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NAVINCHANDRA N. MAJITHIA

v.

STATE OF MAHARASHTRA AND ORS.

SEPTEMBER 4, 2000

B

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

C

Constitution of India—Article 226(2)—FIR registered in Shillong in respect of agreement to sell shares in Mumbai—Writ Petition for quashing complaint filed in Mumbai—Alternate prayer to transfer investigation to Mumbai—Writ Petition dismissed on ground of lack of territorial jurisdiction—Part of case of action arising in Mumbai—Held, Writ Petition maintainable—Investigation to be transferred from Shillong to Maharashtra—Directions issued.

D

Words and Phrases—Cause of action—Meaning of.

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Appellant entered into an agreement for sale of shares with the Respondent and received an earnest money. Since the Respondent committed default in making the balance payment and thereby committed breach of the agreement, the said agreement was terminated and the earnest money stood forfeited as stipulated in the agreement. A complaint was filed by the Respondent against the Appellant in a criminal court in Shillong. The appellant filed the writ petition in Mumbai against the State of Maharashtra, the State of Meghalaya, the Special Superintendent of Police, CID, Shillong etc. to quash the complaint lodged by the Respondent company or in the

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alternative to issue a writ of mandamus directing the State of Meaghalaya to transfer the investigation being conducted by the officers of the CID at Shillong to the Economic Offences wing, General Branch of the CID, Mumbai or any other investigating agency of the Mumbai Police and to issue a writ of prohibition or any other order or direction restraining the Special S.P. Police, CID, Shillong and/or and investigating agency of the Meghalaya Police from taking any further step in respect of the complaint lodged by the Respondent company with the Police authorities at Shillong.

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The Appellant contended that the Respondent company had tried to pressurise them to reverse the transaction of sale of shares and recover the money paid in respect thereof by employing strong arm tactics, which

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eventually failed; that having failed to achieve the purpose by such means it has filed a false complaint against the petitioner at Shillong in the State of Meghalaya; that the complaint is false and it has been deliberately filed at Shillong with the *malafide* intention of exerting pressure and causing harassment to him so as to get the transaction relating to transfer of share reversed; that since the entire transaction upon which the complaint is purportedly based had taken place at Mumbai and not at any other place outside Mumbai much less at Shillong or any other place in the State of Meghalaya, the complaint could not/ought not to have been entertained by the Police at Shillong; and that the jurisdiction, if any, to investigate/inquire into the contents of the complaint is with the Police/Courts in Mumbai and the action taken by the Special S.P. Police, CID, Shillong in entertaining the said complaint and in taking up investigation on the basis of the same is clearly oppressive, discriminatory and *malafide*. The Appellant also contended that the conduct on the part of the Shillong Police in entertaining the complaint against him and in embarking upon investigation was clearly in excess of the jurisdiction vested in under the provisions of the Code of Criminal Procedure; that the Shillong Police had on their own requested the Mumbai Police (Malvani Police Station), to carry out an extensive investigation into the alleged offence which clearly indicates that Shillong Police authorities were very much aware that the entire transaction upon which the complaint is purportedly based had taken place in Mumbai, that, therefore, the subsequent conduct of the Shillong Police in continuing with investigation of the case is clearly *malafide* and without sanction of law and procedure and that the allegations made against him in the complaint do not make out any cognizable offence and that the dispute, if any, is of civil nature. The respondent referred to a writ petition filed by them in Gauhati High Court challenging the action of the Government of Meghalaya refusing permission to the concerned Police Officers to go to Mumbai on the ground of paucity of funds and opposed the writ petition. The single Judge of the High Court directed the complainant to deposit the requisite amount to enable the Senior Police Inspector concerned to proceed to Mumbai for investigation of the case. The High Court dismissed the writ petition holding that it could not entertain the writ petition since the petitioner had prayed for quashing of the complaint which was lodged by the complainant at Shillong in the State of Meghalaya. A Division Bench of the High Court confirmed the said order taking the view that since the case has been registered in the State of Meghalaya, it is for the police of that State to investigate into the matter.

Allowing the Appeal, the Court

A HELD: (per D.P. Mohapatra, J.)

B 1. 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 was to harass and pressurise the petitioners and 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 it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of Bombay High Court. [93-H; 94-A-C]

E *Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.*, [1994] 4 SCC 711; *K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.*, [1999] 7 SCC 510; *Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr.*, [1999] 8 SCC 728 and *H.V. Jayaram v. Industrial Credit and Investment Corpn. of India Ltd. and others*, [2000] 2 SCC 202, referred to.

F 2. The complaint lodged by the respondent 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. [94-F]

(Per K.T. Thomas, J-Supplementing)

G 1. The power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment to Article 226 is aimed at widening the width of the area for reaching the writs issued by different High Courts. [97-D]

H *K.S. Rashid Ahmed v. Income Tax Investigation Commission*, AIR (1951)

Punjab 74; M.K. Ranganathan v. The Madras Electric Tramways Ltd. : AIR (1952) Mad. 659; Aswini Kumar Sinha v. Dy. Collector of Central Excise and Land Customs, Shillong : AIR (1952) Assam 91 and Election Commission of India v. Saka Venkata Subba Rao, [1953] SCR 1144, referred to. A

2. The mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case. [99-A-B] B C

Mohd. Khalil Khan v. Mahbub Ali Mian : AIR (1949) PC 78; State of Rajasthan v. Swaika Properties : [1985] 3 SCC 2171; Oil and Natural Gas Commission v. Utpal Kumar Basu and Anr., [1994] 4 SCC 711, referred to. D

Read v. Brown : [1889] 22 Q.B.D. 128 Lord Esner, M.R., referred to.

3. It is almost impossible to hold that even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the Petitioner. Even the very fact that major portion of the investigation of the case under the FIR has to be conducted at Bombay itself shows that the cause of action cannot escape from the territorial limits of the Bombay High Court. [99-E] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 744 of 2000. F

From the Judgment and Order dated 23.3.99 of the Bombay High Court in W.P. (Crl.) No. 1683 of 1998.

Ashok H. Desai, Dipankar Gupta, B.N. Deshmukh, Mahendra Anand, Nikhil M. Sakhardande, Ms. Meenakshi Sakhardande, S.R. Grover, Anil G Srivastav, S.S. Shinde, S.V. Deshpande and Ranjan Mukherjee for the appearing parties. G

The Judgments of the Court were delivered by

D.P. MOHAPATRA J. Leave granted. H

A This appeal filed by the writ petitioner is directed against the judgment dated 23.3.1999 of the Bombay High Court summarily dismissing W.P. No. 1683/88 *Naveenchandra N. Majithia v. State of Maharashtra & others* on the ground of want of jurisdiction.

B The appellant filed the writ petition against the State of Maharashtra, the State of Meghalaya, the Special Superintendent of Police, CID, Shillong and Mr. Malerkode Subramaniam Jayaram praying, *inter alia*, (a) to quash the complaint lodged by M/s J.B. Holdings Ltd. or in the alternative to issue a writ of mandamus directing the State of Meghalaya to transfer the investigation being conducted by the officers of the CID at Shillong to the Economic
C Offences Wing, general Branch of the CID, Mumbai or any other investigating agency of the Mumbai Police and (b) to issue a writ of prohibition or any other order or direction restraining the Special S.P. Police, CID, Shillong and/or and investigating agency of the Meghalaya Police from taking any further step in respect of the complaint lodged by the M/s J.B. Holdings Ltd. with the Police authorities at Shillong. For the sake of convenience the appellant
D will be referred as the petitioner while narrating the facts of the case.

The relevant facts of the case as stated in the writ petition may be shortly stated thus: The petitioner is the Managing Director of the company, *M/s India Farmers Pvt. Ltd.* (IFPL for short), registered under the Companies Act, having its registered office at Mumbai. Out of the 2500 shares of IFPL
E the petitioner, his family members and friends together hold 2430 shares; the balance 70 shares have remained un-allotted till date. In the year 1950 the then Government of Bombay put IFPL in possession of 300 acres of land at Akas, Marve, Malvani at Malad, Bombay. Thereafter in 1956 the State Government granted a lease in favour of IFPL for 114 acres out of the 300 acres for a period
F of 999 years. The agreement for the balance area of 186 acres is yet to be executed by the Government.

On 7th July 1994 a company known as Chinar Export Ltd. entered into an agreement with the petitioner for purchase of the entire lot of 2430 shares of IFPL at a total price of Rs. 58 crores. A sum of Rs. 2 crores was paid by
G M/s Chinar Export Ltd. as earnest money and a further sum of Rs. 25,00,000 was paid subsequently. The balance of the purchase price was to be paid on or before 31st October, 1995. However, Chinar Export Ltd. was unable to fulfil its commitment as to payment of the balance purchase price, and therefore, the petitioner terminated the agreement.

H M/s. Chinar Export Ltd. filed suit No. 178/95 against the petitioner in the

High Court of Bombay for specific performance of the agreement dated 7.7.94. A
Two share holders of M/s Chinar Export Ltd. Mr. Jayaram and Mr. Bareh, took
over the management and control of the company. Thereafter they formed
another company M/s J.B. Holdings Ltd. at Shillong. On the request of Mr.
Jayaram and Mr. Bareh who were the directors in both the companies M/s J.B.
Holdings Ltd. and M/s Chinar Export Ltd. the suit was withdrawn upon the B
petitioner's returning the amount paid by M/s Chinar Export Limited which
was earlier forfeited by the petitioner. This fact was recorded in the consent
terms filed in the suit in September, 1995.

In pursuance of the agreement M/s J.B. Holdings Ltd. paid a sum of Rs.
6, 75, 63,000 towards purchase price of 170 shares of IFPL and a sum of Rs. C
1,50,33,000 as earnest money for the purchase of the balance shares. On
13.10.95 M/s J.B. Holdings Ltd. paid the petitioner a further sum of Rs. 1 crore.
On 31.10.95 yet another sum of Rs. 1.24 crores was paid by M/s J B Holding
Ltd. From the amount received from M/s J.B. Holdings Ltd. the petitioner paid
a sum of Rs. 2.25 crores by way of refund of the forfeited amount to M/s
Chinar Exports Ltd. as per the terms of the settlement in Suit No. 178/95 filed D
in the Bombay High Court. Against the payment made by M/s J.B. Holdings
Ltd. the petitioner delivered 170 shares of IFPL which were duly transferred
in the name of M/s J.B. Holdings Ltd. and delivered to them at Mumbai.

The petitioner alleged that at no point of time M/s J.B. Holdings Ltd. E
offered to make the balance payment or to take delivery of the remaining
shares. As M/s J.B. Holdings Ltd. had committed default in making the
balance payment and thereby committed breach of the agreement dated 18.9.95
the said agreement stood terminated and the earnest money stood forfeited
as stipulated in the agreement.

It was further alleged in the Writ Petition that after some correspondence
between the parties M/s J B Holding Ltd. had tried to pressurise the petitioner
to reverse the transaction of sale of shares and recover the money paid in
respect thereof by employing strong arm tactics, which eventually failed.
Having failed to achieve the purpose by such means, M/s J.B. Holdings Ltd. G
filed a false complaint against the petitioner at Shillong in the State of
Meghalaya. The petitioner asserted that the complaint is false and it has been
deliberately filed at Shillong with the malafide intention of exerting pressure
and causing harassment to him so as to get the transaction relating to transfer
of shares reversed. According to the petitioner since the entire transaction
upon which the complaint is purportedly based had taken place at Mumbai H

- A and not at any other place outside Mumbai much less at Shillong or any other place in the State of Meghalaya the complaint could not/ought not to have been entertained by the police at Shillong. It was further averred in the Writ Petition that the jurisdiction, if any, to investigate/inquire into the contents of the complaint is with the Police/Courts in Mumbai and the action taken by the Special S.P. Police, CID, Shillong in entertaining the said complaint and
- B in taking up investigation on the basis of the same is clearly oppressive, discriminatory and *mala fide*. It was also stated in the writ petition that the petitioner was approaching the High Court under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code for the issuance of a writ of prohibition and mandamus quashing the complaint made by
- C M/s J.B. Holdings Ltd. on the grounds stated in the said paragraph.

- According to the petitioner, the conduct on the part of the Shillong Police in entertaining the complaint against him and in embarking upon an investigation was clearly in excess of the jurisdiction vested in under the provisions of the Code of Criminal Procedure. Indeed the Shillong Police had
- D on their own requested the Mumbai Police (Malvani Police Station), to carry out an extensive investigation into the alleged offence which clearly indicates that Shillong Police authorities were very much aware that the entire transaction upon which the complaint is purportedly based had taken place in Mumbai. In such circumstances, according to the petitioner, the subsequent conduct
- E of the Shillong Police in continuing with investigation of the case is clearly malafide and without sanction of law and procedure.

- In the writ petition, it was contended that in the two letters dated 14.9.98 and 16.9.98 addressed by the Assistant Police Inspector, Malvani Police Station to the petitioner, it was stated that the complaint had been received
- F in the Police Station at Malvani and the petitioner was requested to attend the said Police Station with documents. Thereafter, on 19.9.98 the statement of the petitioner was recorded and certain documents were received from him at Malvani Police Station. The petitioner also contended in the writ petition that the allegations made against him in the complaint do not make out any
- G cognizable offence and the dispute, if any, is of civil nature.

- Mr. Melarkode Subramanian Jayaram, who was arrayed as respondent no. 4. in the writ petition filed a counter-affidavit generally denying the averments made in the writ petition. The respondent referred to the writ petition filed by the complainant M/s J.B. Holdings Ltd. in Gauhati High Court
- H challenging the action of the Government of Meghalaya refusing permission

to the concerned Police officers to go to Mumbai on the ground of paucity of funds. A learned single Judge by order dated 17.11.1997 directed the complainant to deposit the requisite amount to enable the Senior Police inspector concerned to proceed to Mumbai for investigation of the case. In appeal a Division Bench of the High Court confirmed the said order taking the view that since the case has been registered in the State of Meghalaya, it is for the police of that State to investigate into the matter. A B

The High Court as noted earlier, dismissed the writ petition holding that it could not entertain the writ petition since the petitioner has prayed for quashing the complaint which was lodged by the complainant at Shillong in the State of Meghalaya. C

On the pleadings of the parties noticed in the foregoing paragraphs the moot question that arises for consideration is whether the Bombay High Court was right in passing the order rejecting the writ petition on the ground that the Court could not entertain the writ petition as the petitioner had prayed for quashing the complaint filed against him by M/s J.B. Holdings, Ltd. at Shillong. D

Article 226 of the Constitution of India which provides the power to High Courts to issue certain writs reads as follows :

“226. Power of High Courts to issue certain writs-(1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territory 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, including writs in the nature of habeas corpus, mandamus, prohibition, *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. E F

(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. G

(3) xxx xxx xxx

(4) xxx xxx xxx H

A From the provision in clause (2) of Article 226, it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

B In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person (Black's Law Dictionary)

C In Stroud's Judicial Dictionary a 'cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

D In 'Words and Phrases' (fourth edition) the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

E A Bench of three learned Judges of this Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.*, [1994] 4 SCC 711, considered at length the question of territorial jurisdiction under Article 226 (2) of the Constitution of India. Some of the relevant observation made in the Judgment are extracted hereunder:

F 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

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by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, 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. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

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* Lords 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. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

(Emphasis supplied)

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

A where the alleged offence was committed.

This Court in case of *K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.*, [1999] 7 SCC 510, 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 29.1.93 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 15.2.93 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 First 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.

This Court held that under section 177 of the Criminal Procedure Code "every offence shall ordinarily be enquired 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 N.I. 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 among 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.

In the case of *Satvinder Kaur v. State (Govt. of NCT of Delhi) and another*, [1999] 8 SCC 728 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 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:

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 Cr.PC 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 in the same *per se*; it has no jurisdiction to examine the correctness or otherwise of the allegations."

In case of *H.V. Jayaram v. Industrial Credit & Investment Corpn. of India Ltd. and others*, [2000] 2 SCC 202, 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 stipulated 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.

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

- A 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
- B 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 pressurise 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
- C 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 Bombay High Court.

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

- D 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 M/s J B Holding Ltd.
- E should be made by the Mumbai Police.

- 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 M/s J.B. Holdings Ltd. at Shillong which is presently being investigated by the Special Superintendent of Police, CID, Shillong shall be transferred to
- F the Mumbai Police for further investigation through its Economic Offences Wing, General Branch, CID, or any another branch as the competent authority of the Mumbai Police may decide in accordance with law.

- THOMAS, J.** I respectfully agree with the Judgment prepared by my
- G learned brother Mohapatra, J. In view of the importance of the legal issue highlighted before us-regarding the extent of jurisdiction of a High Court under Article 226 of the Constitution of India- I am tempted to add a few lines of my own for a further support to the conclusion reached by my learned brother.

- H As the facts of the case have been succinctly narrated by Mohapatra,

J., I shall set out only the main issue involved. Whether the High Court of Bombay has jurisdiction to issue a writ under Article 226 of the Constitution in respect of any step taken or to be taken pursuant to the FIR registered by the Shillong police in the State of Meghalaya. The Division Bench of the High Court of Bombay dismissed the writ petition filed by the appellants solely on the ground of want of jurisdiction. The Division Bench has observed thus:

“Petitioner cannot content that a part of the cause of action arose within the limits of this Court as Bombay Police sought to interrogate him. The investigation is not the cause of action. The investigation is only the consequence of the FIR filed by the 4th respondent before the Police authorities in Meghalaya. The Petitioner challenges in this Writ Petition the said FIR where an investigation is extending to Bombay or any other State on the basis of the FIR filed in a different State. One cannot say that the part of cause of action has arisen wherever police goes for the purpose of investigation.”

The Division Bench extracted the definition of High Court under Section 2(e) of the Code of Criminal Procedure (for short ‘the Code’) and stated that by the said definition the Code has clearly laid down that “every High Court has to exercise the jurisdiction under the provisions of the Code only within the territory of the State unless it is extended by any law. The High Court is defined in the Code as the High Court for that State. Learned Judges then made the following observations:

“Merely for the reason that the High Court can exercise the power under Article 226, also to quash an FIR where no offence is disclosed, cannot be construed to have jurisdiction to be exercised outside the territory where no FIR is lodged. To hold so would be farfetched. The instance that has been pointed out by the learned counsel for the petitioner that the petitioner is being questioned by Bombay Police is only as a part of investigation. Police of a particular State can very well seek the assistance of police of another State in the course of the investigation of a crime. It is permissible under Sec. 48 of the Code of Criminal Procedure that any police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India. Exercising this power, the Assam Police might have come to Bombay also and sought aid of Bombay Police. Thus that by itself cannot be said that the part of cause of action has arisen in Maharashtra. If that be so, then no investigation by any police in India can be successfully carried out

A because any absconding accused can go to any corner of India and challenge the prosecution where he was staying. This concept is quite contrary to the scheme envisaged by the Code of Criminal Procedure with regard to the investigation of an offence.”

B When the Constitution was framed, Article 226, as it originally stood therein provided 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, order or writs.....” some of the decisions rendered by different High Courts during the earlier years of the post-Constitution period have given a wider perspective regarding the jurisdiction of the High Court and pointed out that a High Court can exercise powers under Article 226 even in respect of Tribunals or Authorities situated outside the territorial limits of its jurisdiction if such Tribunal or Authority exercises powers in such a manner as to affect the fundamental rights of persons residing or carrying on business within the jurisdiction of such High Court vide *K.S. Rashid Ahmed v. Income Tax Investigation Commission*, AIR (1951) Punjab 74; *M.K. Ranganathan v. The Madras Electric Tramways Ltd.*, AIR (1952) Madras 659 and *Aswini Kumar Sinha v. By. Collector of Central Excise and Land Customs, Shillong*, AIR (1952) Assam 91. It was Subba Rao, J (as the learned Chief Justice then was) who observed in *M.K. Ranganathan’s* case (supra) that “if a tribunal or authority exercises jurisdiction within the territories affecting such rights it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and, therefore, is amenable to its jurisdiction”.

F But a Constitution Bench of this Court has held in *Election Commission, India v. Saka Venkata Subba Rao*, [1953] SCR 1144, thus “The power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction.”

G It was the said decision of the Constitution Bench which necessitated the Parliament to bring the Fifteenth Amendment to the Constitution by which clause (1A) was added to Article 226. That clause was subsequently renumbered as clause (2) by the Constitution Forty Second Amendment.

H Now clause (2) of Article 226 reads thus:

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

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

In *Read v. Brown*, (1889) 22 Q.B.D. 128 Lord Esher M.R., adopted the definition of the phrase "cause of action" that it meant "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. It does not comprise every piece of evidence which is necessary to prove each. fact, but every fact which is necessary to be proved."

The Privy Council has noted in *Mohd. Khalil Khan v. Mahbub 'Ali*

A *Mian*, AIR (1949) PC 78, that the aforesaid definition adopted by Lord Esher M.R. had been followed in India. Even thereafter the courts in India have consistently followed the said interpretation without exception for understanding the scope of the expression "cause of action."

B Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action wholly or in part arises" vide *State of Rajasthan v. Swaika Properties*, [1985] 3 SCC 2171. A three Judge Bench of this Court in *Oil and Natural Gas Commission v. Utpal Kumar Basu and Anr.*, [1994] 4 SCC 711, observed that it is well settled that the expression 'cause of action' means that bundle of facts which
C the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachalliah, CJ, and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action
D taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations:

E "If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so
F but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

G The above observations are sufficient to take care of the apprehension expressed by the Division Bench of the Bombay High Court in the impugned judgment that "if that be so, then no investigation by any police officer in India can be successfully carried out because any absconding accused can go to any corner of India and challenge the prosecution where he was
H staying."

We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State, Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case.

In the present case, a large number of events have taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong. If the averments in the writ petition are correct then the major portion of the facts which led to the registering of the FIR have taken place at Bombay. It is unnecessary to repeat those events over again as Mohapatra, J. has adverted to them with precision and the needed details.

In the aforesaid situation it is almost impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that major portion of the investigation of the case under the FIR has to be conducted at Bombay itself shows that the cause of action cannot escape from the territorial limits of the Bombay High Court.

Hence I too agree that this appeal should be allowed in the manner mentioned in the judgment prepared by Mohapatra, J.

VM

Appeal allowed.