended that at the time of sanction of loan, the petitioner was not on the rolls of A2, therefore, the question of the petitioner being a party to the conspiracy would not arise. The petitioner occupied the seat of the Managing Director of A2 company in February 2012, whereas the loan was sanctioned in 2010. Therefore, none of the charging provisions in the charge sheet or in the complaint would apply to the petitioner. The allegations in the FIR and charge sheet were civil in nature and the same would not attract the ingredients of a criminal offence. The case of the bank with respect to the FIR dated 01.02.2016 would only relate to a commercial dispute for recovery of debt and grant of credit facility. The case was civil in nature and no criminal offence was made out against the petitioner. The grant of credit facility was purely for business purposes and the recovery of the same could only be related to dispute of civil nature and not otherwise and non-payment of credit facility *ipso facto* was not an offence under IPC. The respondents malafidely given colour of a criminal offence to a civil dispute. The

complaint given by the bank was nothing but abuse of process of law and the same was driven by ulterior motives.

3.2 It was not the case of the prosecution that sanctioning of loan was fraudulent or A2 Company had induced the bank for sanctioning credit facilities to A2. The prosecution had not made any official of bank as an accused nor found fault in the manner in which credit facilities were sanctioned to A2 Company. When the bank sanctioned credit facilities as per RBI norms, the prosecution could not say that there was any dishonest intention at the very inception warranting a charge under Section 420 IPC. The charge under Section 420 IPC against the petitioner was not maintainable.

3.3 On the basis of the proposal given by A2 company to regularise the account, the lead banker namely, the Central Bank of India asked A2 company to deposit a sum of Rs.5.00 Crores to show the bonafides and in furtherance thereof A2 company complied with the same. The Bank was holding a sum of Rs.5.00 Crores in a No Lien account till 2017 and the minute the prosecution filed a final report, the bank adjusted the 5.00 Crores towards the loan account. The Bank had not dealt with the matter in a fair manner and was resorting to frivolous prosecution. The Bank had

prime properties available as securities in Chennai, Hyderabad and had already initiated SARFAESI proceedings. The bank filed O.A. No.198 of 2014 before DRT-1, Chennai and obtained a recovery certificate. The proceedings were pending. The bankers were converting a commercial dispute into a criminal case.

3.4 The case of the prosecution was heavily based on the forensic report prepared in March, 2014 by M/s. Jai Singh & Associates, Mumbai which was bereft of any details and was of full of lacunae. The A2 company had got its transaction audit done. There was no evidence of any siphoning of funds or misappropriation of funds. There could be no case against A2 company as the transaction audit would clearly show that there was no money lying in the hands of A2 company.

3.5 The prosecution complaint was based on a false premise. The role of the petitioner in the charge sheet was only that he was the Managing Director of A2 at the relevant point of time. The company was never given an opportunity to explain the accounts. A2 company was a 100 year old company and contributed immensely to the economy of the country. No FIR was ever registered against the company except the present one. It was only because of the tussle between the management of the bank and the

petitioner, which led to filing of the complaint without following proper procedure and consequently the FIR and charge sheet. The complaint bank did not follow the due procedure of law before filing the complaint. Neither the Board of Directors of A2 company nor any other consortium bank was informed by the complainant bank. The guarantors were also not informed. The complainant bank ought to have informed the RBI before filing the complaint. It also ignored the past audit report before lodging the complaint. The additional credit facility sanctioned by bank of Rs.500.00 Crores was not availed by A2.

3.6 No charge of forgery was maintainable against the petitioner since it was not the case of the prosecution that the petitioner dishonestly or fraudulently signed, sealed or executed a document or a part of the document with the intention of causing it to be believed that such document was made, sealed, signed, executed by the authority of a person which he knew it was not made. The transactions which A2 company entered were all genuine transactions. In the absence of any cogent material, it was not possible to conclude that Section 465 IPC would be applicable to the case in hand. Similarly, Section 471 IPC would also have no application as there was no material to show that the petitioner had used a forged or fabricated document.

3.7. He further contended that there were allegations in the complaint that criminal conspiracy to commit the offence was hatched in Hyderabad and Chennai. The Head Quarter branch of the Andhra Bank which forwarded the credit facility to BCEPL was in Hyderabad. The investigation of some of the transactions took place in Hyderabad. Further, in connection with the investigation in FIR No.4(E) of 2017 lodged by Respondent No.1, W.P. No.9590 of 2019 was filed before this Court challenging issuance of summons and vide order dated 13.04.2019, this Court protected the petitioner therein from arrest. In terms of Article 226(2) of the Constitution of India, the territorial jurisdiction of the High Court would be determined if cause of action, wholly or partly, arose within its territorial jurisdiction. The Hon'ble Apex Court in **Navinchandra N. Majithia v. State of Maharashtra**[1] held that mere fact that FIR was registered in a particular state was not the sole criteria to decide that no cause of action had arisen even partly within the territorial limits of jurisdiction of another State. The aforesaid view was subsequently reiterated by the Hon'ble Apex Court in **Rajendra Ramachandra Kavalekar v. State of Maharashtra**[2]. In view of the law laid down by the Hon'ble Apex Court, this Court had jurisdiction to

[1] **(2000) 7 SCC 640**
[2] **(2009) 11 SCC 286**

entertain the writ petition and prayed to allow the same by quashing the proceedings in C.C. No.3449 of 2018 pending before Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the charge sheet in RC No.4 of 2016 including the order dated 8-5-2018 passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

3.8 The learned counsel for the petitioner relied upon the judgment of Hon'ble Apex Court in **Navinchandra N Majithia**'s case (1 supra) on the aspect that mere fact that FIR was registered in a particular State was not the sole criteria to decide that no cause of action had arisen evenly partly within the territorial limits of jurisdiction of another State. The courts must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. He relied upon the judgment of Hon'ble Apex Court in **State of Haryana Vs. Bhajan Lal**[3] wherein the circumstances/categories of cases where power to quash under Article 226 or Section 482 of Cr.P.C. could be exercised by the courts was stated. He relied upon the judgment of Hon'ble Apex Court in **Sathishchandra Ratanlal Shah v. State of Gujarat & Anr.**[4]**,** wherein it was held that mere inability of the appellant to return the loan amount could not give rise to criminal prosecution for cheating under Section 420 IPC unless fraudulent

[3] **(1992) Supp 1 SCC 335**
[4] **(2019) 9 SCC 148**

or dishonest intention was shown right from the beginning of the transaction. He also relied upon the judgments of Hon'ble Apex Court in the case of **Vesa Holdings Pvt. Ltd. & Anr. v. State of Kerala & Ors.**[5]**, Sushil Sethi & Anr. v. State of Arunachal Pradesh & Anr.**[6] and **V.Y Jose & Anr. v. State of Gujarat & Anr.**[7] on the aspect that when there were no specific allegations against the accused persons in the FIR as well as in the charge sheet that fraudulent and dishonest intention was from the very beginning of the transactions investigated into, the offence of cheating under Section 420 IPC was not made out.

4. The learned Additional Solicitor General of India, on the other hand, raised a preliminary objection of maintainability of the Writ of Certiorari as it was filed for quashing a judicial proceeding for taking cognizance by a competent criminal court which fell outside the territorial jurisdiction and superintendence of this court. He contended that the present case was transformed into a judicial proceedings and a competent criminal court had taken cognizance of the matter. The said court was under the territorial jurisdiction of the High Court of Madras and the superintendence and revisional jurisdiction over the said court was

[5] **(2015) 8 SCC 293**
[6] **Crl.Appeal No. 125 of 2020**
[7] **(2009) 3 SCC 78**

exercised by the High Court of Madras under Article 227 of the Constitution of India. This court could not judicially review the action of the competent Magistrate in taking cognizance under Section 190 Cr.P.C. and issue in process under Section 204 Cr.P.C. The entire cause of action arose in Chennai, outside the territorial jurisdiction of this court. The relief granted by this court in W.P. No.9590 of 2019 to the petitioners therein pertained to the summons issued by the CBI during investigation, as such there was no relevance in the context of the present criminal petition. All the records were with the court under the jurisdiction of High Court of Madras. As such High Court of Madras was proper and appropriate forum and relied upon several judgements of the Hon'ble Apex Court in:

1. **Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. and Ors.**[8]

2. **Shri Rajendra Ramchandra Kavlekar v. State of Maharashtra**[9]

3. **Dashrath Rupsingh Rathod v. State of Maharashtra**[10]

and of the High Court of Madras in

4. **S. Ilanahai v. State of Mumbai & Ors**[11]

5. **M Asha Vs. The State of Rep. by SHO & Ors.**[12]

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[8] **2006 (3) SCC 658**
[9] **2009 (11) SCC 286**
[10] **(2014) 9 SCC 129**
[11] **2015 SSC Online Mad 51**
[12] **WP No. 9128 of 2019**

and of the High Court of Kerala in

6. Anil Kumar V C v. Magma Fincorp Ltd and Ors.[13]

4.1 He further contended that the petitioner had an effective and efficacious alternative statutory remedy under Section 482 Cr.P.C. to approach the High Court of Madras to quash the criminal proceedings in C.C. No.3449 of 2018 and this writ petition was liable to be dismissed on the said count. He also contended that the petitioner could invoke writ jurisdiction of the High Court of Madras under Article 226 and revisional jurisdiction under Article 227 of the Constitution of India as well. The petitioner resorted to forum shopping by filing this petition before this court as already A2 had filed a criminal petition under Section 482 Cr.P.C. before the High Court of Madras vide Cr.P.No.12595 of 2020 and Cr.M.P. Nos.4871 & 4952 of 2020 for quashing the proceedings in C.C. No.3449 of 2018 on the file of ACMM, Egmore, Chennai which was dismissed as withdrawn on 11-9-2020. Vide order dated 8-10-2020, the High Court of Madras dismissed the Criminal Petition No.15975 of 2020 and Cr.M.P. No.6113 of 2020 filed by A2 for quashing the proceedings in C.C. No.3449 of 2018 as further investigation was pending in the case. The petitioner approached the subordinate courts of Chennai and the High Court of

[13] **2013 Law Suit (Ker) 1479**

Madras during the investigation and after filing the charge sheet. All other accused persons are companies in C.C. No. 3449 of 2018 and had approached the courts in Chennai. The petitioner for the reasons best known to him resorted to forum shopping, which was against the principle of legal propriety and to subvert the process of law. The court had discretionary power not to entertain the matter on the ground that there existed more appropriate court of competent jurisdiction which would be in a better position to decide the matter and prayed to dismiss the petition.

4.2 He also further contended about the role of the petitioner in the case on merits and the documents filed along with the charge sheet and several correspondences made by the petitioner with banks showing his active involvement in the business and his role in applying for fresh loans for Rs.900.00 Crores from existing loan of Rs.300.00 Crores. He contended that the petitioner was actively involved in company business and made efforts to open fresh letters of credit in March 2013 in the names of Ganga Exim Pvt. Ltd. and Global Forging Ltd and that the petitioner had submitted management representation letter to statutory auditor of the company stating that all the transactions related to the company were genuine during the financial year ended on 31-3-2013. The investigation established that all the transactions of A2 company were fake and LC’s

were opened in the name of fictitious suppliers. He submitted that the petitioner was authorised signatory in all consortium bank accounts since 29-4-2013. The petitioner addressed to the AGM, Central Bank of India, Chennai regarding regularisation of account stating that he dealt with debtors. Majority debtor companies were trading/shell companies. No amount was recovered from them. No legal action was initiated against them. The petitioner suppressed the material fact that two other FIRs were registered against him and were under active investigation on the complaint lodged by Andhra Bank (FIR No. RC. 04/E/2017) and Corporation Bank (FIR No. RC.14/E/2018).

4.3 The loan default was not due to business difficulty but part of a well designed and planned criminal conspiracy to defraud the public sector banks, through the crony/paper companies shown as suppliers by diverting the funds from the accused companies accounts to the personal account of the accused petitioner. There existed a clear money trail which linked the suppliers arrayed as A8 to A11 to the petitioner/A1. The forensic audit demonstrated the extent of fraud. False net worth certificates were furnished by the petitioner to the banks for sanction of credit limit. There existed a criminal angle to the entire episode, wherein the petitioner/A1 played a key role and was a prime conspirator.

4.4 The charge sheet and the annexed material documents and the list of witnesses would clearly demonstrate the role of the petitioner prima facie in the entire episode. The essential ingredients of Section 120B, 420, 465, 471 IPC were well established. There existed sufficient and cogent material for prosecuting the petitioner and the same could be better appreciated in a criminal trial and prayed to dismiss the petition on the ground of lack of jurisdiction and on the ground that the petition was devoid of merit.

5. In view of the above contentions the following questions arise for consideration:

> 1. Whether this court is having territorial jurisdiction to entertain the writ petition under Article 226 (2) of the Constitution of India?
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> 2. Whether taking cognizance of the offences under IPC by the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C. No.3449 of 2018 against the petitioner is in accordance with law?

6. Question No 1:-

To consider this question it is necessary to examine the legal position and the history behind enactment of Article 226(2) of the Constitution of India.

> "**226. Power of High Courts to issue certain writs:**
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> (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority,

> including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
>
> (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."

6.1 The Hon'ble Apex Court in **ONGC v. Utpal Kumar Basu**[14] observed that:

> "5.Clause (1) of Article 226 begins with a non obstante clause notwithstanding anything in Article 32 - and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose.
>
> Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises Jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
>
> On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or impart, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ 'is issued is not within the said territories.

[14] (1994) 4 SCC 711

6. It is well settled that the expression “cause of action” means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh' Lord Watson said:

> “... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. 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 it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

The Supreme Court in Saka Venkata Subba Rao case while interpreting Article 226 as it then stood observed as under:

“The rule that cause of action attracts Jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction."

Thus, this Court ruled that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court cannot exercise jurisdiction on the plea that the whole or part of the cause of action had arisen within its jurisdiction. This view was followed in subsequent cases. The consequence was that only the High Court of Punjab could exercise jurisdiction under Article 226 of the Constitution against the Union of India and other bodies located in Delhi. To remedy this situation, clause (1-A) was inserted by the 15th Amendment Act, 1963, to confer on the High Courts jurisdiction to entertain a petition under Article 226 against the Union of India or any other body or authority located in Delhi if the cause of action has arisen, wholly or in part, within its

> Jurisdiction. Clause (1-A) was later renumbered as clause (2) of Article 226. Therefore, the learned counsel for NICCO is right that this amendment was introduced to supersede the view taken by this Court in the aforesaid case. But as stated earlier, on a plain reading of clause (2) of Article 226, it is clear that the power conferred by clause (1) can be exercised by the High Court provided the cause of action, wholly or in part, had arisen within its territorial limits.

6.2 In **Alchemist Vs. State Bank of Sikkim**[15], the Hon'ble Apex Court held that,

> 12. Before entering into the controversy in the present appeal, let the legal position be examined: Article 226 of the Constitution as it originally enacted had two-fold limitations on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised by the High Court "throughout the territories in relation to which it exercises jurisdiction", i.e. the writs 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 implied that they must be amenable to its jurisdiction either by residence or location within those territories.
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> 13. In Election Commission, India v. Saka Venkata Rao, 1953 SCR 1144 : AIR 1953 SC 210, the petitioner applied to the High Court of Madras under Article 226 of the Constitution for a writ of prohibition restraining the Election Commission, (a statutory authority constituted by the President) having its office permanently located at New Delhi, from inquiring into the alleged disqualification of the petitioner from membership of the Madras Legislative Assembly. The High Court of Madras issued a writ. The aggrieved petitioner approached this Court. Allowing the appeal and reversing the decision of the High Court, this Court held that the High Court of Madras had no territorial jurisdiction to entertain the petition.
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> Speaking for the Court, Patanjali Sastri, C.J. made the following observations:
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> > "The makers of the Constitution, having decided to provide for certain basic safeguards for the people in

[15] (2007) 11 SCC 335

> the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc., "for any other purpose" being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England. But wide as were the powers thus conferred, a two-fold limitation was placed upon their exercise. 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 writs 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 its jurisdiction either by residence or location within those territories".

(emphasis supplied) As to the cause of action, the Court stated: "The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority 'within the territories' in relation to which the High Court exercises jurisdiction".

Again, a question arose in Khajoor Singh v. Union of India, (1961) 2 SCR 528 : AIR 1961 SC 532. A Bench of seven Judges was called upon to consider the correctness or otherwise of Saka Venkata Rao. The majority (Sinha, C.J., Kapoor, Gajendragadkar, Wanchoo, Das Gupta and Shah, JJ.) reaffirmed and approved the view taken by this Court earlier in Saka Venkata Rao and held that the High Court of Jammu & Kashmir was right in not entertaining the writ petition filed by the petitioner on the ground that it had no territorial jurisdiction. Speaking for the majority, Sinha, C.J., stated: "It seems to us therefore that it is not permissible to read in Article 226 the

residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction".

The effect of the above decisions was that no High Court other than the High Court of Punjab (before the establishment of the High Court of Delhi) had jurisdiction to issue any direction, order or writ to the Union of India, because the seat of the Government of India was located in New Delhi. Cause of action was a concept totally irrelevant and alien for conferring jurisdiction on High Courts under Article 226 of the Constitution. An attempt to import such concept was repelled by this Court. In the circumstances, Article 226 was amended by the Constitution (Fifteenth Amendment) Act, 1963 and after Clause 1, new Clause (1-A) was inserted which read as under:

> "(1-A) 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".

It may be stated that by the Constitution (Forty-second Amendment) Act, 1976, Clause (1-A) was renumbered as Clause (2). The underlying object of amendment was expressed in the following words: "Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226. So that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs".

(emphasis supplied) The effect of the amendment was that the accrual of cause of action was made an additional ground to confer jurisdiction on a High Court under Article 226 of the Constitution.

As Joint Committee observed:

> "This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction".

18. The legislative history of the constitutional provisions, therefore, make it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court within the territorial jurisdiction of which cause of action in whole or in part arises.

It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit. The classic definition of the expression 'cause of action' is found in Cooke v. Gill, (1873) 8 CP 107 : 42 LJ PC 98, wherein Lord Brett observed:

> "'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

Mr. Soli J. Sorabjee, Senior Advocate appearing for the Appellant-Company placed strong reliance on A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem, (1989) 2 SCC 163 : AIR 1989 SC 1239 : JT 1989 (2) SC 38 and submitted that the High Court had committed an error of law and of jurisdiction in holding that no part of cause of action could be said to have arisen within the territorial jurisdiction of the High Court of Punjab & Haryana. He particularly referred to the following observations: "A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other

words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff".

In our opinion, the High Court was wholly justified in upholding the preliminary objection raised by the respondents and in dismissing the petition on the ground of want of territorial jurisdiction. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

26. In Union of India & Ors. v. Oswal Woollen Mills Ltd. & Ors., (1984) 3 SCR 342 : AIR 1984 SC 1264, the registered office of the Company was situated at Ludhiana, but a petition was field in the High Court of Calcutta on the ground that the Company had its branch office there. The order was challenged by the Union of India. And this Court held that since the registered office of the Company was at Ludhiana and the principal respondents against whom primary relief was sought were at New Delhi, one would have expected the writ petitioner to approach either the High Court of Punjab & Haryana or the High Court of Delhi. The forum chosen by the writ petitioners could not be said to be in accordance with law and the High Court of Calcutta could not have entertained the writ petition.

In Kusum Ingots & Alloys Ltd. v. Union of India (UOI) & Anr., (2004) 6 SCC 254 : JT 2004 (Supp. 1) 475, the appellant was a Company registered under the Indian Companies Act having its Head Office at Mumbai. It obtained a loan from the Bhopal

> Branch of the State Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The appellant Company filed a writ petition in the High Court of Delhi which was dismissed on the ground of lack of territorial jurisdiction. The Company approached this Court and contended that as the constitutionality of a Parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.
>
> 37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than."

6.3 The High Court of Madras in **A. John Kennedy and Ors. v. Joint Director, Directorate of Enforcement, Cochin Zonal Office**[16] extracting the judgment of the Hon'ble Apex Court in **Kusum Ingots and Alloys Ltd. [AIR 2004 SC 2321]** observed that, even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be a determinative factor to decide the matter on merit. It observed that:

> 21. Further, the petitioners cannot file the present Writ Petitions even on the ground of "forum-conveniens". In this regard, it is useful to refer a decision in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India and others, reported in AIR 2004 SC 2321, in which, the Apex Court held that a writ petition, questioning the Constitutionality of a Parliamentary Act was not

[16] MANU/TN/7063/2020

be maintainable in the High Court of Delhi merely because the seat of the Union of India was in Delhi. On the point of "forum-conveniens", the Supreme Court held as follows:

> “30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney (AIR 1941 Cal 670 : ILR (1941) 1 Cal 490), Madanlal Jalan Vs. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495], Bharat Coking Coal Ltd. Vs. Jharia Talkies & Cold Storage (P) Ltd. [(1997) CWN 122], S.S.Jain & Co. Vs. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. Vs. Union of India [AIR 1994 Delhi 126].’

(emphasis supplied)

22. In the above decision (Kusum Ingots and Alloys Ltd. case) of the Supreme Court, the Apex Court held that a High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens". Thus, there is no question of granting leave to file Writ Petition under Article 226(2) of the Constitution of India in case where a small fraction of cause of action may have arisen. In appropriate cases, the High Court may however refuse to exercise its discretionary jurisdiction by invoking the Doctrine of "Forum-Conveniens".

23. Whether the principle of "Forum-Conveniens" or analogous principles, will apply or not, for consideration of an Application for leave to sue under Clause 12 of the Letters Patent, fell for consideration before a Full Bench of this Court in Duro Flex Pvt. Limited Vs. Duroflex Sittings System, reported in 2014 (6) CTC 577 (FB) : (2014) 5 LW 673 (FB) : AIR 2015 Mad 30 (FB) = (2015) 1 MLJ 774 (FB), wherein it was held as follows:

> “55. We may add that a Division Bench of this Court comprising two of us (S.K.K., C.J. and M.S.N., J.) had an occasion to examine the applicability of the Principles of Forum Conveniens in a case of Writ proceedings in Bharat Bhogilal Patel Vs. Union of Page No.71/76 https://www.mhc.tn.gov.in/judis/ W.P.Nos.25177 and 25231 of 2019 India, 2014 (6) CTC 285 (DB) : 2014 (7) MLJ 641. In the context of that judgment, we referred to the decision of a Five-Judges Bench of the Delhi High

> Court in Sterling Agro Industries Ltd. Vs. Union of India, AIR 2011 Del. 74, which had gone into the Doctrine of Forum Conveniens vis-a-vis the Concept of Cause of Action. In the context of that judgement, it was observed in Sterling Agro Industries Ltd. case (supra) as under:
>
> "The Concept of forum conveniens fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of.
>
> The Principle of Forum Conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute Court to entertain the matter. While exercising jurisdiction under Articles of the Constitution of India, the Court cannot be totally oblivious of the Concept of Forum Conveniens.
>
> The conclusion thus arrived at was that the Principles of Forum Conveniens, though applicable to the International law as a principle of Comity of Nations, would apply to the discretionary remedy under Article 226 of the Constitution of India."
>
> 24. Recently, this Court has also held in O.S.A.Nos.38, 40 and 42 of 2020 (Sulphur Mills Limited Vs. M/s.Dayal Fertilizers Pvt. Limited and three others), by judgment dated 11.11.2020 that, even though a part of cause of action arises in one Court and the major part of cause of action had arisen within the jurisdiction of the other Court, the petition is not maintainable before the Court where the small part of cause of action had arisen."

6.4 The High Court of Madras in **Karthi P. Chidambaram and Ors. v. Superintendent of Police** held that:

> "12. Once an FIR is filed, it is mandatory for the Investigation Agency to send the copy of the FIR to the Magistrate/Special

> Court having jurisdiction. The Court which monitors the actions of the investigating agency and also addresses/redresses the grievances, if any, of either the accused or the investigating agency as per the code of Criminal Procedure. In matters pertaining to all criminal investigations/proceedings arising therefrom, it is the High Court which has the supervisory jurisdiction over the said jurisdictional Court monitoring/supervising the investigation, which would exercise the jurisdiction either under Article 226 or 227 of the Constitution of India and under section 482 of the Code.
>
> 13. As already conclusively held by the Hon'ble Supreme Court in Dasrath Rupsingh Rathod v. State of Maharashtra, reported in (2014) 9 SCC 129, the concept of "part of cause of action", is absolutely irrelevant and has no application in criminal proceedings and only that High Court would entertain a prayer for quashing which has the supervisory jurisdiction over the jurisdictional court which is monitoring the investigation as per Cr.P.C."

7. Thus all these cases would show how the legal position under Article 226(2) is evolving, how the concept of cause of action is incorporated in Article 226, the history behind it and though initially it is stated that even if a small fraction of the cause of action arises within the jurisdiction of the Court, that Court would have territorial jurisdiction to entertain the suit/petition to the extent that the petition is not maintainable before the Court where a small part of cause of action had arisen and the major part of cause of action shall be considered for applicability of territorial jurisdiction of the Court and had taken a full circle in observing that the concept of part of cause of action is irrelevant and had no application in criminal proceedings and only that High Court could

entertain a prayer for quashing which has the supervisory jurisdiction over the jurisdictional court which is monitoring the investigation as per Cr.P.C.

8. The issue whether a writ petition under Article 226 is maintainable against a Criminal Court situated outside the territorial jurisdiction of the Court as well as whether the Court could judicially review the action of the Magistrate in taking cognizance of the offence located outside the territorial jurisdiction of the court is considered by the High Court of Kerala in **Augustine Babu P.M. Vs. Mohd. Samiur Rahman Ansari and Ors**.[17] It held that:

> "8. The main issue to be decided in this petition is as to whether Writ Petition under Article 226 is maintainable as against a criminal court which is situated outside the territorial jurisdiction of this Court. A Full Bench of this Court had occasion to consider that pertinent issue in Meenakshi Sathish v. Southern Petrochemicals Industries reported in 2007 (1) KLT 890 FB and it was held in paragraphs 9 and 10 thereof that in view of clause (2) of Article 226, if part of the cause of action had arisen in the State, writ could be issued against an authority, though the seat of that authority is outside the territorial jurisdiction of this Court. But, the cause of action which must arise in Kerala for issuing the writs of certiorari or prohibition, must relate to the commissions or omissions of an inferior court or Tribunal amenable to the writ jurisdiction of that court and not that of a private party. This Court cannot judicially review the actions of the first respondent therein (the complainant concerned) and that if a complainant files any complaint before any court it may do it rightly or wrongly and the complainant in a complaint alleging offence under Section 138 of the Negotiable Instruments Act, being a private party is not amenable to the writ jurisdiction of this Court under Article 226 and therefore, this Court cannot judicially review the actions of such a complainant by invoking the powers conferred

[17] **2017 (4) KLJ 390**

under Article 226 of the Constitution of India. The other point that was considered by the Full Bench was as to whether the court could judicially review the action of the Magistrate in taking cognizance of the offence under Section 190(1)(a) read with Section 200 of the Cr.P.C and in issuing process under Section 204 Cr.P.C It was found on facts that the entire cause of action as far as the action of the learned Magistrate was found to have arisen in Coimbatore, which is outside the territorial jurisdiction of this Court and it was held that even if the complainant has wrongly filed a complaint before the Coimbatore court, the action of taking cognizance and issuance of the process took place outside the jurisdiction of this Court and therefore, the reliefs sought for in the Writ Petition cannot be granted by this Court and that even if the cause of action for the complaint under Section 138 of the Negotiable Instruments Act arose in Kerala, this Court cannot interfere with the proceedings for a criminal court which is situated outside the territorial jurisdiction of this Court. It will be profitable to refer to paragraphs 8, 9 and 10 of the above said Full Bench decision in Mrs. Meenakshi Sathish v. M/S. Southern Petrochemical Industries &. Ors. reported in 2007 (1) KLT 890 (F.B).

> "8. In the light of the above mentioned two decisions of the Apex Court in Navinchandra and Mosaraf Hossain Khan, which Division Bench decision of this Court, that is whether the decision in Krishnakumar Menon's case or the decision in U.B.C's case, lays down the correct legal position, is the point to be answered in this case. There cannot be any dispute that the complaint before the Coimbatore court and taking cognizance of the same by the said court cannot be challenged under S.482 of the Cr.P.C or under Art.227 of the Constitution of India, before this Court. The only contention raised is that a Writ Petition under Article 226 will lie, in view of clause (2) thereof, as part of the cause of action in the transaction regarding issuance of the cheque, its dishonour etc., arose in Kerala.

9. Art. 226(2) reads as follows:

> "226. Power of High Courts to issue certain writs:—
>
> (1) …..
>
> (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 said clause was introduced as clause (1A) by the 15th Amendment Act, 1963, in view of the decisions of the Apex Court in Election Commission, India v. Saka Venkata Subba Rao **((**1953) S.C.R 1144**),** Rashid v. I.T Investigation Commission **((**1954) S.C.R 738**),** Lt. Col. Khajoor Singh v. Union Of India & Another (AIR 1961 SC 532) and Collector of Customs v. E.I Commercial Co**.** (AIR 1963 SC 1124). The result of the above decisions was that Writ Petitions under Art.226 against the Union of India were maintainable only in the High Court of Punjab, as at the relevant time the territory of national capital was under the jurisdiction of the said High Court. The High Courts of Madras and Assam took a different view that if part of the cause of action arose within the respective States, writs could be issued to the Union of India by them. To get over the above decisions of the Apex Court and make the law in tune with the decisions of the above High Courts, the amendment was introduced. Art.226 was drastically amended by Constitution 42nd Amendment Act, 1976. The original position was substantially restored later, by the Constitution 44 Amendment Act, 1978**.** In view of clause (2) of Art.226, if part of the cause of action arose in the State, writ could be issued against an authority, though the seat of it is outside the territorial jurisdiction of this Court.

10. But, the cause of action which must arise in Kerala for issuing the writs of certiorari or prohibition, must relate to the commissions or omissions of an inferior court or Tribunal amenable to the writ jurisdiction of this Court and not that of a private party. This Court cannot judicially review the actions of the 1 respondent. It may file any complaint before any court. It may do it rightly or wrongly. The 1st respondent being a private party not amenable to the writ jurisdiction of this Court, we cannot judicially review its actions. But, the point to be decided is whether we can judicially review the action of the Magistrate in taking cognizance under

> S.190(1)(a) read with S.200 of the Cr.P.C of the offence alleged against the petitioner and issuing process under S.204 The entire cause of action, as far as the action of the learned Magistrate is concerned, arose in Coimbatore, outside the jurisdiction of this Court. So, even if the complainant has wrongly filed a complaint before the Coimbatore court, the action of taking cognizance and issuance of the process took place outside the jurisdiction of this Court. Therefore, we have no doubt in our mind that the reliefs sought in this Writ Petition cannot be granted by this Court. We are of the view that the decision of the Division Bench in M/S. Ubc & Others v. M.R Govarthanam (2005 (2) KLT 461) lays down the correct legal position. The observation in Krishnakumar Menon's case concerning the power of this Court under Art.226 of the Constitution of India is an obiter. Further, the decision of the Apex Court in Navinchandra's case (supra) cannot have any application to a case arising on a private complaint under (2009) 3 SCC 78**.** In Navinchandra's case, the Apex Court considered the question regarding quashing of an F.I.R and the criminal investigation conducted by the police in Shillong about the offences committed or the cause of action which arose in Maharashtra State. So, as the police from Shillong has to do investigation in Maharashtra, the Apex Court observed that the Bombay High Court has jurisdiction in the matter. The said observation can have no application to a private complaint, based on which a Magistrate's court, which is outside the jurisdiction of the Kerala High Court takes cognizance and proceeds with the trial. So, the observation in Krishnakumar Menon's case, concerning the jurisdiction of the High Court under Article 226 of the Constitution of India, does not lay down the correct legal position, as far as private complaints are concerned. Even if the cause of action for the complaint under S.138 of the Negotiable Instruments Act arose in Kerala, the Kerala High Court cannot interfere with the proceedings before a criminal court, outside the jurisdiction of this Court."

9. In the present case also the learned senior counsel for the petitioners placed reliance upon the decision of the Hon'ble Supreme Court reported in **Navin Chandra N. Majithia'**s case **(**to contend 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 would depend on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of the Court.

10. The Hon'ble Apex Court in **Mosaraf Hossain Khan**'s case (8 supra) held that:

> "25. It is no doubt true that in a criminal matter also the High Court may exercise its extra-ordinary writ jurisdiction but interference with an order of Magistrate taking cognizance under Section 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution of India against a Judicial Officer. [See Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra & Anr. [AIR 1967 SC 1 : (1966) 3 SCR 744]. However, we are not oblivious of a decision of this Court in Surya Dev Rai vs. Ram Chander Rai & Ors. [(2003) 6 SCC 675] wherein this court upon noticing Naresh Shridhar Mirajkar (supra) and also relying on a Constitution Bench of this Court in Rupa Ashok Hurra vs. Ashok Hurra [(2002) 4 SCC 388] opined that a Judicial Court would also be subject to exercise of writ jurisdiction of the High Court. The said decision has again been followed in Ranjeet Singh vs. Ravi Prakash [(2004) 3 SCC 692]. It is, however, not necessary to dilate on the matter any further. The jurisdiction of the High Court under Section 482 of Code of Criminal Procedure was noticed recently by this Court in State of U.P. & Ors. vs. Surendra Kumar [(2005) 9 SCC 161] holding that even in terms thereof, the court cannot pass an order beyond the scope of the application thereof. In Surya Dev Rai (supra), we may however, notice that this Court categorically stated that the High Court in issuing a writ of certiorari exercises a very limited jurisdiction. It also made a distinction between exercise of jurisdiction by the High Court for issuance of a writ of certiorari under Article 226 and 227 of the Constitution of India. It categorically laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of the record appears as such; the error should be self evident. Thus, an error

according to this Court needs to be established. As regards exercising the jurisdiction under Article 227 of the Constitution of India it was held: (SCC P.689. para 24)

28. We have referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof.

29. The High Court, however, must remind themselves about the doctrine of forum *non conveniens* also. [See Mayar (H.K) Ltd.& Ors. vs. Owners & Parties Vessel M.V. Fortune Express & Ors. - 2006 (2) SCALE 30]

11. The Hon'ble Apex Court in **Shri Rajendra Ramchandra Kavlekar**'s case (9 supra) held that:

"3. It may be useful to extract the reasoning, conclusion and the directions issued by the Court to appreciate the issues canvassed by the appellant. It is as under:

> "From the submissions made by the petitioner's advocate, it is clear that the Jharkhand Court is seized of the matter. It is a CBI Court, all papers and documents pertaining to the case mentioned above are in the custody and possession of the said court and, therefore, it will not be proper for the Court to entertain this petition for quashing the proceedings."

15. The learned Senior Counsel for the respondents further submitted that the investigation in RC Case No. 1(A) of 2004 is completed by CBI, Ranchi and the charge sheet against the appellant and against Shri P.C. Ram, Dispatch Clerk of Ranchi University has been filed before the Special Judge (CBI), Ranchi and the same is pending consideration. Therefore, the learned counsel would submit that the High Court of Judicature at Bombay was right in declining to entertain the criminal writ petition filed by the appellant.

> 22. In the instant case, CBI has initiated the suo motu investigation against the appellant. In the first information report filed before the Special Judge (CBI), Ranchi, it is stated that during the course of investigation of RC Case No. 1(A) of 2004, which was registered pursuant to the orders of the High Court of Jharkhand at Ranchi, a reliable source of information had been received to the effect that Shri Rajendra Ramchandra Kavalekar (the appellant) had entered into a criminal conspiracy with the other unknown persons including the officials of Ranchi University during academic year 1993-1994 by obtaining the false and forged marksheets of Ranchi University, and, further, on the strength of those false and fabricated documents pertaining to his graduation degree, fraudulently and dishonestly obtained employment in India Tourism Development Corporation as Cashier-cum Sales Assistant.
>
> 25. A bare perusal of the complaint filed would clearly go to show that the cause of action arose within the jurisdiction of Special Judge (CBI), Ranchi, the investigation is completed in Ranchi, all the records and the documents pertaining to complaint and the charge sheet are before the Special Judge (CBI), Ranchi, and therefore, in our considered view, the High Court of Judicature at Bombay was perfectly justified in declining to entertain the Writ Petition filed by the petitioner."

12. The Hon'ble Apex Court in **Dashrath Rupsingh Rathod**'s case (10 supra) held that:

> 16. We have already cautioned against the extrapolation of civil law concepts such as "cause of action" onto criminal law. Section 177 of the CrPC unambiguously states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. "Offence", by virtue of the definition ascribed to the word by Section 2(n) of the CrPC means any act or omission made punishable by any law. Halsbury states that the venue for the trial of a crime is confined to the place of its occurrence. Blackstone opines that crime is local and jurisdiction over it vests in the Court and Country where the crime is committed. This is obviously the raison d'etre for the CrPC making a departure from the CPC in not making the "cause of action" routinely relevant for the determination of territoriality of criminal courts. The word "action" has traditionally been understood to be synonymous to "suit", or as ordinary proceedings in a Court of justice for

enforcement or protection of the rights of the initiator of the proceedings. "Action, generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown" - [Bradlaugh v. Clarke 8 Appeal Cases 354 p.361].

16.1 Unlike civil actions, where the Plaintiff has the burden of filing and proving its case, the responsibility of investigating a crime, marshalling evidence and witnesses, rests with the State. Therefore, while the convenience of the Defendant in a civil action may be relevant, the convenience of the so called complainant/victim has little or no role to play in criminal prosecution. Keeping in perspective the presence of the word "ordinarily" in Section 177 of CrPC, we hasten to adumbrate that the exceptions to it are contained in the CrPC itself, that is, in the contents of the succeeding Section 178. The CrPC also contains an explication of "complaint" as any allegation to a Magistrate with a view to his taking action in respect of the commission of an offence; not being a police report. Prosecution ensues from a Complaint or police report for the purpose of determining the culpability of a person accused of the commission of a crime; and unlike a civil action or suit is carried out (or 'prosecuted') by the State or its nominated agency. The principal definition of "prosecution" imparted by Black's Law Dictionary 5th Edition is "a criminal action; the proceeding instituted and carried on by due process of law, before a competent Tribunal, for the purpose of determining the guilt or innocence of a person charged with crime." These reflections are necessary because Section 142(b) of the NI Act contains the words, "the cause of action arises under the proviso to Section 138", resulting arguably, but in our opinion irrelevantly, to the blind borrowing of essentially civil law attributes onto criminal proceedings.

16.2 We reiterate that Section 178 admits of no debate that in criminal prosecution, the concept of "cause of action", being the bundle of facts required to be proved in a suit and accordingly also being relevant for the place of suing, is not pertinent or germane for determining territorial jurisdiction of criminal Trials. Section 178, CrPC explicitly states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 179 is of similar tenor. We are also unable to locate any provision of the NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the prosecution has to be conducted. In fact, since

> cognizance of the offence is subject to the five Bhaskaran components or concomitants the concatenation of which ripens the already committed offence under Section 138 NI Act into a prosecutable offence, the employment of the phrase "cause of action" in Section 142 of the NI Act is apposite for taking cognizance, but inappropriate and irrelevant for determining commission of the subject offence. There are myriad examples of the commission of a crime the prosecution of which is dependent on extraneous contingencies such as obtainment of sanction for prosecution under Section 19 of the Prevention of Corruption Act 1988. Similar situation is statutorily created by Section 19 of the Environmental Protection Act 1986, Section 11 of the Central Sales Tax Act 1956, Section 279 of the Income Tax Act, Sections 132 and 308, CrPC, Section 137 of the Customs Act etc. It would be idle to contend that the offence comes into existence only on the grant of permission for prosecution, or that this permission constitutes an integral part of the offence itself. It would also be futile to argue that the place where the permission is granted would provide the venue for the trial. If sanction is not granted the offence does not vanish. Equally, if sanction is granted from a place other than where the crime is committed, it is the latter which will remain the place for its prosecution."

13. The High Court of Madras in **S Ilanahai** 's case (11 supra) held that:

> "40. Thus, in my considered opinion, so far as the power under Section 482 of the Code of Criminal Procedure for the purpose of quashing the F.I.R. is concerned, the only criteria is the situs of the authority who has registered the case and not the place of commission of the crime either in full or in part. Similarly, the writ jurisdiction of the High Court under Article 226 of the Constitution to quash a criminal case also does not extend beyond the territorial limits of the said High Court if the case is pending on the file of an authority who is located outside the territorial limits of the said High Court. This conclusion is inescapable, in view of the authoritative pronouncement of the larger Bench of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod case (cited supra) wherein the Court has held that the concept of "cause of action" which is relevant to Civil Law cannot be imported to Criminal Law.

41. In view of the said settled position, I hold that in the instant case, though it may be true that a part of offence has been committed within the State of Tamil Nadu, since the situs of the authority who has registered the crime falls outside the territorial limits of this Court, this petition is not at all maintainable before this Court.

42. In the result, this petition is dismissed for want of territorial jurisdiction. Consequently, the connected miscellaneous petition is closed."

14. The High Court of Madras in **A.M Asha**'s case (12 supra) held that"

"6. The facts remains that the second respondent lodged a complaint before the Inspector of Police, Women Police Station, Vizianagaram, Andhra Pradesh and after completion of investigation, the first respondent filed a final report before the jurisdictional Court and the same has been taken cognizance for the offence under Sections 498A, 506 of IPC r/w Sections 3 and 4 of Dowry Prohibition Act, 1961 in C.C.No.1198 of 2016 on the file of the learned Additional Judicial First Class Magistrate, Vizianagaram and it is pending for trial. Though the petitioners are residing at Chennai within the jurisdiction of this Court territory, this Court has no jurisdiction to entertain this Writ Petition, in view of the above order passed by this Court, as discussed the law in Navinchandra N Majithia's case based on the subsequent judgment of the Hon'ble Supreme Court of India reported in (2014) 9 SCC 129 in the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra and another in 2015 (1) MWN (Cr.) 618 in the case of S.Ilanahai Vs. The State of Maharashtra.

7. Therefore, this Court is of the considered opinion that the writ jurisdiction of this Court under Article 226 of Constitution of India, to quash the criminal proceedings does not extend beyond the territorial jurisdiction limit of the said High Court, if the case is pending on the file of an authority, who is located out side the territorial limits of the said High Court. Therefore, this Court has no jurisdiction to entertain this writ petition to quash the proceedings in C.C.No.1198 of 2016 on the file of the learned Additional Judicial First Class Magistrate, Vizianagaram.

8. Accordingly, this Writ Petition is dismissed as this Court has no jurisdiction and the petitioner is at liberty to approach the

concerned jurisdictional Court for appropriate relief. Consequently, connected miscellaneous petition is closed. No costs."

15. The High Court of Kerala in **Anil Kumar**'s case (12 supra) held that:

"7. By virtue of Article 226(2) of the Constitution of India, a wider discretion was given to the High Court, if any part of the cause of action whether wholly or in part had taken place within the jurisdiction of that court and it is likely to be enforced within the jurisdiction of that court, to exercise the power under Art.226(1) of Constitution to that court. The dictum laid down in the decision in Navinchandra N.Majithia's case (supra) is not applicable to the facts of the case. That was case where the First Information Report was registered within the Police Station where no part of the transaction had taken place. Under such circumstances, the Honourable Supreme Court invoking the power under Article 32 and explaining the scope of Article 226 of the Constitution, transferred the case to the Police Station within whose jurisdiction the incident has happened.

8. The similar question regarding the jurisdiction of the High Court to quash the proceedings pending before another court within the jurisdiction of another High Court was considered by this Court in the decision reported in UBC Vs Govarthanam's case and held that it is not proper for the High Court of Kerala to entertain writ petition to quash proceedings of a subordinate court under the superintendence of another High Court and observed as follows:

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.

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. 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. Added to the above jurisdictional factors, the High Court competent to exercise the power conferred under Section 482 of Crl.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

Cr.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.

9. In the decision reported in Mosaraf Hossain Khan's case (supra), the Hon'ble Supreme Court has held as follows:

> "In a criminal matter also the High Court may exercise its extra-ordinary writ jurisdiction but interference with an order of Magistrate taking cognizance under Section 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution of India against a Judicial Officer. The High Court under Article 226 should not ordinarily interfere with an order taking cognizance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution of India unless it is established that the earlier cause of action arose within the jurisdiction thereof. The High Court, however, must remind themselves about the doctrine of forum non conveniens also."

10. Further the same question has been considered by the Full Bench of this court in Meenakshi Sathish Vs. Southern Petrochemical Industries (supra) and observed as follows:

> "In view of Clause (2) of Article 226, if part of the cause of action arose in the State, writ could be issued against an authority, though the seat of it is outside the territorial jurisdiction of this Court. But, the cause of action which must arise in Kerala for issuing the writs of certiorari or prohibition, must relate to the commissions or omissions of an inferior Court or Tribunal amenable to the writ jurisdiction of this Court and not that of a private party. This Court cannot judicially review the actions of the 1st respondent. It may file any complaint before any Court. It may do it rightly or wrongly. The 1st respondent being a private party not amenable to the writ jurisdiction of this Court, we cannot judicially review its actions. But, the

> point to be decided is whether we can judicially review the action of the Magistrate in taking cognizance under Section 190(1)(a) read with Section 200 of the Cr. P.C, of the offence alleged against the petitioner and issuing process under Section 204. The entire cause of action, as far as the action of the learned Magistrate is concerned, arose in Coimbatore, outside the jurisdiction of this Court. So, even if the complainant has wrongly filed a complaint before the Coimbatore Court, the action of taking cognizance and issuance of the process took place outside the jurisdiction of this Court. Therefore, we have no doubt in our mind that the reliefs sought in this writ petition cannot be granted by this Court. Even if the cause of action for the complaint u/s 138 of NI Act arose in Kerala, the Kerala High Court cannot interfere with the proceedings before a criminal court, outside the jurisdiction of this court.
>
> So, in view of the above dictum laid down in the decision cited supra, it is not proper on part of this court to exercise jurisdiction under Article 226(2) of the Constitution of India to quash the proceedings which was taken cognizance on the basis of an order passed by a competent Magistrate and pending within the jurisdiction and the superintendence of another High Court."

16. This Court also agrees with the view taken by the Kerala High Court as the present case has reached the stage of completion of investigation and entered the stage of taking cognizance by the Court which is situated in another State, outside the territorial jurisdiction of this State, it is considered not appropriate to call for records from the said Court over which this Court would not have any superintendence to exercise its jurisdiction.

17. Hence this question is answered holding that even though a part of cause of action arises in this State, as the investigation was culminated in filing the charge sheet and the case is also taken cognizance by a competent court situated outside the territorial limits of this State, this Court cannot exercise its jurisdiction to entertain the writ petition under Article 226(2) of the Constitution of India.

18. Since the question of territorial jurisdiction is answered against the petitioner, it is considered not appropriate to deal with the merits of the matter to answer question No.2.

19. Hence, the writ petition is dismissed. The petitioner can approach the appropriate court for appropriate relief. No costs.

Miscellaneous Petitions pending, if any, shall, stand closed.

Dr. G. RADHA RANI, J

August 23, 2022
KTL

Note:
L.R. copy to be marked.