OM HEMRAJANI

v.

STATE OF U.P. AND ANR.

NOVEMBER 25, 2004

[Y.K. SABHARWAL AND D.M. DHARMADHIKARI, JJ.]

Code of Criminal Procedure, 1973—Section 188—Offence committed outside India—Inquiries and Trial—Jurisdiction of Criminal Court—Held: The offences committed outside India can be inquired and tried by any Court in India approached by the victim—The Court where the complaint is filed and where the accused appears either voluntarily or in execution of warrant would be the competent Court—The finding of accused has to be by the Court and not the complainant or Police—The convenience of the victim and not the offender is relevant—Determination of the abuse of such wide option to the victim would depend on the facts of each case.

Respondent No. 2, a Dubai based Bank filed a complaint against the petitioner in a Criminal Court at Ghaziabad for commission of offences punishable under IPC. Criminal Court took cognizance of the offence and issued processes and also issued non-bailable warrants. Petitioner filed petition u/s 482 Cr.P.C. seeking quashing of the complaint case and also challenged the order of the Criminal Court on the ground that the Court at Ghaziabad had no jurisdiction to take cognizance of the offence as neither the petitioner resided there nor the complainant had any office there. High Court held that the Court did not lack jurisdiction to entertain the complaint.

In appeal to this Court petitioner contended that the likelihood of the availability of the offender is implicit in the expression used in Section 188.

Respondent-Bank contended that in view of Scheme of Chapter XIII, the expression 'at which he may be found' in Section 188 Cr.P.C. only means the place where the accused may either appear voluntarily or brought by Police in execution of warrants of arrest, since the responsibility to find the accused is of the Court and not that of the complainant or the Police.

A Dismissing the petition, the Court

HELD : 1.1. The Court where the complaint may be filed and the accused either appears voluntarily pursuant to issue of process or is brought before it involuntarily in execution of warrants, would be the B competent Court within the meaning of Section 188 Cr.P.C. as that Court would find the accused before him where he appears. The finding has to be by the Court. It has neither to be by the complainant nor by the Police. The Section deems the offence to be committed within the jurisdiction of the Court where the accused may be found. [373-D, E]

C 1.2. From the scheme of Chapter XIII of Cr.P.C., it is clear that neither the place of business place of residence of the petitioner and for that matter of even the complainant is of any relevance. The relevant factors 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. D 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 E 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. 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 F who is hiding after committing offence abroad and is fugitive from justice is not relevant. The Court cannot compare the question of convenience of the accused at the cost of victim's convenience. Between the two, the convenience of the latter has to prevail. It is in this context, the expression in question has to be interpreted. [370-G-H; 371-A, B, C]

G *Reg.* v. *Benito Lopez,* (1858) Cr.L.C. 431; *Empress* v. *Maganlal,* ILR Bom. Series (Vol. 6) 622; *Emperor* v. *Vinayak Damodar Sarvarkar,* (1910) 35 ILR 223 and *Sahebrao Bajirao* v. *Suryabhan Ziblajit and Ors.,* AIR (1948) Nag. 251, referred to.

H 2. Regarding the abuse of such wide option of the victim, there are

enough provisions in Cr.P.C. for redressal of any particular abuse. Whether a particular case is an abuse or not would depend on its own facts.

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 99 of 2004.

From the Judgment and Order dated 14.11.2003 of the Allahabad High Court in Crl.M.A. No. 8741 of 2003.

Vijay Kotwal, S.B. Keswani, Sushil Karanjkar and Venkateswara Rao Anumolu for the Petitioner.

Vinod A. Bobde, S. Mudaliar, Arujun Bobde, Hrishikesh Baruah and S. Misra for the Respondent No. 2.

Prashant Chaudhary and Praveen Swarup for State of U.P.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. : The interpretation of Section 188 of the Code of Criminal Procedure, 1973 (Code) falls for determination in this petition. The said section reads as under :

> *"188. Offence committed outside India.*—When an offence is committed outside India —
>
> (a) by a citizen of India, whether on the high seas or elsewhere; or
>
> (b) by a person, not being such citizen, on any ship or aircraft registered in India,
>
> he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:
>
> Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

A The sole question is about the interpretation of the expression 'at which he may be found' in the aforesaid section. On whom, under Section 188, does the responsibility to find the accused lies — the complainant, the Police or the Court? The question has arisen under the following circumstances :

B Respondent No. 2, a Dubai based bank, has filed a complaint against the petitioner and another in the Court of Special Judicial Magistrate (CBI) under Sections 415, 417, 418 and 420 read with Section 120-B IPC. It has been, *inter alia*, alleged in the complaint that the petitioner obtained loans, executed various documents in proof of his ability to discharge the bank liability and gave his personal guarantee. But instead of discharging the C liability, the accused absconded without liquidating his liability to the bank. The accused cheated and defrauded the bank in obtaining loan facilities knowing fully well that he had no intention to pay it back and fled from UAE. The Magistrate took cognizance of the offence and issued processes against the person arraigned in the complaint and also issued non-bailable warrants.

D

The petitioner sought quashing of the complaint case by filing a petition under Section 482 of the Code before the High Court and also challenged the order of the Magistrate dated 6th October, 2003 taking cognizance of the offence along with non-bailable warrants issued against E him. The main contention urged before the High Court was that no cause of action or part thereof had occurred within the territorial jurisdiction of the court at Ghaziabad; the petitioner was not residing within the jurisdiction of that Court nor the complainant had any office at Ghaziabad and, thus, court at Ghaziabad had no jurisdiction to take cognizance of the offence.

F In terms of the impugned judgment, the High Court has rejected the contention that Ghaziabad court lacks jurisdiction to entertain the complaint. Challenging the High Court's judgment, Mr. Vijay Kotwal, learned senior advocate, submits that the High Court erroneously construing Section 188 has come to the conclusion that the Special Judicial Magistrate at Ghaziabad has jurisdiction to entertain the complaint. Learned counsel submits that the G interpretation placed by the High Court on Section 188 is not legal and, if upheld, it would cause, as in the present case, unnecessary harassment to the accused. Our attention has also been drawn to para 21 of the complaint which reads as under :

H "21. JURISDICTION

That this Hon'ble Court has territorial jurisdiction to try, inquire and take cognizance. In the present case, the accused persons have conspired together in India and in furtherance of their conspiracy and common intention of cheating and defrauding the Complainant Bank opened an account with the Complainant Bank, availed of various loan facilities knowing fully well that had no intention of paying back the same, fled from UAE. It may be pertinent here to mention that the accused has business all over India and abroad and for that purpose travels all over India and abroad."

Learned counsel contends that vague averments as above have been made and the complainant knows that the petitioner lives at Mumbai and has also business operations there, no cause of action took place at Ghaziabad and even the complainant bank has no operations at Ghaziabad. The submission is that nothing has been stated in the complaint as to what happened in Ghaziabad. Mr. Kotwal contends that when Section 188 states that offence committed outside India by an Indian citizen may be dealt with at any place within India at which the offender may be found, it is implicit that the competent Court at the place where the offender is likely to be found will have jurisdiction and not any court which the complainant may choose. The likelihood of the availability of the offender is implicit in the expression used in Section 188 of the Code, is the submission, otherwise it would mean that the complaint may be filed in any part of India, which could never have been the intention of the law. The argument looks very attractive at the first blush but that is all since its deeper consideration shows that it has no substance.

Representing the complainant bank, respondent No. 2, Mr. Vinod A. Bobde, learned Senior Counsel, submits that unlike civil proceedings the residence of the offender as a concept of part of cause of action has no relevance in construing the provisions of the Code, particularly, Section 188. Learned counsel submits that the scheme of Chapter XIII clearly shows that the expression 'at which he may be found' in Section 188 only means the place where the accused may either appear voluntarily or may be brought by the Police in execution of the warrants of arrest since the responsibility to find the accused, within the meaning of Section 188, is only of the court and not that of the complainant or the Police. Learned counsel further submits that the law in regard to interpretation of Section 188 has been well settled for over 150 years.

A Let us examine the provisions of Chapter XIII of the Code which deals with the jurisdiction of the criminal courts in inquiries and trials.

Section 177 postulates that ordinarily offence shall be inquired into and tried by a court within whose local jurisdiction it was committed. Section B 178, *inter alia*, deals with situations when it is uncertain in which of several local areas, an offence is committed or partly committed in one area and partly in another. The section provides that the offence can be inquired into or tried by a court having jurisdiction over any of the local areas mentioned therein. Under Section 179, offence is triable where act is done or consequences thereof ensued. Section 180 deals with the place of trial where C act is an offence by reason of its relation to other offence. It provides that the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either act was done. In all these sections, for jurisdiction the emphasis is on the place where the offence has been committed. There is, however, a departure under Section 181(1) where D additionally place of trial can also be the place where the accused is found, besides the court within whose jurisdiction the offence was committed. But the said section deals with offences committed by those who are likely to be on move which is evident from nature of offences mentioned in the section. Section 181(1) is in respect of the offences where the offenders are not normally located at a fixed place and that explains the departure. Section E 183 deals with offences committed during journey or voyage. Section 186 deals with situation where two or more courts take cognizance of the same offence and in case of doubt as to which one of the courts has jurisdiction to proceed further, the High Court decides the matter. Section 187 deals with a situation where a person within local jurisdiction of a Magistrate has F committed an offence outside such jurisdiction. The Magistrate can compel such a person to appear before him and then send him to the Magistrate which has jurisdiction to inquire into or try such offence.

Under the aforesaid circumstances, the expression abovenoted in Section 188 is to be construed. The same expression was also there in the old Code. G 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 H 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.

In *Reg.* v. *Benito Lopez,* [1858] Cr.L.C. 431, dealing with the question of jurisdiction of English courts in respect of offences committed on the high seas by foreigners on board English ships, decision was rendered by 14 Judges, i.e., all the judges of the Court except Bramwell, B. The accused was held to have been found within jurisdiction of the county where he was tried. The decision refers to principles of International Law that a person is liable to be punished of all such offences wheresoever committed. Interpreting the word 'found' in provision under consideration in that case, which was to the following effect :

> "If any person being a British subject charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour; or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions, which would have cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: provided that nothing contained in this section shall be construed to alter or interfere with the act 12 & 13 Vict. C. 96."

It was held that the word 'found' is used in its most extensive sense,

A 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, B 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.

In *Empress* v. *Maganlal,* [ILR Bom Series (Vol.6) 622], decided in the year 1882 interpreting the word 'found', it was opined that it was used to C confer the jurisdiction to the court of a place where the accused is actually found, i.e., produced before the Court and not where a person is discovered. In other words, it would mean that an accused may be discovered by the Police at a place not within the jurisdiction of the Court enquiring or trying but that is not the place contemplated by Section 188. For the purpose of D jurisdiction, it would be the court where he is actually produced or appears which can said to have found him. As earlier stated, the finding of the accused is to be by the Court inquiring or trying and not by the Police.

The aforesaid decisions were referred to and relied upon in *Emperor* v. *Vinayak Damodar Sarvarkar,* [1910] 35 ILR 223. The contention that the E accused is charged before a Magistrate with an offence under the Penal Code and was brought there illegally from a foreign country was rejected. An illustration was given in that — a man commits a crime, say murder, in a country but he escapes to some other country before he is apprehended, the Police finding him in some other country, brings him to England and F produces him before a Magistrate. It would not be open to the Magistrate to refuse to commit him. The Court held that "If he were brought here for trial, it would not be a plea to the jurisdiction of the Court that he had escaped from justice, and that by some illegal means he had been brought back".

G The last decision on interpretation of Section 188 is of Justice Vivian Bose in *Sahebrao Bajirao* v. *Suryabhan Ziblaji & Ors.,* AIR (1948) Nag. 251. The question posed was as to who is to do the 'finding'. Learned Judge held that the word 'found' in Section 188 means found by the Court at the time when the matter comes up for trial, that is to say, any Court which is H otherwise competent to try the offence can take seisin the moment the

accused appears in its presence. How the accused gets there is immaterial. It does not matter whether he comes voluntarily or in answer to summons or under illegal arrest. It is enough that the Court should find him present when it comes to take up the matter.

In our opinion, the law has been correctly enunciated by in the aforesaid case. The scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any Court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a Court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege the accused may be found in India. The Court where the complaint may be filed and the accused either appears voluntarily pursuant to issue of process or is brought before it involuntarily in execution of warrants, would be the competent Court within the meaning of Section 188 of the Code as that Court would find the accused before him when he appears. The finding has to be by the Court. It has neither to be by the complainant nor by the Police. The section deems the offence to be committed within the jurisdiction of the Court where the accused may be found.

It is correct that as a result of the aforesaid interpretation, it is possible for a complainant to file a complaint against an accused in any Court in the country. But then we cannot compare the question of convenience of the accused at the cost of victim's convenience. Between the two, the convenience of the latter has to prevail. Regarding the abuse of such wide option to the victim, there are enough provisions in the Code for redressal of any particular abuse. Whether a particular case is an abuse or not would depend on its own facts.

In view of the aforesaid, the Special Leave Petition is dismissed.

K.K.T. Petition dismissed.