



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 2ND DAY OF DECEMBER 2024 / 11TH AGRAHAYANA, 1946

WP(CRL.) NO. 1159 OF 2024

PETITIONER:

DBS BANK INDIA LTD THROUGH ITS AUTHORISED
REPRESENTATIVE
ERNAKULAM (COCHIN) BRANCH,
LAXMAN CHAMBERS,
SAHODARAN AYYAPPAN ROAD,
VALANJAMBALAM, ERNAKULAM, PIN - 682016

BY
SRI.ANSHUMAN SINHA (SR)
ADV RAMAKRISHNAN M.N.

RESPONDENTS:

- 1 THE STATE OF KERALA,
THROUGH CHIEF SECRETARY
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 2 THE COMMISSIONER OF POLICE
KOZHIKODE DISTRICT, KERALA, PIN - 673001
- 3 THE SHO VATAKARA POLICE STATION
THE SHO, RAILWAY STATION ROAD,
PUTHIYAPPU, VADAKARA, KERALA, PIN - 673101
- 4 THE DEPUTY SUPERINTENDENT OF POLICE
PALAYAM, KOZHIKODE, KERALA, PIN - 673004
- 5 THE SUPERINTENDENT OF POLICE
KOZHIKKODE MAVOOR ROAD, THONDAYAD,
KOZHIKODE, KERALA, PIN - 673016



- 6 THE COMMISSIONER OF POLICE
SIRUPOOLAPATTI, TIRUPPUR,
TAMIL NADU, PIN - 641603
- 7 THE SHO TIRUPPUR POLICE STATION
TIRUR RAILWAY STATION ROAD,
TIRUPUR, PIN - 676101

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
DIRECTOR GENERAL OF PROSECUTION (AG-10)
P.NARAYANAN, SENIOR G.P.
AND ADDL.PUBLIC PROSECUTOR()
SHRI.SAJJU.S., SENIOR G.P.()

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 02.12.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



"C.R."

J U D G M E N T

The petitioner is a banking company registered under the Companies Act 2013, having its registered office in New Delhi, Corporate Office in Mumbai, and branches all over India. The petitioner Bank is engaged *inter alia* in the business of extending financial facilities to customers under various finance schemes including Jewel Deposit Loan (for short, 'JDL') through outsourcing agencies for sourcing different types of loans from prospective customers.

2. The Vatakara Police Station registered Ext.P3 F.I.R. as Crime No.880/2024 against one Madhajayakumar, who was the Branch Manager of Bank of Maharashtra, Vatakara Branch for the offence under Section 409 of the IPC alleging that he replaced 26,244.20 grams of gold jewels worth Rs.17,20,35,717/- in 42 accounts with counterfeit gold jewels,



that had been pledged for obtaining loans by customers of Bank of Maharashtra. After the registration of the crime, the Vatakara police conducted a search and seizure on the premises of the petitioner Bank, Tiruppur Branch and Kanagayam Road Branch, on 22/08/2024, 23/08/2024, 08/10/2024, and 09/10/2024 and seized gold jewels worth more than Rs.5.98 crores, on the ground that those gold jewels are 'stolen property' and are the subject matter of Crime No.880/2024. According to the police, some portion of the gold jewels misappropriated by the accused in Crime No.880/2024 have been pledged by the customers to the petitioner bank and availed JDL facility. Pursuant to the said search and seizure, the petitioner Bank approached the Tiruppur police station in Tamil Nadu and filed a complaint seeking registration of F.I.R. against its 56 customers who pledged the gold jewels and availed JDL facility for the offences of criminal conspiracy and cheating. When there was no response, the petitioner Bank made a



complaint to the Commissioner of Police, Tiruppur. However, the Commissioner of Police refused to register F.I.R. and directed the petitioner Bank to approach Vatakara Police Station for redressal of their grievances on the ground that Ext.P3 F.I.R. had already been registered. Ext.P1 is the communication given by the Commissioner of Police in this regard. The petitioner Bank thereafter approached SHO, Vatakara Police Station vide Ext.P4 complaint dated 11.10.2024 seeking registration of F.I.R. for offences of cheating, criminal breach of trust, forgery, and criminal conspiracy under Sections 318(4), 319(2) r/w 61(2) of the Bharatiya Nyaya Sanhita (for short, 'the BNS'). Since there was no response from the SHO, Vatakara, the petitioner Bank approached the Superintendent of Police (Rural), Kozhikode on 15.10.2024. Still, there was no response. The petitioner Bank then filed Ext.P6 application before the Judicial First-Class Magistrate Court, Vatakara, invoking Section 173(4) r/w Section 175(3) of Bharatiya Nagarik Suraksha



Sanhita (for short, 'the BNSS') seeking registration of F.I.R. The learned Magistrate, as per Ext.P7 order, returned the application on the grounds of lack of jurisdiction. It was found that the Tamil Nadu Police Station has the jurisdiction to deal with the offence of cheating. This writ petition has been filed challenging Ext.P7 order. There is a further prayer to direct the SHO, Vatakara Police Station to register the F.I.R. on the basis of the complaint preferred by the petitioner Bank, or in the alternative, to add the wrongdoers as additional accused in FIR bearing Crime No. 880/2024.

3. I have heard Sri. Anshuman Sinha, the learned Senior counsel, as instructed by Sri. Ramakrishnan M.N., the learned counsel appearing for the petitioner Bank and Sri. P. Narayanan, the learned Senior Additional Public Prosecutor.

4. As stated already, Ext.P3 F.I.R. was registered on the allegation that the accused therein misappropriated gold ornaments weighing 26244.20 grams worth Rs.17,20,35,717



pledged in the Bank of Maharashtra for the period from 13.06.2024 to 6.7.2024 and put imitation gold ornaments in the place of original pledged gold ornaments. During the investigation of Ext.P3 crime, it was found that some portion of gold jewels misappropriated by the accused in Ext.P3 crime had been pledged by a few customers to the petitioner Bank and availed JDL facility. It was further found during the investigation that some portion of the said misappropriated gold jewels were currently in the custody of the petitioner Bank, Tiruppur Branch and Kangayam Road Branch, and after conducting search and seizure in those branches, those gold ornaments were seized.

5. In Ext.P4 complaint submitted to SHO, Vatakara Police Station, the petitioner Bank has clearly averred all the facts and circumstances attracting the commission of a cognizable offence under Sections 318(4), 319(2), 340(2) r/w 61(2) of the BNS. A specific request was made in the said complaint to register the FIR. In Ext.P6 application submitted



before the Magistrate also, all the facts and circumstances pertaining to the commission of the aforementioned cognizable offences were reiterated. However, the learned Magistrate, as per Ext.P7 order, rejected Ext.P6 application summarily stating that "cause of action purely arose within the jurisdiction of Tamil Nadu". The learned Magistrate seems to have the view that since the alleged offence of cheating had taken place within the State of Tamil Nadu, only the courts of Tamil Nadu will have the jurisdiction to try the said offence.

6. The implementation of Section 173 of BNSS marks a significant shift in how the police handles information relating to the commission of a cognizable offence. Now, Zero FIR has been given statutory recognition by incorporating it in Section 173 of BNSS, which deals with the registration of FIR in cognizable cases. Zero FIR has been introduced with the primary purpose of ensuring that victims can file complaints regardless of jurisdiction. Section 173(1) specifically states that



"Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given-(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf". Thus, as per sub-section (1) of Section 173 of BNSS, the police is mandatorily required to register FIR upon receiving any information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed. In other words, the police cannot refuse to register an FIR on the grounds of "not having territorial jurisdiction" over the offence for the reason that some part of the offence was committed outside the local jurisdiction of that concerned police station. According to sub-



section (3) of Section 173, on receipt of information relating to the commission of a cognizable offence for offences punishable for three years or more but less than seven years, the officer in charge may with the prior permission of the Deputy Superintendent of Police proceed to conduct a preliminary enquiry within fourteen days to ascertain if there exists a *prima facie* case and proceed with the investigation when there exists one. Section 173(4) provides that the complainant may file an application to the Magistrate to register an FIR if the Superintendent of Police does not investigate the case or direct a subordinate police officer to investigate, in accordance with the BNSS. Thus, Vatakara police ought not to have acted upon Ext.P4 complaint since it disclosed the commission of a cognizable offence.

7. Ext.P4 complaint filed by the petitioner bank contains facts and circumstances which make out an offence of criminal conspiracy to cheat the petitioner's bank. They have been



reiterated in Ext.P6 application as well. The learned Magistrate failed to take note of the facts and circumstances of the case pleaded in Ext.P6 application filed invoking Section 173(4) of BNSS and rejected it on the grounds of lack of jurisdiction. There is clear averment in Ext.P6 that the cheated money has been transferred from 56 customers to the bank accounts of the accused persons whose bank accounts are located in Vatakara. There is also a clear averment that the cause of action has arisen in Tamil Nadu initially when the gold loans were sanctioned and has arisen again in the State of Kerala when the gold loan amount was transferred to the bank accounts located in Vatakara. That apart, gold jewels seized from the petitioner's bank and the cheated money of the petitioner Bank are lying within the jurisdiction of Vatakara Police Station. As per Section 198(b) of BNSS, where an offence is committed partly in one local area and partly in another, then it may be enquired into or tried by a court having jurisdiction



over any of such local areas.

8. Section 200 of BNSS (corresponding to Section 180 of Cr. P.C) deals with the place of trial where act is an offence by reason of relation to other offence. It says that when an act is an offence by reason of its relation to any other act which is also an offence or which could be an offence if the doer were capable of committing an offence, the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either act was done. The Section contemplates two offences, of which one category is designated as 'the first mentioned offence'. The relation between 'the first mentioned offence' and the other offence referred to in the Section is a logical relationship, not a chronological sequence. In other words, either offence may be anterior in point of time. The principle underlying the Section is that the act must be an offence by reason of its relation to any other act which is also an offence. Where such an act, which is an offence by reason of



its relation to any other act which is also an offence, is also committed, a charge of 'the first mentioned offence' may be tried by the court within the local limits of whose jurisdiction either act was done. It is the relation of one act with the other which brings this Section into operation and gives jurisdiction to the Courts in both the local areas where either of them has occurred [See. Justice M.L.Singhal, *Sohoni's Code of Criminal Procedure 1973 (Volume 2)*, 21st Edition page 1271].

9. Ext.P3 F.I.R. was registered under Section 409 of the IPC alleging criminal breach of trust by replacing 26,244.20 grams of gold jewels worth Rs.17,20,35,717 crores in 42 accounts that had been pledged, with fake gold during the period 13/06/2024 to 06/07/2024. It was further alleged that part of the said gold jewels had been pledged by several customers to the petitioner Bank in its Tiruppur and Kangayam Road Branches, Tamil Nadu, for availing JDL for the said customers, and loans have been disbursed pursuant to such



pledging. According to the petitioner, the offence which had taken place in its branches in Tamil Nadu were the offences of cheating and criminal conspiracy under Section 318(4) r/w 61(2) of BNS. As rightly argued by the learned Senior Counsel for the petitioner Bank, the act of 'pledging' alone is not an offence, but this act of pledging becomes an offence because of the act and offence under Section 409 of IPC which has been registered at Vatakara police station, i.e, the property which was involved in criminal breach of trust had been pledged and loan under JDL Scheme had been availed. The offence of cheating under Section 318(4) of BNS becomes dependent on the offence of criminal misappropriation under Section 409 of IPC, which has been registered at Vatakara Police Station as Ext.P3. The offence of criminal conspiracy that had taken place against the petitioner Bank comes under the category of 'part of same transaction' of Ext. P3 crime. Thus, the facts of the case projected by the petitioner Bank in Ext.P6 application



make it clear that the case falls within the ambit of Section 200 of BNSS. In terms of the said Section, Vatakara police has jurisdiction to investigate the offence of criminal conspiracy and cheating alleged in the application preferred by the petitioner Bank. While passing the impugned order, the learned Magistrate overlooked Section 200 as well.

For the reasons stated above, I am of the view that Ext.P7 cannot be sustained, and accordingly, it is set aside. The learned Magistrate is directed to reconsider Ext.P6 application in the light of the observations made in this judgment and pass fresh orders in accordance with law after hearing both sides.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA



APPENDIX OF WP (CRL.) 1159/2024

PETITIONER EXHIBITS

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| EXHIBIT P1 | A TRUE COPY OF THE REJECTION LETTER DATED 30.08.2024 BEARING C. NO.125/COP-TPR CITY/CAMP/2024 SENT BY THE COMMISSIONER TO THE COMPLAINANT BANK |
| EXHIBIT P2 | A TRUE COPY OF ONE LOAN APPLICATION FORM SUBMITTED BY ONE OF THE CUSTOMER FOR AVAILING JDL FACILITY |
| EXHIBIT P3 | A TRUE COPY OF THE FIR BEARING CRIME NO. 880/2024 DATED 15.08.2024 REGISTERED AT VATAKARA PS |
| EXHIBIT P4 | A TRUE COPY OF THE COMPLAINT DATED 11.10.2024 ALONG WITH THE RECEIVING GIVEN BY THE DEPUTY SUPERINTENDENT OF POLICE, CRIME BRANCH, VATAKARA OF SUCH COMPLAINT |
| EXHIBIT P5 | A TRUE COPY OF THE LETTER DATED 15.10.2024 SUBMITTED TO THE SUPERINTENDENT OF POLICE ALONG WITH THE RECEIVING GIVEN BY THE S.P OF SUCH COMPLAINT |
| EXHIBIT P6 | A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BANK BEFORE THE LD. COURT OF JUDICIAL FIRST CLASS MAGISTRATE, VATAKARA UNDER SECTION 175 (3) AS OF BNSS IN C.M.P NO. 6204/2024 |
| EXHIBIT P7 | A TRUE COPY OF THE REJECTION ORDER DATED 17.10.2024 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE, VATAKARA IN C.M.P NO. 6204/2024 |
| EXHIBIT P8 | A TRUE COPY OF THE AUTHORISATION LETTER IN FAVOUR OF MR. SOJU ABRAHAM TO FILE THIS CASE ON BEHALF OF DBS BANK INDIA LTD. |