SARIKA

v.

ADMINISTRATOR, MAHAKALESHWAR MANDIR COMMITTEE, UJJAIN (M.P.) & ORS.

(M.A. No. 1235 of 2019)

In

(Civil Appeal No.4676 of 2018)

SEPTEMBER 01, 2020

[ARUN MISHRA, B. R. GAVAI AND KRISHNA MURARI, JJ.]

Religious heritage/monuments – Erosion of Shivalinga in Shri Mahakaleshwar Temple, Ujjain – Prevention of – Expert Committee consisting of experts of ASI and GSI appointed by Supreme Court vide order dated 02.05.2018 in Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (M.P.) & Ors. reported as [2018] 4 SCR 634 – Monitoring compliance of – Held: Considering the facts and circumstances of the Report submitted by the Expert Committee, Report of Temple Committee and the project report prepared by Ujjain Smart City Ltd., directions issued.

Issuing directions, the Court

HELD: Considering the facts and circumstances of the Report submitted by the Experts Committee dated 19.01.2019 and the Report of the Temple Committee as well as the project report prepared by the Ujjain Smart City Ltd., the following directions are issued:- (i) The Expert Committee shall visit the temple and submit a report by 15th December 2020, as to the steps to be taken to prevent deterioration of Shivlinga and the steps to be taken to preserve the temple structure, including Chandranageshwar Temple. (ii) The Committee to do a yearly survey and submit a report to this Court. (iii) Directions to preserve the Shivalingam. (iv) The Temple Committee shall provide water from Koti Thirth Kund filtered and purified and further maintain the required pH value. (v) Let the CBRI, Roorkee visit the temple, if necessary, and submit a project report as per its proposal dated 17.09.2019. CBRI, Roorkee, is directed

to submit a project report regarding structural stability within six months. A sum of Rs. 41.30 Lakhs, as required by it, shall be paid by the Central Government as early as possible. (vi) Ujjain Smart City Ltd., as per its letter dated 27.08.2020, to undertake Mahakaal Rudrasagar Integrated Development Approach (Phase I and Phase II) forthwith and submit to this Court detailed project report and the time frame within six weeks. (vii) Let the details of necessary repairs, maintenance, and improvement be worked out and carried out forthwith. Let the Collector prepare a comprehensive plan for this purpose with the help of the Superintendent Engineer and available Architect. The State Government shall sanction fund immediately. Let a suitable plan and estimate be prepared within four weeks, and necessary repair and maintenance work be carried out urgently. (viii) The Expert Committee ordered the removal of modern additions, as noted at Item No. 20. They shall be removed, and the Temple Committee shall file a compliance report to this Court by 15th December, 2020. (ix) The original work in the temple is required to be restored. As assured by the Committee, let restoration work be done concerning eyesore painting by 15th December, 2020. The Temple Committee to ensure in future not to permit or resort to such painting and covering of the original work, objected by the Expert Committee. Let a report be submitted to this Court in this regard by 15th December, 2020. (x) The Collector and Superintendent of Police of Ujjain to ensure that encroachment within 500 mtrs. of the area of the temple premises are removed, as suggested by the Experts Committee. Let needful be done by 15th December, 2020, and a report be submitted to this Court. (xi) Concerning the preservation and maintenance of Chandranageshwar Temple, a comprehensive plan be prepared and implemented, and be submitted to this Court for information. (xii) If any area is slippery in Garbh Griha, the Temple Committee to ensure that the needful is done. (xiii) Let the necessary religious rituals be performed regularly along with other aspects as discussed in Para 5 of the order. [Para 9][308-D-H; 309-A-H; 310-A-G]

Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (M.P.) & Ors. **[2018] 4 SCR 634 – referred to.**

Case Law Reference

[2018] 4 SCR 634	**referred to**	**Para 1**

CIVIL APPELLATE JURISDICTION: M.A. No. 1235 of 2019 in Civil Appeal No. 4676 of 2018.

From the Judgment dated 27.10.2016 of the High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No. 37 of 2014.

By Courts motion.

Tushar Mehta, SG, Saurabh Mishra, AAG, S.B. Upadhyaya, Sr. Adv., Divyakant Lahoti, Niraj Sharma, Rohit K. Singh, Nishant Kumar, Ms. Anshruta Maheshwari, Arjun Garg, Ms. Shrutika Garg, Rahul Kaushik, Gurmeet Singh Makker, Rajat Nair, Raj Bahadur Yadav, Mrs. Anil Katiyar, Atishi Dipankar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ARUN MISHRA, J.

1. This Court is monitoring the compliance of the judgment and order passed by this Court in Civil Appeal No. 4676/2018 on 02.05.2018. We have appointed an Expert Committee consisting of experts of Archaeological Survey of India and Geological Survey of India concerning the prevention of erosion of Shivalinga in Shri Mahakaleshwar Temple at Ujjain. The Expert Team visited Ujjain on 19.01.2019. Its Report indicates that there was erosion of Shivalinga after the last inspection, and it is a continuing process. The last inspection was made earlier in 2018. The time gap was short when the inspection was made. As such, the extent of further erosion was not measured. However, the facts remain that there was some erosion of the Shivalingam. We have vide order dated 19.08.2020 called for the Action Taken Report from the Temple Committee. The Temple Committee has submitted the response to the various measures pointed out by the Committee of the Experts in the inspection report dated 19.01.2020. Since it has been noted that the deterioration and erosion of Lingam is a continuing process, the photographs of July 2020 indicate that there was further erosion of the Lingam. A patch of Shivlinga towards the side of the deity of Shri Kartikeyan is quite visible. The matter is of grave concern as due to reckless offerings, the Lingam of Omkareshwar Temple was destroyed. The Report indicates that the pH value of Bhasma Aarti stands at 10.51, which is required to be improved and is reactive to Cryptocrystalline

A siliceous cementing material of orthoquartzite at room temperature and causing deterioration in Jyotirlingam. Sanitation and drainage were required to be improved. There was a mechanical erosion also of the Lingam due to the weight of Mund Mala and Serpakarnahas. Though their weight has been reduced to half, mechanical abrasion takes place due to their existing weight. It was also suggested that the rubbing of the
B Lingam by the devotees be strictly banned. It was also reported that there was modern style construction made in the temple premises, which needs to be removed. It was also pointed out that the modern construction within the temple premises was in progress, which was required to be stopped and removed. The necessity was also felt to restore the original
C work. The walls were painted with colours, which was giving a bad look to the ancient heritage place. There were additions in the form of eyesore painting inside the temple, which were yet to be removed. It was reported that ghee, milk, curd, and honey are regular in the offering. The Temple Management Committee has decided to provide pure and natural offering material to pilgrims. There was a necessity for a periodical review of
D the remedial measures.

2. The stand of the Temple Committee is that during Bhasma Aarti, the cloth is covered on Shivalinga and is cleaned with RO water after that. They are regulating the entry into the Garbh Griha, and during the COVID pandemic, no access is permitted. They have been restoring
E the original work, which is in progress and will be completed within three months. Concerning eyesore paintings, their removal is in the process and would be completed within three months. The Temple Committee has decided to meet monthly to do a review.

F 3. A Report dated 28.07.2019 indicated that Chandranageshwar Temple in the premises was also not in good shape, and repair work was required. Its roof has become weak.

4. The Temple Committee pointed out that there is a necessity of further inspection by the experts' team, as the last inspection was made 1½ years ago. The team of experts is located at Bhopal. They can visit
G the temple at any time. Periodic inspection by the Expert Committee is necessary for the remedial measures and to prevent erosion and to preserve the temple structure. To ensure that there was no rubbing of Shivalinga, the Poojaries (Janeupati, Khutpati), Purohits, and their authorized representatives be directed to ensure that no visitors or devotees
H rub the Shivalinga. There should be a video recording of the entire process,

and it should be preserved at least for six months. The Temple Committee shall provide water from Koti Thirth Kund filtered and purified to maintain the required pH value and shall also provide milk from its resources so that pure milk is offered to the deity. No visitor shall be allowed to offer Panchamrita to Shivalinga.

5. It was pointed out that during COVID-19, visitors and devotees are not permitted to enter the sanctum sanctorum. But in our opinion, at the same time, customary Poojaries and Purohits must perform rituals as they know the rituals and are expert in *pooja* and *archana*. When the Temple Committee prepares the details of rituals, customary Poojaries and Purohits must be associated with the Committee to render proper help and guidance in the various matters relating to the temple. Of late, it is seen that unfortunately the performance of necessary rituals is the most neglected aspect in the temples, and new Poojaries do not understand them; the same should not be the state of affairs. There is no scope for commercialization. The myriad religious rituals and ceremonies are to be performed regularly. We cannot direct what kind of *pooja-archana* rituals should be performed, but no doubt, they should be done regularly by the experts in the field. Accordingly, we direct that the Temple Committee acts in the manner described above.

6. Concerning the temple structure's stability, the Temple Committee has pointed out that on 31.07.2019, this Court directed the Central Government to get the temple and various structures inspected by CBRI, Roorkee. The CBRI visited the temple in September 2019 and submitted a structural assessment proposal and wanted 12 months to submit the project report. It has claimed a sum of Rs. 41.30 Lakhs as project charges, to be paid in advance. Prayer has been made that this Court may direct the Central Government to bear the expenses of Rs.41.30 Lakhs, to be paid to CBRI. The CBRI may be required to submit its project report within a reasonable time. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the Union of India, has agreed that the Central Government would be bearing the expenses of Rs.41.30 Lakhs to be paid to CBRI, Roorkee.

7. It is also submitted on behalf of the Temple Committee that it is necessary to undertake repairs and maintenance and other construction activities within the temple premises and further, as suggested by CBRI. The State or Central Government may be directed to contribute adequate funds for that purpose, including for the preservation of

A Chandranageshwar Temple. The Temple Committee has also prayed that encroachment within the area of 500 mtrs. from the temple are required to be removed, as recommended by the Expert Committee. The concerned authorities should remove the encroachments and prohibit the construction, otherwise than essential facilities for the public and pilgrims.

B

8. The learned counsel appearing on behalf of the State of Madhya Pradesh has placed on record a detailed plan prepared by the Ujjain Smart City Limited (USCL) for the comprehensive development of Shri Mahakaleshwar Temple and surrounding areas. The project is named as "Mahakaal Rudrasagar Integrated Development Approach" (MRIDA). Letter dated 27.08.2020 issued by CEO, Ujjain Smart City Ltd. to the Collector is placed on record, pointing out various developments proposed for the development in Phase I and Phase II of the abovementioned project.

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9. Considering the facts and circumstances of the Report submitted by the Experts Committee dated 19.01.2019 and the Report of the Temple Committee as well as the project report prepared by the Ujjain Smart City Ltd., we issue the following directions:-

D

(i) That the Expert Committee shall visit the temple and submit a report by 15th December 2020, as to the steps to be taken to prevent deterioration of Shivlinga and the steps to be taken to preserve the temple structure, including Chandranageshwar Temple.

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(ii) We also direct the Committee to do a yearly survey and submit a report to this Court.

F

(iii) To preserve the Shivalingam, we direct that :

(a) any devotee should do no rubbing of the Shivalingam.

(b) The Temple Committee to ensure that the pH value of Bhasma during the Bhasma Aarti is improved and Shivalingam is preserved from further deterioration and to implement the best methodology to prevent further damage to the Lingam.

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(c) The Temple Committee ensures that weight of Mund Mala and Serpakarnahas is further reduced to preserve the Shivalingam from mechanical abrasion. The Temple Committee to find out a way and consider whether it is necessary to use the Metal Mund Mala on the Shivalingam, or there can be a

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way out to use Mund Mala and Serpakarnahas without touching the Shivalingam. Possibility of further reducing weight may also be found out to prevent mechanical abrasion.

(d) The rubbing of curd, ghee, honey on the Shivalingam by the devotees is also a cause of erosion. It would be appropriate that only pouring of a limited quantity of pure milk is allowed by the Committee. Whereas in the traditional puja to be done on behalf of the temple, all pure materials can be used.

(e) Poojaries, Janeupati, Khutpati, Purohits, and their authorized representatives to strictly ensure that no visitor or devotee rub the Shivalingam at any cost. If it is done by any devotee, accompanying Poojari or Purohit shall be responsible for not stopping the rubbing. No rubbing of Shivalingam to be done by anyone except during traditional Puja and Archana performed on behalf of the temple.

(f) The entire proceedings of Puja and Archana in Garbh Griha to be video recorded 24 hours and be preserved at least for six months. If any violation is found by any Poojari, Purohit, let the Temple Committee take suitable action against that Poojari or Purohit, as considered appropriate.

(g) As agreed to on behalf of the Temple Committee, no Panchamrita to be poured on Shivalingam by any devotee. It may be used only during traditional Puja and Archana of the Shivlingam.

(h) The Temple Committee shall provide pure milk from its resources to the visitors and devotees for offering and make arrangements for that. The Committee should ensure that no impure or adulterated milk is offered to Shivalingam and concerned Poojari/ Purohit to ensure compliance.

(iv) The Temple Committee shall provide water from Koti Thirth Kund filtered and purified and further maintain the required pH value.

(v) Let the CBRI, Roorkee visit the temple, if necessary, and submit a project report as per its proposal dated 17.09.2019. CBRI, Roorkee, is directed to submit a project report regarding structural stability within six months. A sum of Rs. 41.30 Lakhs, as required by it, shall be paid by the Central Government as early as possible.

A (vi) Ujjain Smart City Ltd., as per its letter dated 27.08.2020, is directed to undertake Mahakaal Rudrasagar Integrated Development Approach (Phase I and Phase II) forthwith and submit to this Court detailed project report and the time frame within six weeks.

(vii) Let the details of necessary repairs, maintenance, and B improvement be worked out and carried out forthwith. Let the Collector prepare a comprehensive plan for this purpose with the help of the Superintendent Engineer and available Architect. The State Government shall sanction fund immediately. Let a suitable plan and estimate be prepared within four weeks, and necessary repair and maintenance work be carried out urgently.

C (viii) The Expert Committee ordered the removal of modern additions, as noted at Item No. 20. They shall be removed, and the Temple Committee shall file a compliance report to this Court by 15th December, 2020.

(ix) The original work in the temple is required to be restored. As D assured by the Committee, let restoration work be done concerning eyesore painting by 15th December, 2020. The Temple Committee is directed to ensure in future not to permit or resort to such painting and covering of the original work, objected by the Expert Committee. Let a report be submitted to this Court in this regard by 15th December, 2020.

E (x) We direct the Collector and Superintendent of Police of Ujjain to ensure that encroachment within 500 mtrs. of the area of the temple premises are removed, as suggested by the Experts Committee. Let needful be done by 15th December, 2020, and a report be submitted to this Court.

F (xi) Concerning the preservation and maintenance of Chandranageshwar Temple, a comprehensive plan be prepared and implemented, and be submitted to this Court for information.

(xii) If any area is slippery in Garbh Griha, the Temple Committee to ensure that the needful is done.

G (xiii) Let the necessary religious rituals be performed regularly along with other aspects as discussed in Para 5 of the order.

Let the case be listed for further monitoring and consideration of the Compliance Report in the second week of January 2021.

Divya Pandey Directions issued.

KAUSHIK CHATTERJEE

v.

STATE OF HARYANA & ORS.

(Transfer Petition (Crl.) No.456 of 2019)

SEPTEMBER 30, 2020

[V. RAMASUBRAMANIAN, J.]

Transfer Petition – The petitioner herein was appointed by the second respondent, which is a non-banking finance company and the de facto *complainant in the criminal cases filed – Three loans sanctioned by the second respondent-company, during the period when the petitioner was in service, became the subject-matter of the three different complaints lodged by the second respondent-company – All three complaints were filed in Gurugram – After completion of investigation police filed charge-sheet in 3 FIRs for alleged offences of criminal breach of trust, cheating, forgery along with various other offences – The petitioner sought transfer of all three criminal cases pending in the Court of Additional Judicial Magistrate, Gurugram to any competent Court in New Delhi – It was contended that the entire cause of action in respect of one case arose in Delhi and the other two cases in Indore and Surat respectively – Held: In the instant case, the type of jurisdictional issue raised is one of territorial jurisdiction – The answer to this depends upon facts to be established by evidence – The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by ss. 177 to 184 of the Code – In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshaled – These questions may have to be raised before the court trying the offence and such Court is bound to consider the same – Code of Criminal Procedure, 1973 – ss.461, 462 and 177 to 184.*

Dismissing the transfer petitions, the Court

HELD: 1. The upshot of the discussion is (i) that the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence (ii) that if the issue is one of

territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177 to 184 of the Code and (iii) that these questions may have to be raised before the court trying the offence and such court is bound to consider the same. [Para 39][324-C-D]

2. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshaled. [Para 41][324-E-F]

Abhiram Veer v. North Eastern Regional Agricultural Marketing Corporation Ltd. **(2000) 10 SCC 433;** *Asit Bhattacharjee v. Hanuman Prasad Ojha & Ors.* **(2007) 5 SCC 786 : [2007] 6 SCR 939;** *State of Uttar Pradesh v. Sabir Ali* **AIR 1964 SC 1673 : [1964] 7 SCR 435;** *Ramnath Sardar v. Rekharani Sardar* **(1975) Criminal Law Journal 1139;** *Raj Kumari Vijh v. Dev Raj Vijh* **AIR 1977 SC 1101 : [1977] 2 SCR 997;** *Purushottam Das Dalmia v. State of West Bengal* **AIR 1961 SC 1589: [1962] 2 SCR 101 – referred to.**

Case Law Reference

(2000) 10 SCC 433	**referred to**	**Para 15**
[2007] 6 SCR 939	**referred to**	**Para 16**
[1964] 7 SCR 435	**referred to**	**Para 29**
[1977] 2 SCR 997	**referred to**	**Para 35**
[1962] 2 SCR 101	**referred to**	**Para 35**

CRIMINAL ORIGINAL JURISDICTION: Transfer Petition (Criminal) No.456 of 2019.

Petition filed under S.406 of the code of Criminal Procedure, 1973 r/w of Supreme Court Rules 2013 For Transfer of case being F.I.R. No. 452 Dated 14.09.2018.

With

Transfer Petition (CRL.) Nos. 666 and 681 of 2019

Deepak Thukral, AAG, Vikas Singh, Neeraj Kishan Kaul, Sr. Advs, Ms. Nandadevi Deka, Vikas Sharma, Bharat Bhushan, Ms. Divya Sharma, Mritunjay Singh, Ms. Aakanksha Kaul, Ms. Garima Bajaj, Varun Mathur, Akash Lamba, Sansakar Aggarwal, Manek Singh, Dr. Monika Gusain, Rajat Bhardwaj, Advs. for the appearing parties.

The following Judgment of the Court was delivered:

JUDGMENT

1. Seeking transfer of three criminal cases, all pending on the file of the Court of the Additional Judicial Magistrate, Gurugram, Haryana, to any competent Court in New Delhi, a person who is implicated as one of the accused in those three cases has come up with the above transfer petitions.

2. I have heard Mr. Vikas Singh, learned Senior Counsel appearing for the petitioner, Mr. Deepak Thukral, learned counsel appearing for the State of Haryana and Mr. Neeraj Kishan Kaul, learned Senior Counsel appearing for the *de facto* complainant, who is the second respondent herein.

3. The petitioner herein was appointed on 04.08.2016 as the Group Chief Risk Officer-Executive Director of the second respondent, which is a non-banking finance company and which happens to be the *de facto* complainant in the criminal cases whose transfer is what is sought in these petitions. It is relevant to note that the petitioner, upon his appointment, joined the Delhi Office of the second respondent-Company on 04.08.2016 and he was transferred to Mumbai on 10.04.2017. The petitioner resigned in July-2018.

4. Three loans sanctioned by the second respondent-Company, during the period when the petitioner was in service, became the subject-matter of three different complaints lodged by the second respondent-Company. All the three complaints were lodged by the second respondent with the Station House Officer, Civil Lines, Gurugram P.S. For the purpose of easy appreciation, the particulars of the loan and the borrower, as well as the particulars of the FIR are given in the tabular column as follows:

S.No.	FIR No.	Offences Complained	Borrower	Date of Sanction	Amount of loan
1.	452/2018	Sections 406, 408, 420, 120-B r/w Section 34 of the IPC.	Zillion Infraprojects Private Ltd.	26.10.2016	Rs.4,30,00,000/-
2.	748/2017	114, 120-B, 406, 420, 467, 468, 471 and 216 of the IPC.	Al-Fatah Tours and Travels	22.09.2019	Rs.71,50,000/-
3.	356/2019	Sections 120-B, 406, 408, 420, 387 r/w Section 34 of the IPC	Hotel M.S.	30.12.2016	Rs.46,00,000/-
				28.12.2017	Rs.5,13,594/-

5. After completion of investigation, the police filed a charge-sheet on 14.12.2018 in FIR No.452/18, for alleged offences under Sections 406, 408, 420, 120-B read with Section 34 of the Indian Penal Code *(hereinafter referred to as the "IPC").*

6. Similarly, a charge-sheet was filed on 18.07.2019 in FIR No.748 of 2017 for alleged offences under Sections 114, 120-B, 406, 420, 467, 468, 471 and 216 of the IPC. Likewise a charge-sheet was filed on 24.10.2019 in FIR No.356/2019 for offences under Sections 120-B, 406, 408, 420, 387 read with Section 34 of the IPC.

7. The police also filed supplementary charge-sheets, on 06.01.2020 in the first case and on 08.11.2019 in the third case.

8. Contending ***(i)*** that no part of the cause of action arose in Gurugram to enable the *de facto* complainant to lodge a complaint in the Gurugram Police Station; ***(ii)*** that while first loan was sanctioned at Delhi, the second loan was sanctioned at Indore and third loan was sanctioned at Surat, nothing happened in Gurugram, entitling the *de facto* complainant to invoke the jurisdiction of the investigating agency and the Court in Gurugram; ***(iii)*** that the second respondent-*de facto* complainant has deliberately filed the complaint at Gurugram, as the promoter of the *de facto* complainant wields lot of influence at Gurugram and ***(iv)*** that the petitioner will not get a fair trial at Gurugram, the petitioner has come up with the above transfer petitions.

9. Thus, in effect, transfer is sought primarily on 2 grounds namely (i) lack of territorial jurisdiction and (ii) apprehension of bias.

10. But Mr. Vikas Singh, learned Senior Counsel for the petitioner did not press into service the second ground, revolving around the allegation that the second respondent wields a lot of influence locally in Gurugram and that the petitioner will not get a fair trial. This saves me of the botheration to bring on record the transcript of certain whatsapp messages filed before me as part of the paper book.

11. Mr. Vikas Singh, learned Senior Counsel, took me through the loan agreements under which the second respondent-Company sanctioned the subject loans and argued that in all the three loan agreements, the place of execution of the agreement, the Branch office of the lender and the address of the borrower are indicated. For instance, the loan agreement dated 26.10.2016 under which facilities were extended to Zillion Infraprojects Private Limited (which forms the subject-matter of FIR No.452/2018), the place of execution of agreement and the address of the Branch Office of the lender are indicated to be at Delhi. The address of the borrower as well as the Co-borrower are also stated to be in Delhi. The branch of the bank on which the cheque for the loan amount was drawn was also in Delhi.

12. Similarly the loan agreement under which facilities were extended to Hotel M.S. (which forms the subject matter of the third FIR) indicates the place of agreement and Branch Office of the lender to be Indore. The address of the borrower is also stated therein to be in Indore. The address of the lender is indicated to be in Bombay.

13. Insofar as the loan agreement under which facilities were extended to Al Fatah Tours and Travels (forming the subject matter of second FIR) is concerned, the place of the agreement and the Branch Office of the lender are stated to be at Surat. The address of the borrower is indicated to be in Surat and the address of the lender is stated to be in Mumbai.

14. Therefore, it was contended by Mr. Vikas Singh, learned Senior Counsel for the petitioner that the entire cause of action in respect of one case arose in Delhi, the entire cause of action for the second case arose in Indore and the entire cause of action for the third case arose in Surat. It is also contended by him that the *de facto* complainant did not even have an office at Gurugram and that the second respondent is

A guilty of perjury by claiming even before this Court, as though they have an office in Gurugram. The petitioner has also taken out an application under Section 340 of the Code of Criminal Procedure for prosecuting the officials of the second respondent for committing perjury through their claim that the second respondent has an office at Gurugram.

B 15. Mr. Neeraj Kishan Kaul, learned Senior Counsel appearing for the second respondent contended that the question whether any part of the cause of action arose within the local limits of jurisdiction of the Courts in Gurugram, is a question of fact to be established by evidence and that the same cannot be gone into in the transfer petitions. In support of this proposition, he relied upon the decision of this Court in ***Abhiram***
C ***Veer*** Vs**. *North Eastern Regional Agricultural Marketing Corporation Ltd.***[1] He also contended that insofar as the loan granted to Zillion Infraprojects limited is concerned, the property offered as security is located in Gurugram and that the second respondent was actually sharing the office space of a company which is a 100% subsidiary of the
D second respondent. Therefore, it is his contention that no wrong statement was ever made. It is further contended that the borrowers who are also the prime accused in these cases have not sought a transfer and that therefore the petitioner is not entitled to seek transfer.

16. The learned Standing Counsel for the State of Haryana supplemented the arguments of the learned Senior Counsel for the second
E respondent and relied upon the decision of this Court in ***Asit Bhattacharjee*** Vs**. *Hanuman Prasad Ojha &Ors.***[2]

17. I have carefully considered the rival contentions.

18. As seen from the pleadings and the rival contentions, the
F petitioner seeks transfer, primarily on the ground of lack of territorial jurisdiction. While the question of territorial jurisdiction in civil cases, revolves mainly around *(i)* cause of action; or *(ii)* location of the subject matter of the suit or *(iii)* the residence of the defendant etc., according as the case may be, the question of territorial jurisdiction in criminal Cases revolves around *(i)* place of commission of the offence or *(ii)*
G place where the consequence of an act, both of which constitute an offence, ensues or *(iii)* place where the accused was found or *(iv)* place where the victim was found or *(v)* place where the property in respect of which the offence was committed, was found or (vi) place where the

[1] 2000 (10) SCC 433.

H [2] 2007 (5) SCC 786

property forming the subject matter of an offence was required to be returned or accounted for, etc., according as the case may be.

19. While jurisdiction of a civil court is determined by(i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold.

(i) The first is that ***the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21*** of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.

(ii) The second is that in civil proceedings, a plaint can be returned, under ***Order VII, Rule 10, CPC,***to be presented to the proper court, ***at any stage of the proceedings.*** But in criminal proceedings, ***a limited power is available to a Magistrate under Section 201 of the Code, to return a complaint.*** The power is limited in the sense (a) that it is available before taking cognizance, as Section 201 uses the words "***Magistrate who is not competent to take cognizance"***and (b) that the power is limited only to complaints, as the word "complaint", as defined by section 2(d), does not include a "police report".

20. Chapter XIII of the Code of Criminal Procedure, 1973 contains provisions relating to jurisdiction of criminal Courts in inquiries and trials. The Code maintains a distinction between *(i)* inquiry; *(ii)* investigation; and *(iii)* trial. The words *"inquiry*" and *"investigation"* are defined respectively in clauses (g) and (h) of Section 2 of the Code.

21. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal Courts in inquiries and trials can be summarized in simple terms as follows:

(1) Every offence should ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression "*local jurisdiction*" found in Section 177 is defined in Section 2(j) to mean "in relation to a Court or Magistrate, the local area within which the Court or Magistrate may exercise all or any of its or his powers under the Code"

(2) In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having

A jurisdiction over any of such local areas may inquire into or try such an offence.

(3) Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

B

(4) In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

(5) Where an offence consists of several acts done in different local areas it may be inquired into or tried by a Court having jurisdiction

C over any of such local areas. *(Numbers 2 to 5 are traceable to Section 178)*

(6) Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a Court within whose local jurisdiction either the act was

D done or the consequence ensued. *(Section 179)*

(7) In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either of the acts was done. *(Section 180)*

E

(8) In certain cases such as dacoity, dacoity with murder, escaping from custody etc., the offence may be inquired into and tried by a Court within whose local jurisdiction either the offence was committed or the accused person was found.

F

(9) In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

(10) The offences 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 was possessed, received or retained.

G

(11) An offence of criminal misappropriation or 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 was received or retained or was required to be returned or accounted for by the accused person.

H

(12) An 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, having knowledge that it is stolen property. *(Nos. 8 to 12 are found in Section 181)*

(13) An offence which includes cheating, if committed by means of letters or telecommunication messages, may be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or received.

(14) An offence of cheating and dishonestly inducing delivery of the property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(15) Some offences relating to marriage such as Section 494, IPC (marrying again during the life time of husband or wife) and Section 495, IPC (committing the offence under Section 494 with concealment of former marriage) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with the spouse by the first marriage. *(Nos. 13 to 15 are found in Section 182)*

(16) An offence committed in the course of a journey or voyage may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage. *(Section 183)*.

(17) Cases falling under Section 219 *(three offences of the same kind committed within a space of twelve months whether in respect of the same person or not),* cases falling under Section 220 (commission of more offences than one, in one series of acts committed together as to form the same transaction) and cases falling under Section 221, (where it is doubtful what offences have been committed), may be inquired into or tried by any Court competent to inquire into or try any of the offences. *(Section 184).*

21. Apart from Sections 177 to 184, which lay down in elaborate detail, the rules relating to jurisdiction, Chapter XIII of the Code also contains a few other sections. Section 185 empowers the State Government to order any case or class of cases committed for trial in any district, to be tried in any Sessions division. Section 186 empowers

A the High Court, in case where 2 or more courts have taken cognizance of the same offence and a question as to which of them should inquire into or try the offence has arisen, to decide the district where the inquiry or trial shall take place. Section 187 speaks of the powers of the Magistrate, in case where a person within his local jurisdiction, has committed an offence outside his jurisdiction, but the same cannot be
B inquired into or tried within such jurisdiction. Sections 188 and 189 deal with offences committed outside India.

22. After laying down in such great detail, the rules relating to territorial jurisdiction in Chapter XIII, the Code of Criminal Procedure makes provisions in Chapter XXXV, as to the fate of irregular proceedings.
C It is in that Chapter XXXV that one has to search for an answer to the question as to what happens when a court which has no territorial jurisdiction, inquires or tries an offence.

23. Section 460 lists out 9 irregularities, which, if done in good faith by the Magistrate, may not vitiate his proceedings. Section 461 lists
D out 17 irregularities, which if done by the Magistrate, will make the whole proceedings void. Clause (l) of section 461 is of significance and it reads as follows:-

> *"If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-*
>
> E _____
>
> *(l) tries an offender:*
>
> _____
>
> *his proceedings shall be void"*

F 24. Then comes Section 462, which saves the proceedings that had taken place in a wrong sessions division or district or local area. But this is subject to the condition that no failure of justice has occasioned on account of the mistake. Section 462 reads as follows:

> *"**462. Proceedings in wrong place.** –*
>
> G *No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub- division or other local area, unless it appears that such error has in fact occasioned a failure of justice."*

H

25. A cursory reading of Section 461(l) and Section 462 gives an impression that there is some incongruity. Under Clause (l) of Section 461 if a ***Magistrate not being empowered by law to try an offender***, wrongly tries him, his proceedings shall be void. ***A proceeding which is void under Section 461 cannot be saved by Section 462***. The focus of clause (l) of Section 461 is on the ***"offender"*** and not on the ***"offence"***. If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.

26. It is significant to note that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word "offence" in three places *namely* clauses (b), (d) and (e). Section 460 does not use the word "offender" even once.

27. On the contrary Section 461 uses the word 'offence' only once, namely in clause (a), but uses the word "offender" twice namely in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does not make the principle contained therein to have force notwithstanding anything contained in Section 461.

28. Section 26 of the Code divides offences into two categories namely *(i)* offences under IPC and *(ii)* offences under any other special law. Insofar as offences under the IPC are concerned, Clause (a) of Section 26 states that they may be tried by *(i)* the High Court or *(ii)* the Court of Session or *(iii)* any other Court, by which such offence is shown in the first Schedule to be triable. In respect of offences under any other law, clause (b) of Section 26 states that they shall be tried by the Court specifically mentioned in such special law. In case the special law is silent about the Court by which it can be tried, then such an offence may be tried either by the High Court or by any other Court by which such offence is shown in the first schedule to be triable.

29. But Clause (a) of Section 26 makes the provisions contained therein, subject to the other provisions of the Code. Therefore, a question arose before this Court in the ***State of Uttar Pradesh*** **Vs.** ***Sabir Ali***[3] as to whether a conviction and punishment handed over by a Magistrate of first class for an offence under the Uttar Pradesh Private Forest Act, 1948 were void, in the light of Section 15(2) of the Special Act. Section

[3] AIR 1964 SC 1673

15(2) of Uttar Pradesh Private Forest Act made the offences under the Act triable only by a Magistrate of second or third class. Though the entire trial in that case took place before a Magistrate of second class, he was conferred with the powers of a Magistrate of first class, before he pronounced the Judgment. This Court held that the proceedings were void under Section 530(p) of the Code of Criminal Procedure, 1898 (as it stood at that time). It is relevant to note that Section 461(l) of the Code of 1973 is in *pari materia* with Section 530(p) of the Code of 1898.

30. What is now clause (a) of Section 26 of the Code of 1973, is what was Section 28 of the Code of 1898. The only difference between the two is that Section 28 of the Code of 1898 referred to the eighth column of the second schedule, but Section 26(a) of the Code of 1973 refers to the first schedule.

31. Similarly, clause (b) of Section 26 of the Code of 1973 is nothing but what was Section 29 of the Code of 1898.

32. What is significant to note from the Code of 1898 and the Code of 1973 is that the question of jurisdiction dealt with by Sections 28 and 29 of the Code of 1898 and Section 26 of the Code of 1973, is relatable only to the offence and not to the offender. The power of a Court to try an offence is directly governed by Clauses (a) and (b) of Section 26 of the Code of 1973, as it was governed by Sections 28 and 29 of the Code of 1898.

33. In other words, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (section 27) or where the victim is a women [the proviso to clause (a) of section 26]. But Section 461(l) focuses on the offender and not on the offence.

34. The saving clause contained in Section 462 of the Code of 1973 is in *pari materia* with Section 531 of the Code of 1898. In the light of Section 531 of the Code of 1898, a question arose before the Calcutta High Court in ***Ramnath Sardar*** **Vs.** ***Rekharani Sardar***[4], as to the stage at which an objection to the territorial jurisdiction of the court could be raised and considered. In that case, the objection to the territorial jurisdiction raised before a Magistrate in a petition for

[4] (1975) Criminal Law Journal 1139

maintenance filed by the wife against the husband, was rejected by the Magistrate both on merits and on the basis of the saving clause in Section 531. But the High Court held that Section 531 would apply only after the decision or finding or order is arrived at by any Magistrate or Court in a wrong jurisdiction and that if any objection to the territorial jurisdiction is taken in any proceeding, it would be the duty of the Magistrate to deal with the same.

35. In ***Raj Kumari Vijh*** **Vs.** ***Dev Raj Vijh***[5]**,** which also arose out of a case filed by the wife for maintenance against the husband, the Magistrate rejected a prayer for deciding the question of jurisdiction before recording the evidence. Actually the Magistrate passed an order holding that the question of jurisdiction must await the recording of the evidence on the whole case. Ultimately the Magistrate held that he had jurisdiction to entertain the application. One of the reasons why he came to the said conclusion was that in the reply filed by the husband there was no specific denial of the wife's allegation that the parties last resided together within his jurisdiction. When the matter eventually reached this Court, this Court relied upon the decision in ***Purushottam Das Dalmia*** **Vs.** ***State of West Bengal***[6] to point out that there are two types of jurisdictional issues for a criminal Court namely *(i)* the jurisdiction with respect of the power of the Court to try particular kinds of offences and *(ii)* its territorial jurisdiction.

36. It was specifically held by this Court in **Raj Kumari Vijh** *(supra)* that the question of jurisdiction with respect to the power of the Court to try particular kinds of offences goes to the root of the matter and that any transgression of the same would make the entire trial void. However, territorial jurisdiction, according to this Court "is a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused and the convenience of the witnesses who have to appear before the Court."

37. After making such a distinction between two different types of jurisdictional issues, this Court concluded in that case, that where a Magistrate has the power to try a particular offence, but the controversy relates solely to his territorial jurisdiction, the case would normally be covered by the saving clause under Section 531 of the Code of 1898 (present Section 462 of the Code of 1973).

[5] AIR 1977 SC 1101
[6] AIR 1961 SC 1589

A 38. From the above discussion, it is possible to take a view that the words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (l). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have includedthe ***trial of an offence*** by a Magistrate, not empowered by law to do so,as one of the several items which make B the proceedings void.In contrast, the ***trial of an offender*** by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461 (l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by C law to do.

39. But be that as it may, the upshot of the above discussion is (i) that the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence (ii) that if the issue is one of territorial jurisdiction, the D same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code and (iii) that these questions may have to be raised before the court trying the offence and such court is bound to consider the same.

40. Having taken note of the legal position, let me now come back E to the cases on hand.

41. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand,is one of territorial jurisdiction, atleast as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of F commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer,on the ground of lack of territorial jurisdiction, even before evidence is marshaled. Hence the transfer petitions are liable to be dismissed. Accordingly, they are dismissed.

G 42. However, it is open to both parties to raise the issue of territorial jurisdiction, lead evidence on questions of fact that may fall within the purview of Sections 177 to 184 read with Section 26 of the Code and invite a finding. With the above observations the transfer petitions are dismissed. There will be no order as to costs.

Ankit Gyan Transfer Petitions dismissed.