*** THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN**
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

+ WRIT PETITION Nos. 19725 AND 19726 OF 2020

% Dated: 25.11.2020

Between:

Radhika Anil Upadhyaya

... Petitioner

and

The Principal Secretary, Home Department,

BRK Building, Secretariat, Hyderabad, and others.

...Respondents

! Counsel for the Petitioners: Mr. Rasesh Parikh, for M. A. Khader

^ Counsel for the Respondents: Advocate General

<Gist:

>Head Note:

?Citations:

1 (2019) 5 SCC 384

2 (2013) 1 SCC 314

3 (2019) 5 SCC 384

4 (2007) 5 SCC 786

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COMMON ORDER: {Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan}

Since the legal issues in both the writ petitions are the same, although the facts are different to a limited extent, both the writ petitions are being decided by this common judgment.

The petitioner has filed both these habeas corpus writ petitions on behalf of her husband, Mr. Anil Karkala Upadhyaya ('detenu'), in order to challenge his arrest effected on 02-10-2020 by the Assistant Commissioner of Police, Control Room, Central Crime Station, Hyderabad, the respondent No. 4, in connection with Crime No. 92 of 2020, and Crime No. 93 of 2020 on the file of Central Crime Station, Hyderabad respectively, and also his judicial custody, as being arbitrary, illegal and violative of fundamental rights; consequently, the petitioner has prayed that her husband, the detenu should be set at liberty.

Briefly, the facts of the cases are that, the detenu is the Chief Executive Officer of M/s. Trillion Capital Private Limited, Mumbai; he is also an Agent/Relationship Manager of the stock broking firms, namely M/s. Manoj Javeri Stock Broking Private Limited, and M/s. Conard Securities Private Limited, Mumbai. He is arrayed as A-6 in Crime No. 92 of 2020, and as A-5 in Crime No. 93 of 2020. During the year 2017, the detenu approached Mr. Pradeep Yarlagaddam, the complainant, at Hyderabad, introduced himself as an expert in stock trading, and as one of the share holders of M/s. Conard Securities Pvt. Ltd., and M/s. Manoj Javeri

Stock Broking Private Limited. He lured the complainant to invest in share trading through M/s. Manoj Javeri Stock Broking Pvt. Ltd. Thereafter, the detenu and the Directors of the said firms assured the complainant that he would receive high rate of returns over his investment. Believing the assurance of the detenu, in the month of September, 2019, the complainant, along with his family members, and others, opened Demat Accounts with different Client Codes (NSE Cash, NSE F & O). On various dates in the year 2017, the complainant and others, transferred an amount of Rs. 7.19 crores for the purpose of share trading. They also transferred Rs.1.55 crores on 03.09.2019. The monies were transferred to the accounts of M/s. Manoj Javeri Stock Broking Private Limited and M/s. Conard Securities Private Limited through their respective bank accounts at Hyderabad. Subsequently, in December, 2019, the complainant requested for redemption of the funds. As there was no response from the offenders, again on 25.01.2020, the complainant requested for withdrawal of the funds. After waiting till February, 2020, he had filed a complaint with National Stock Exchange. As a result, Mrs. Shika Hemang Shah, Director of M/s. Conard Securities Pvt. Ltd., called the complainant, and assured him that the withdrawal of payment would start from 10.07.2020. However, as there was no response, or communication from any of the accused persons, on 17.07.2020, the complainant approached the Economic Offences Wing, CCS, Hyderabad, and lodged a complaint. The complaints were registered on 05.08.2020 and investigation was taken up. During the course of investigation, it was elicited that the investments made by the victims, including the complainant, were

diverted into personal accounts of the detenu, and other co-accused instead of investing in share market. In fact, M/s. Manoj Javeri Stock Broking Private Limited was declared as defaulter in 2017 itself by the Securities and Exchange Board of India, Mumbai. The detenu, claiming to be an Agent/Relationship Manager of the above mentioned companies, had induced hundreds of clients/investors to open share trading accounts with M/s. Manoj Javeri Stock Broking Private Limited, by sending fabricated trade statements through M/s. Trillion Capital and contract notes. Later on, he, along with other accused, diverted the funds and siphoned off the money of innocent investors. On credible information, on 02.10.2020, the respondent No. 4 along with his staff, arrested the detenu at Sahara Airport, Mumbai and brought him to Hyderabad. The Police produced the detenu before the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad on 03.10.2020; he was remanded to judicial custody. Hence, both the writ petitions.

Mr. Rasesh Parikh, the learned counsel appearing for the petitioner, has raised the following contentions:-

Firstly, Section 177 Cr.P.C. prescribes the place of trial. Ordinarily, the place of trial shall be "the Court in whose jurisdiction the offence had occurred". A bare perusal of the FIR clearly reveals that no part of the offence had occurred in Hyderabad. Therefore, the Courts at Hyderabad do not have the jurisdiction to hold the trial.

Secondly, according to the FIRs, the Company in whose account the money was deposited is in Mumbai; the money was

deposited in a bank in Mumbai; the money was allegedly not refunded by the accused from Mumbai. Therefore, the alleged offences under Sections 406 and 420 IPC had occurred in Mumbai. Hence, only the Courts in Mumbai have the jurisdiction to try the offences. Thus, the Courts in Hyderabad do not have the jurisdiction under Section 177 Cr.P.C. to try the case.

Thirdly, Section 178 Cr.P.C. is an exception to Section 177 Cr.PC. It is only when a trial is not feasible under the latter provision that the former provision can be resorted to. In order to support this plea, the learned counsel has relied on the decision of the Apex Court in **Rupali Devi v. State of Uttar Pradesh**[1].

Fourthly, the remand order has been passed in a mechanical manner. For, without examining as to whether the offence has occurred within its territorial jurisdiction, the learned Magistrate had passed the remand order.

Lastly, relying on the case of **Manubhai Ratilal Patel v. State of Gujarat**[2], the learned counsel submits that merely remanding the detenu to judicial custody would not make the custody a legal one. Therefore, this Court is required to examine whether the remand orders were passed in mechanical manner or not? Since the remand orders were passed mechanically, without examining whether the offence had occurred within the territorial jurisdiction, the detention of the detenu in judicial custody is an illegal one. Hence, the writ of habeas corpus should be issued by this Court; the detenu deserves to be set at liberty.

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[1] (2019) 5 SCC 384

[2] (2013) 1 SCC 314

On the other hand, Mr. Sreekanth Reddy, the learned Government Pleader for Home, has raised the following counter-contentions:-

Firstly, the FIR is not meant to be encyclopaedic in its scope. The FIR can be lodged at the place where the victim resides. Since the money was transferred from South Indian Bank, Madhapur Branch, Hyderabad, and since the loss was suffered by the complainant in Hyderabad, part of cause of action arose in Hyderabad.

Secondly, the co-accused, Rajdeep Manoj Javeri, was also arrested from Mumbai and was produced before the concerned judicial Magistrate in Hyderabad. Presently, he too is in judicial custody. Furthermore, the present detenu has already confessed. Further, in further investigation, sufficient evidence has been collected by the investigating agency to show that the detenu had induced the complainant and his family members to invest about Rs.7.19 crores (in Crime No. 92 of 2020), and Rs.1.55 crores (in Crime No. 93 of 2020). It is upon the promise made by A-2 and the present detenu that the complainant and his family members had invested such a huge amount. Yet, not a single penny has been returned to the complainant and his family members. Thus, the complainant and his family members, who are residents of Hyderabad, have suffered a loss.

Thirdly, Section 177 of Cr.P.C. lays down the general principle, with regard to the enquiry and trial of a case by a Court. According to the said Section, the enquiry and trial should generally be held by the Court within whose local jurisdiction the

offence was committed. However, Section 178 Cr.P.C. to Section 184 Cr.P.C. deal with different facets where the trial can be held depending on the factual situation of a given case. Section 178 Cr.P.C. clearly deals with a situation where an offence is committed partly in one local area, and partly in another. Section 178(b) Cr.P.C. deals with an offence partly involved in one local area and partly in another. Similarly, Section 178(d) Cr.P.C. deals with the case where an offence consists of several acts done in different local areas. In these two situations, the enquiry or the trial may be conducted by the Court having jurisdiction "*over any of such local areas*".

Likewise, Section 179 Cr.P.C. empowers a Court to try a case in an area where the offence was committed and the consequence ensued. In such a situation, the Court within whose local jurisdiction such a thing was done, or such consequence ensued, is empowered to hold the trial. In the present case, since the money was transferred from Hyderabad, since the money was entrusted from Hyderabad, part of the cause of action arose in Hyderabad. Similarly, the consequence of having to suffer "a wrongful loss" has occurred in Hyderabad. Therefore, both under Section 178 and 179 Cr.P.C., the Courts in Hyderabad would, indeed, have the jurisdiction to try the case.

Moreover, according to Section 181(4) Cr.P.C., the offence of criminal breach of trust may be enquired into, or tried by a Court within whose local jurisdiction the property was required to be returned or accounted for. Since in the present case, the money was required to be returned, or accounted for to the complainant

in Hyderabad, the Courts in Hyderabad would have the jurisdiction to try the case.

Lastly, Section 415 of Indian Penal Code defines the offence of cheating. The definition uses the words "*fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, and which act causes, or is likely to cause damage or harm to that person in property, is said to "cheat"*". The words "fraudulently" and "dishonestly" have been defined in Section 24 and 25 IPC respectively. "Dishonestly" means, "*whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"*". Similarly, "fraudulently" means "*to do an act with intent to defraud a person*". In the present case, because of the inducement of the detenu, the complainant, and his family members, have invested the moveable property, namely their money. Since the said money has never been returned to them by the detenu and by other co-accused persons, the complainant and his family members have suffered a wrongful loss. Thus, the wrongful loss has been caused to them at Hyderabad. Therefore, the offence of cheating has occurred at Hyderabad. Hence, the Courts in Hyderabad would, indeed, have the jurisdiction to try the case.

Lastly, while remanding an accused person to judicial custody, the remand officer is not required to hold a mini-trial. At the time of remand, the remand officer is merely required to see whether the remand of the accused person should be given to the Police for further investigation, or the accused person should be

sent into judicial custody. Therefore, it is not the duty of the remand officer to go into the merits or demerits of the case. Hence, the order of remand passed by the concerned judicial Magistrate is legally valid. Since the detenu happens to be in judicial custody, his custody is a legal one. Hence, the writ of habeas corpus should not be issued.

Heard the learned counsel for the parties, and perused the record.

Sections 177, 178 and 179 Cr.P.C. read as under:-

> **177. Ordinary p*lace of inquiry or trial*.—** Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.
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> **178. *Place of inquiry or trial*.**—(*a*) When it is uncertain in which of several local areas an offence was committed, or
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> (*b*) where an offence is committed partly in one local area and partly in another, or
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> (*c*) where an offence is a continuing one, and continues to be committed in more local areas than one, or
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> (*d*) where it consists of several acts done in different local areas,
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> it may be inquired into or tried by a court having jurisdiction over any of such local areas.
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> **179. *Offence triable where act is done or consequence ensues*.**—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued."

In the case of **Rupali Devi v. State of Uttar Pradesh**[3], the Hon'ble Supreme Court has dealt with the inter-relationship between the three provisions mentioned hereinabove. The Hon'ble Supreme Court has opined as under:-

> *8. Section 178 creates an exception to the "ordinary rule" engrafted in Section 177 by permitting the courts*

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[3] (2019) 5 SCC 384

in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

(Emphasis added)

Thus, although it is true that Sections 178 and 179 Cr.P.C. are exceptions to the ordinary rule, but merely by being "exception" they do not lose their legal relevance. In fact, these provisions need to be read holistically in order to appreciate their inter-relationship with each other. While Section 177 Cr.P.C. prescribes the general rule, with regard to the jurisdiction of a Court to try the case, Section 178 and 179 Cr.P.C. further bestow a power upon different Courts to try an offence, depending on the nature of the offence, the sequence/steps in commission of the offence and the consequence of an offence. Thus, under Section 178 Cr.P.C. if different aspects of the same offence are committed at different places, then a Court, any of the places where an aspect occurred, would necessarily have the jurisdiction to try the case.

Likewise, if the consequences of an offence are suffered at a different place, than the place where the offence had occurred,

even then the Court where the consequences are suffered would certainly have the jurisdiction to try the case.

Hence, while considering the generality of Section 177 Cr.P.C., the mere existence of Section 177 Cr.P.C. does not nullify the legal importance of Section 178 and 179 Cr.P.C. For, the intention of the Legislature is not to make Sections 178 and 179 Cr.P.C. redundant in light of generality of Section 177 Cr.P.C. In fact, the intention of the Legislature is, firstly, to state the general principle in Section 177 Cr.P.C. and to carve out the exceptions in order to deal with different circumstances, which may arise when an offence is committed. Since many a times, an offence may be committed in different areas, since many a times, a given offence may have different steps that are required to be taken, Section 178 Cr.P.C. deals with such a situation. Moreover, an offence may be committed at place 'A', yet its consequences may be felt at place 'B'. In these peculiar circumstances under Section 179 Cr.P.C., the Court at place 'B' would certainly have the jurisdiction to try the case. Moreover, since Sections 178 and 179 Cr.P.C. deal with the specific situations and circumstances, they should be given effect to when the situation or circumstances of the case requires it to be done. Therefore, the contention raised by the learned counsel for the petitioner, that only the Courts in Mumbai have the jurisdiction to try the case and not the Courts at Hyderabad, is unacceptable.

It is, indeed, trite to state that an FIR is not meant to be encyclopedic in its coverage. However, as the investigation unfolds itself, and more evidence is collected, the evidence, so collected in the form of the Case Diary, can certainly be looked into and should

be looked into by the judicial Magistrate passing the remand order. A bare perusal of the remand report, submitted before the judicial Magistrate, clearly reveals that the present detenu had informed the police that he had induced the complainant and his family members to invest Rs.7.19 crores in one case, and Rs.1.55 crores in another case. It is on the basis of such an inducement that the complainant and his family members had deposited the said monies, and had transferred the monies from their respective banks at Hyderabad. Therefore, the entrustment of the money began from Hyderabad. Moreover, since the money was sent from Hyderabad, the complainant was induced to part with his property from Hyderabad. Moreover, due to the alleged criminal breach of trust, and due to the alleged cheating committed by the offenders, including the detenu, wrongful loss has been caused to the complainant and his family members at Hyderabad. Therefore, the consequence of the offence is felt at Hyderabad. Thus, under Section 178 (b) and (d) and under Section 179 Cr.P.C., the Courts at Hyderabad would have the jurisdiction to try the offence.

Furthermore, Section 181 Cr.P.C. deals with trial of offence of criminal breach of trust. Section 181 Cr.P.C. is as under:-

181. Place of trial in case of certain offences:
(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.
(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.
(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to relieve it to be stolen property.

> *(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.*
> *(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.*

Thus, the provision bestows a power to try the case upon the Court where the property which was entrusted is required to be returned, or accounted for by the accused person. In the present case, the money was sent from Hyderabad; the money had to be returned to the complainant at Hyderabad; the transaction had to be accounted for to the complainant at Hyderabad. Therefore, even under Section 181(4) Cr.P.C., the Court at Hyderabad would have the jurisdiction to try the case.

In the case of **Asit Bhattacharjee v. Hanuman Prasad Ojha**[4], the Hon'ble Supreme Court has observed as under:-

> *21. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation.*

Therefore, even if a part of the offence had occurred in Mumbai, even then, as part of the offence had occurred in

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[4] (2007) 5 SCC 786

Hyderabad, the Courts in Hyderabad would have the jurisdiction to try the case.

Moreover, in the case of **Asit Bhattacharjee** (supra), the Apex Court has observed as under:-

> *29..... Furthermore, whether the offence of forgery of some documents committed or some other criminal misconducts are said to have been committed in furtherance of the commission of the principal offence of cheating and misappropriation wherefor the respondents are said to have entered into a criminal conspiracy, are required to be investigated. The Chief Metropolitan Magistrate, thus, had jurisdiction in the matter in terms of Section 178 read with Section 181(4) of the Code of Criminal Procedure.*

The same logic would be applicable even in the present case. For, the fraudulent representation was made to the complainant in Hyderabad. The money had to be returned to the complainant in Hyderabad. The money had to be accounted for to the complainant in Hyderabad. Therefore, the Court at Hyderabad would have the jurisdiction to try the case.

In the case of **Manubhai Ratilal Patel** (supra), while dealing with the remand duty conferred on a Magistrate, the Apex Court has observed as under:-

> *24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an*

order of remand automatically or in a mechanical manner.

There can be no quarrel with the observation made by the Hon'ble Supreme Court as quoted hereinabove. However, while carrying out the remand duty, the learned Magistrate is not required to hold a mini-trial. The learned Magistrate is required to consider whether the commission of a cognizable offence is mentioned in the FIR or not? Whether the Police is justified in arresting the accused person or not? Whether the Police requires the continuation of the police custody for the purpose of further investigation or not? Or whether the accused person should be sent into judicial custody so as to ensure that the accused person would face the trial as and when called for? Or whether the accused was subjected to torture or not while he was in police custody? Or whether the accused should be set at liberty or not?

In the present case, the FIR was lodged in Hyderabad, which clearly alleged the commission of a cognizable offence. Since part of the cause of action had arisen in Hyderabad, the police force of Telangana was justified in arresting the detenu who was residing in Mumbai, and in bringing him to the State of Telangana for further investigation. The detenu was produced before the learned Magistrate. Therefore, the learned Magistrate was justified in exercising her remand power. Since the Magistrate was of the opinion that the custody of the detenu need not be continued with the Police, by order dated 03.10.2020 the learned judicial Magistrate had remanded the detenu to judicial custody. Therefore, the learned Magistrate had legally exercised the power bestowed upon the Magisterial Court. Hence, the judicial custody of the detenu is a legal one. Therefore, the learned counsel for the

petitioner is unjustified in claiming that since the remand order has been passed in mechanical manner, the custody is an illegal one.

Once this Court has concluded that the custody of the detenu is a legal one, this Court does not find any merit in the present writ petitions. Therefore, the writ petitions are, hereby, dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(B. VIJAYSEN REDDY, J)

November 25, 2020

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THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION Nos. 19725 AND 19726 OF 2020

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