

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4727 OF 2017

Jaideep Pradeep Zaveri
Adult, Aged about 32 years,
Occ :- Business, Indian Inhabitant
residing at Krishna B-2, Setl-Minar
Compound, Opp. Jaslok Hospital,
Peddar Road, Mumbai-400 026.

....Petitioner
(Orig. Accused)

V/s.

1. The State of Maharashtra
Through the office of Govt. Public
Prosecutor, Criminal Appellate Side,
High Court, P.W.D. Building,
Mumbai-400 032.
(Through Koregaon Park Police
Station, Pune)

2. Rishi Suresh Mehra,
Adult, Aged about 40 years
Occ :- Not known Indian Inhabitant,
the Power of Attorney holder of,
The National Bank of Rasal-
Khaimah (P.S.C.), Dubai
(U.A.E.) and the Director of Chase
International Services, Proprietary
Concern of Armeka Financial
Consultants Pvt. Ltd., having its
registered office at "YASH"
1st Floor, B23B, Ragvilla Society,
Koregaon Park, Pune-411 001.

....Respondents
(Orig. Complainant)

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Mr. Vivek Kantawala a/w. Mr. Amey Patil i/by. M/s. Vivek Kantawala & Co., Advocate for the petitioner.

Mrs. A.S. Pai, Addl. P.P. for the State, respondent no.1.

Mr. Shankar Katkar, Advocate for respondent no.2.

**CORAM :- R.M. SAVANT, &
 SANDEEP K. SHINDE, JJ.
DATE :- 31ST JANUARY, 2018.**

JUDGMENT (PER :- SANDEEP K. SHINDE, J)

1. This petition under Article 226 of the Constitution of India read with Section 482 Criminal Procedure Code is preferred for quashing the FIR No. 86 of 2017 registered with the Koregaon Park Police Station under Sections 418 and 420 at the instance of the respondent, bank in terms of the order dated 12th April, 2017 passed under Section 156(3) Criminal Procedure Code by the Judicial Magistrate First Class, Court No. 3, Pune.

2. It is the complainant's case that, in January,

2012 the petitioner-accused with malafide intention to cheat the bank, approached the complainant bank at Dubai, UAE and represented that he is an Indian citizen and further promised and agreed that, in case, if loan facility is extended by way of credit card, he would repay the cash availed or withdrawn. The complainant, believing his bonafides and being induced by the confidence gained by the accused, issued him a credit card and extended the loan facility against the personal Loan Account No. 20266255. Later, the bank came to know that, in order to avoid the repayment of loan and to avoid the consequent legal action in UAE, the petitioner, accused absconded from UAE and fled to India. It is the complainant's case that, they could locate his whereabouts through his passport and other documents and came to know that, the petitioner accused fled to India. It is the complainant's case that, accused did not have intention from the very beginning to repay the loan amount and he made a false promise and misrepresentation whereby he induced the bank to part with the money which caused a

wrongful loss to the bank and wrongful gain to the petitioner.

3. The complainant, thus filed Criminal Misc. Application No. 1432 of 2017 in the Court of Judicial Magistrate First Class, Court-3, Pune and sought directions to the police to register the offence against the petitioner.

4. The Learned JMFC, Court No.3, Pune vide order dated 12th April, 2017 directed the Police Inspector, Koregaon Park Police Station to investigate the matter under Section 156(3) Criminal Procedure Code and also directed to comply with the provisions of Section 188 of the Criminal Procedure Code.

5. The respondent, State, in pursuance to the directions issued by the Judicial Magistrate first Class, as aforesaid and registered the FIR No. 86 of 2017 against the petitioner under Sections 418 and 420 of the Indian Penal Code on 28th April, 2017.

6. Aggrieved by the registration of the offence as aforesaid, this petition is preferred.

7. Heard Learned Counsel for the petitioner and Learned APP for the State. The Learned Counsel for the petitioner has urged that, plain reading of Section 188 Criminal Procedure Code suggests that certain prerequisites, such as, the previous sanction of the Central Government needs to be obtained and in absence thereof, the order issuing the directions under Section 156(3) of the Criminal Procedure Code and consequent registration of the FIR, is bad in law. His next contention is that, the petitioner is a resident of Mumbai and this fact was within the knowledge of the complainant. He would submit that, the contemporaneous documents suggest that, the petitioner is a resident of Mumbai and therefore the Court of Metropolitan Magistrate at Mumbai would have exclusive jurisdiction and so would be a local police station.

8. It is therefore the contention of the petitioner that, though the complainant knows that the petitioner lives at Mumbai, and no cause of action has arisen place at Pune and further the complainant, bank has no operations at Pune. It

was sought to be contended that, nothing has been stated in the complaint as to what happened in Pune. It is therefore the contention of the petitioner that the expression “at any place within India at which the offender may be found” has to be interpreted and to be held the place where the offender is likely to be found and not any Court which the complainant may choose.

9. Mr. Kantawala, has relied on the judgment of the Division Bench of this Court in **Criminal Application No. 481 of 2016 in the case of Shalini Harpalsingh Dugal & Ors. V/s. State of Maharashtra dated 29th April, 2016** wherein issue, was, whether FIR could have been registered at Mumbai as the alleged offence was committed at Dubai in UAE.

10. The Learned APP for the State has supported the impugned order and the registration of the FIR.

11. We have gone through the judgment of this Court in the case of *Shalini Harpalsingh Dugal* (supra) and the judgment of the Supreme Court in the case of **Om Hemrajani V/s. State of U.P. and another. reported in AIR 2005 Supreme Court page 392.**

12. The Learned JMFC, while issuing the directions under Section 156(3) has also relied on the judgment of the Supreme Court.

13. Identical issue came up for the consideration before the Apex Court in the case of *Om Hemrajani* (supra). The Apex Court, has held that, neither the place of business nor the place of residence of the petitioner (accused) and for that, even the complainant is of any relevance. It was held by legal fiction, Section 188 which deals with offence committed outside India, makes the place at which the offender may be found, to be the place of commission of offence. In para-10 of the judgment of the Supreme Court, the issue has been squarely answered, which is reproduced hereinunder :-

“10. Under the aforesaid circumstances, the expression abovenoted in Section 188 is to be construed. The same expression was also there in the old Code. From the scheme of Chapter XIII of the Code, it is clear that neither the place of business or place of residence of the petitioner and for that matter of even the complainant is of any relevance. The relevant factor is the place of commission of offence. By legal fiction, Section 188 which deals with offence committed outside

India, makes the place at which the offender may be found, to be a place of commission of offence. Section 188 proceeds on the basis that a fugitive from justice may be found anywhere in India. The finding of the accused has to be by the court where accused appears. From the plain and clear language of the section, it is evident that the finding of the accused cannot be by the complainant or the Police. Further, It is not expected that a victim of an offence which was committed outside India should come to India and first try to ascertain where the accused is or may be and then approach that court. The convenience of such a victim is of importance. That has been kept in view by Section 188 of the Code. A victim may come to India and approach any court convenient to him and file complaint in respect of offence committed abroad by the Indian. The convenience of a person who is hiding after committing offence abroad and is fugitive from justice is not relevant. It is in this context, the expression in question has to be interpreted. Section 188 has been subject matter of interpretation for about 150 years.”

Further, in paragraph no.12 has observed thus ;-

. It was held that the word 'found' is used in its most extensive sense, and was intended to include all cases by giving jurisdiction to try at any place where the prisoner might happen to be at the time of trial. The object of the provision was to get rid of all questions about local jurisdiction. Lord Campbell, Chief Justice, in his opinion, dealing with the contention that if the prisoner was brought within the jurisdiction of the court against his will, he cannot be said to

have been found there within the meaning of the Act, held that a man is 'found', within the meaning of that Act, in any place where he is actually present.”

14. Thus, after going through the facts of the case and the law laid down by the Supreme Court in the case of *Om Hemrajani* (supra), the contention of the petitioner that, the Court at Pune had no jurisdiction to issue the directions under Section 156(3) and the consequent registration of the FIR was bad in law for want of jurisdiction, needs to be rejected and is rejected accordingly.

15. In view of the facts of the case and the law laid down by the Supreme Court, we do not see any merit in the petition. The petition is accordingly dismissed.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)