

**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC No.31088/2018**  
**Manoj Shrivastava vs. State of MP & Anr.**

**Gwalior, dtd. 20/09/2018**

Shri J.S. Kushwah, Counsel for the applicant

Shri B.P.S. Chouhan, Counsel for the respondent No.2/  
State

Shri Anoop Nigam, Counsel for the complainant.

Heard on the question of admission.

This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. in crime no. 27/2017 registered at Police Station Sirol, Distt. Gwalior for offence under Sections 420, 467, 409 and 120-B of I.P.C. read with Section 166, 188-B of Companies Act, as well as for quashing the criminal proceedings in S.T. No.437/2017, which are pending before the Court of 9<sup>th</sup> Additional Sessions Judge, Gwalior.

The necessary facts for the disposal of the present application in short are that the complainant Rajiv Shrivastava lodged a report that Assotec C.P. Infrastructure Pvt. Limited started a project in the name and style of Windsor Hills in Gwalior and a residential township was to be constructed. The applicant was given the charge of looking after the residential township in which Flats, Villas, Shops etc. were to be constructed. It was alleged that the applicant, in connivance of the co-accused P.K. Shrivastava, Mukesh, Dilip, Ankit Ranjan, Anand Shrivastava, and Sidharth Shrivastava, sold 36 Flats and shops and did not deposit the consideration amount in the account of the company. It was alleged the flats and shops were sold in favour of the co-accused persons at a much lower price than the scheduled price, who in their turn, sold the flats and shops to the *bona fide* purchasers at a higher price and thus,

played fraud with the Company, and the actual consideration amount was misappropriated by the applicant, his wife, daughter Aishwarya by depositing the same in their bank accounts. The fraudulent transactions done by the applicant and the co-accused persons for misappropriating the funds of the Company were also mentioned in detail in the F.I.R.

The police accordingly, registered the F.I.R. in crime No. 27/2017 for offence under Sections 420, 467, 409 and 120-B of I.P.C. read with Section 166, 188-B of Companies Act. It is not out of place to mention here that some of the co-accused persons are still absconding and the police has filed the charge sheet, showing them to be absconding.

The bail application of the applicant has already been rejected by this Court thrice, and the S.L.P. has also been dismissed by the Supreme Court in S.L.P. (Criminal) 5987/2018 by order dated 30-7-2018.

It is submitted by the Counsel for the applicant that the registered office of the Company is situated in Noida, and the entire decisions were taken at Noida, therefore, the cause of action has arisen at Noida, thus, the Police Station Sirol, Distt. Gwalior has no jurisdiction to investigate the matter. It is further submitted that the allegations are squarely covered by different provisions of Companies Act and in view of provisions of Sections 439(1)(2), 436(1)(2), 441, 442, 435 and 445 of Companies Act, the prosecution of the applicant under provisions of Indian Penal Code is unwarranted as when a separate provision has been made in the Special Statute, then the applicant should not be prosecuted for offences punishable under Section 420, 467, 409, 120-B of I.P.C.

Per contra, it is submitted by the Counsel for the State, that so far as the territorial jurisdiction of the Police Station

Sirol, Distt. Gwalior is concerned, undisputedly, the residential Township, known as Windsor Hills was constructed in Gwalior, different fraudulent Sale deeds have been executed at Gwalior, therefore, the entire cause of action has taken place at Gwalior. Merely the registered office of the Company is situated at Noida, would not give rise to any cause of action at Noida. Further, there is no provision in Companies Act, ousting the applicability of provisions of Penal Code.

While opposing the prayer of the applicant, for quashment of the proceedings, it is submitted by the Counsel for the complainant that the applicant himself had approached the National Company Law Tribunal, but later on, he withdrew the proceedings.

Considered the submissions made by the Counsel for the parties.

The first contention raised by the Counsel for the applicant is that the registered office of the Company is situated in Noida and all the decisions were taken at Noida, therefore, only the Noida police has territorial jurisdiction to investigate the matter and the Police Station Sirol, Distt. Gwalior, has no territorial jurisdiction to entertain the matter. The submission made by the Counsel for the applicant is misconceived and is hereby rejected. Undisputedly, the residential township in the name and style of Windsor Hills has been constructed within the territorial jurisdiction of Police Station Sirol, Distt. Gwalior. It is the allegation of the complainant, that initially, the sham sale deeds in respect of 36 flats and shops were executed in favour of the co-accused persons, at a very low price and even much below the actual price of the flats and shops and thereafter, the same property was sold in favour of the actual borrowers at a much higher price, and the consideration amount was not deposited in

the account of the Company. All the sale deeds were executed in Gwalior. Thus, it is clear that the entire offence has taken place in Gwalior. In the considered opinion of the Court, the offence has been committed within the territorial jurisdiction of Police Station Sirol, Distt. Gwalior. Even otherwise, if for the sake of argument, it is accepted, that the decision taken at Noida, can also be treated as a part of cause of action/offence, then it is well-established principle of law that where the offence has taken place within the territorial jurisdiction of more than one police stations, then each of the police stations will have jurisdiction to investigate the offence.

The Supreme Court in the case of **Sunita Kumari Kashyap vs. State of Bihar & Another**, reported in **(2011) 11 SCC 301** has held as under:-

"8. Chapter XIII of the Code of Criminal Procedure, 1973 (in short "Code") deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 are relevant which are as follows:

"177. Ordinary place of inquiry and trial -. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

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."

From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per [Section 178](#), the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section [179](#) makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

Thus, the objection of the applicant, with regard to the lack of territorial jurisdiction of Police Station Sirol, Distt. Gwalior is hereby rejected.

It is next contended by the Counsel for the applicant, that in view of the specific provisions of Sections 439(1),(2),436(1) (2),441,442,435 and 445 of Companies Act, the applicant cannot be prosecuted for offences punishable under Penal Code. The submissions made by the Counsel for the applicant is misconceived and is hereby rejected.

It is fairly conceded by the Counsel for the applicant, that there is no provision in Companies Act, which ousts the applicability of the provisions of Indian Penal Code.

Section 26 of General Clauses Act, reads as under :-

**"26. Provision as to offences punishable under two or more enactments.—** Where an

act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

The Supreme Court in the case of **State of M.P. Vs. Rameshwar** reported in **2009(11) SCC 424** has held as under :-

"48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

The Supreme Court in the case of **State (NCT of Delhi) Vs. Sanjay** reported in **(2014)9 SCC 772** has held as under :-

"61. Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offence."

The Supreme Court in the case of **State of Maharashtra Vs. Sayyad Hassan Sayyad Subhan**, by judgment dated 20-9-2018, passed in Criminal Appeal No.1195 of 2018 has held as under :-

"8. In Hat Singh's case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that

prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay 4 held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."

This Court is of the considered opinion, that the second contention of the applicant, that he cannot be prosecuted for offences under the Indian Penal Code, and can be prosecuted for punishments provided under the Companies Act only, cannot be accepted, hence, it is rejected.

It is next contended by the Counsel for the applicant that as per the provision of Section 430 of Companies Act, the jurisdiction of the Civil Court is barred, therefore, it should be presumed that the jurisdiction of the Criminal Court is also barred.

The submission made by the Counsel for the applicant cannot be accepted. Section 430 of Companies Act, reads as under :

**"430. Civil court not to have jurisdiction.—** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken

or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

The submission made by the Counsel for the applicant, that the word "Civil Court", should be read as "Criminal Court" also, is misconceived. If the intention of the Legislature was to exclude the provisions of Indian Penal Code, then nothing had prevented the Legislature from making such a provision. Even otherwise, it is a well-established principle of law that the exclusion of the jurisdiction of the Court has to be specific and cannot be inferred, and the provisions excluding the jurisdiction have to be construed strictly. Thus, the word "Civil Court", cannot be read as "Criminal Court", as suggested by the Counsel for the applicant.

No other argument is advanced by the Counsel for the applicant.

Thus, this Court is of the considered opinion, that the F.I.R. in Crime No.27/2017 registered at Police Station Sirol, Distt. Gwalior for offence under Sections 420,467,409 and 120-B of I.P.C. read with Section 166,188-B of Companies Act, as well as the criminal proceedings in S.T. No.437/2017 pending in the Court of 9<sup>th</sup> A.S.J., Gwalior cannot be quashed.

The application fails and is hereby **dismissed**.

**(G. S. Ahluwalia)**  
**Judge**