Om Prakash Srivastava vs Union Of India And Anr on 24 July, 2006

Equivalent citations: 2006 AIR SCW 3823, (2006) 46 ALLINDCAS 736 (SC), AIR 2007 SC (SUPP) 1834, (2006) 3 ALLCRIR 2444, (2006) 4 EASTCRIC 5, (2006) 6 ALLMR 18 (SC), 2006 (3) SCC (CRI) 24, 2006 ALL CJ 3 1868, (2006) 35 OCR 154, (2006) 131 DLT 557, 2006 (6) SCC 207, (2006) 7 SCALE 318, (2006) 5 SUPREME 751, (2006) 3 CRIMES 151, (2006) 3 CHANDCRIC 169, (2006) 2 MADLW(CRI) 845, (2006) 56 ALLCRIC 93, (2006) 3 CURCRIR 171, (2006) 3 RECCRIR 855, (2006) 3 RECCIVR 720, MANU/SC/3240/2006, (2007) 1 ANDHLT(CRI) 251, (2006) 2 ALD(CRL) 308

Author: Arijit Pasayat

Bench: Arijit Pasayat, Altamas Kabir

CASE NO.:
Appeal (crl.) 786 of 2006

PETITIONER:
Om Prakash Srivastava

RESPONDENT:
Union of India and Anr

DATE OF JUDGMENT: 24/07/2006

BENCH:
ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:

J U D G M E N T (Arising out of SLP (Crl.) No. 282 of 2006) ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the order passed by a learned Single Judge of the Delhi High Court disposing of the Writ Petition (W.P. (Crl.) No.201/2005) filed by the appellant holding that the Allahabad High Court would have also jurisdiction to deal with grievances of the writ petitioner and can deal with conditions of prisoners in that State more effectively, though the Delhi High Court may have jurisdiction.

Background facts sans unnecessary details are as follows:

Appellant had filed a Writ Petition before the Delhi High Court taking the stand that he was being tried in several cases contrary to the extradition decree. Appellant came to India by way of extradition from Singapore. Presently, the appellant was facing trial in eight cases which is in complete violation of the provisions of Section 21 of the Extradition Act, 1962 (in short the 'Extradition Act'). He had also pleaded that he was being kept in solitary confinement without proper medical aid in the Central Jail in the State of U.P. It is to be noted that the appellant had filed the Writ Petition (Crl.) No.54 of 2005 before this Court which was withdrawn by him in order to enable him to move appropriate High Court for redressal of his grievances, if any. Appellant had filed a writ petition as afore-noted in the Delhi High Court which came to be disposed of by the impugned order.

Learned counsel for the appellant submitted that the choice of the High Court is entirely that of the writ petitioner. It is not in dispute that in terms of Article 226(2) of the Constitution of India, 1950 (in short the 'Constitution') the appellant could file the writ petition in Delhi High Court. Merely because he had a choice of going before the Allahabad High Court, the Delhi High Court should not have refused to consider the writ petition stating that the Allahabad High Court can deal with conditions of prisoners in the State of Uttar Pradesh more effectively. It is submitted that the basic grievance of the appellant related to alleged violation of the terms of Extradition Act as provided in Section 21 thereof. Learned counsel for the Union of India submitted that there is no violation of any term, practically no part of the cause of action had arisen in Delhi and the Delhi High Court has rightly observed that the appellant can pursue his remedy if any before the Allahabad High Court.

In the present appeal, we are not concerned with the question whether there is any violation of the terms of Extradition Act. The only question that needs consideration is whether the Delhi High Court had jurisdiction to deal with the matter. The Delhi High Court accepted that it may have jurisdiction but it was of the view that the grievance can be more effectively dealt with by the Allahabad High Court.

Clause (2) of Article 226 of the Constitution is of great importance. It reads as follows:

"(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ

petition a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. (See Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors. (1994 (4) SCC

711).

By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors. (1994 (6) SCC 322).

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See Sadanandan Bhadran v. Madhavan Sunil Kumar (1998 (6) SCC 514).

It is settled law that "cause of action" consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and others. (1996 (3) SCC 443).

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action"

> means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Association v. Union of India and Ors. (2001 (2) SCC 294).

> The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh (1977 (1) SCC 791).
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> The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (See Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra and Ors. (2000 (7) SCC 640).
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> In Halsbury Laws of England (Fourth Edition) it has been stated as follows:
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> "Cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

As observed by the Privy Council in Payana v. Pana Lana (1914) 41 IA 142, the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arises from the same transaction. One great criterion is, when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit whether the same evidence will maintain both actions. (See Mohammad Khalil Khan v. Mahbub Ali Mian (AIR 1949 PC 78).

It would be appropriate to quote para 61 of the said judgment, which reads as follows:-

> "61. xxx xxx xxx (1) The correct test in cases falling under Order 11 Rule 2, is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit (Moonshee Buzloor Fuheer v.

Shumroonnissa Begum, (1967)11 Moo I 551 (P.C.).

(2) The 'cause of action' means every fact which will be necessary for the plaintiff to prove it tranversed to order to support his right to the judgment (Real v. Brown (1889) 22 Q.B.O. 138).

(3) If the evidence to support the two claims is different. (Brunsoon v. Nurnphroy (1984 14 Q.B.O. 141), (4) The causes of action in the two suits may be considered to be away if in substance they are identical (Brunsoon v, Numphroy, supra).

(5) The cause of action has no relation whether to the defence that may be act up by the defendant nor does it depend upon the character of the relief prayed for the plaintiff. It refers .. to media upon which the plaintiff sake the Court to arrive at a conclusion in his favour. (Mst. Chand Kour v. Pratap Singh (1887)15 I. A. 185(PC). This observation was made by Lord Watson in a case under section 43 of the Act of 1882 (corresponding to Order II, Rule 2) where plaintiff made various claim in the same. "

> In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition. It only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. As noted supra, there were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High Court. It was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is not certainly a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits. A prayer has been made for release of the appellant on parole for the reasons indicated in the application. We are not inclined to pass any order on the said application. The same is rejected.
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> The appeal is disposed of as aforesaid. No costs.