

be open to challenge in a civil suit but if the order has been passed by a person or authority not competent to do so or has been passed in violation of the provisions of the statute or of principles of natural justice then the civil court would certainly have the jurisdiction."

This was a case where the impugned order of assessment of house-tax which was required to be passed by a sub-committee consisting of two members of the Municipal Committee and the Executive Officer was in fact passed by only one member of the sub-committee. It was held that the order was void and without jurisdiction and the Civil Court had the requisite jurisdiction to grant an injunction to restrain the Municipal Committee from recovering the house-tax under that order. This authority constitutes a binding precedent here.

(7) It follows that in the circumstances as emerge in this case, the Civil Court indeed had the requisite jurisdiction to grant to the plaintiff the relief claimed. This being so, no exception can be taken to the judgment and decree of the lower appellate Court, which is hereby upheld and affirmed. It is clarified, however, that it would be open to the Municipal Committee to assess and recover house-tax even in respect of the period in question in the present suit, in accordance with the relevant provisions of the Punjab Municipal Act, 1911, if they so permit.

(8) This appeal is accordingly dismissed with costs.

R. N. R.

Before : M. M. Punchhi, J.

KAMAL DEV,—Petitioner.

versus

STATE OF HARYANA,—Respondent.

Criminal Revision No. 390 of 1986

May 14, 1986.

Prevention of Corruption Act (II of 1947)—Section 5(1)(e)—Public servant charged for criminal misconduct as possessing assets disproportionate to his known sources of income—Assets acquired while posted at a particular place—Part of assets situated at the place of office while the others situated outside—Place of office—Whether determines the jurisdiction for trial of the offence.

Kamal Dev v. State of Haryana (M. M. Punchhi, J.)

Held, that a reading of Section 5(1) of the Prevention of Corruption Act, 1947 would show that the commission of the offence of criminal misconduct has nexus to the period of office. It is so intimately interlinked that it is the place of office which would determine the place of commission of misconduct of the government servant. It is through his office alone that one can determine his known source of income and if his property which is presently in his possession or in possession of some one on his behalf or has at any time during the period of his office been in his possession or of someone on his behalf, then it is relatively to be viewed with the period of the office of public servant. In this context the place of office assumes importance, for that would determine the jurisdiction in which the offence of misconduct is to be tried as the criminal misconduct has been committed at the place of office and it would be the place of office which would determine the jurisdiction for the trial of the offence.

(Para 4)

Petition under section 401 Cr. P. C. read with Section 482 Cr. P. C. for revision of the order of Shri P. C. Nariala, Special Judge, Ambala, dated 26th February, 1986 ordering that Kamal Dev accused is ordered to be charge framed the offence under section 5(1)(b) punishable under section 5(2) of the Prevention of Corruption Act, 1947.

Baij Nath Sharma, Advocate and Kapil Sharma, Advocate, for the applicant.

B. S. Panwar, A.A.G., Haryana, for the Respondent.

JUDGMENT

M. M. Punchhi, J. (oral):—

(1) During the course of vigilance inquiry, it was revealed that the petitioner Kamal Dev was in possession of property disproportionate to his known sources of income and for that he could not account for satisfactorily. This brought him under the shadow of section 5(1) (e) of the Prevention of Corruption Act, 1947. Accordingly, an F.I.R. was recorded at P. S. Vigilance Bureau, Karnal on 2nd October, 1984. A challan was presented in due course in the Court of Special Judge, Ambala.

(2) The petitioner took objection to the jurisdiction of the Court. According to him, his entire service career had been at Chandigarh

though he was an employee of the Haryana Government. Furthermore, his contention was that the property said to have been acquired by him, disproportionate to his known sources of income, was statedly at Chandigarh, Panchkula and Mohali, while he was serving at Chandigarh. Thus, it was urged that since the criminal misconduct attributed to the petitioner was committed while he was posted at Chandigarh, then it is his misconduct which is the subject matter of charge and not each of the properties, one of which happens to be situated at Panchkula (Haryana). The learned Special Judge, Ambala,—*vide* his order dated 26th February, 1986, now sought to be revised, rejected such a plea which has given rise to the present petition.

(3) The relevant penal section which is attracted to the case reads as follows:—

“5. *Criminal misconduct in discharge of official duty.*—(1) A public servant is said to commit the offence of criminal misconduct—

x x x x x

(e) It he, or any person on his behalf is in possession of or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known source of income.”

(4) The commission of the offence of criminal misconduct has nexus to the period of his office. It is so intimately interlinked that it is the place of office which would determine the place of commission of his misconduct. It is through his office alone that one can determine his known source of income and if his property which is presently in his possession or in possession of someone on his behalf, or has at any time during the period of his office been in his possession or of someone on his behalf, then it is relatively to be viewed with the period of his office. In this context, the place of office assumes importance, for that would determine the jurisdiction in which the offence of criminal misconduct would be triable. Thus, in the instant case, I am of the view that it was the Special Judge at Chandigarh who had the jurisdiction to try the offence against the petitioner.

Ram Kumar v. Chelu Ram (D. V. Sehgal, J.)

(5) Viewing the case from another angle, it would be fair, even otherwise, to have the case tried at Chandigarh. Though it may be taken that the offence of criminal misconduct was committed at Chandigarh, yet it can perhaps legitimately be said that its consequences visited at places outside Chandigarh so as to attract the provisions of section 179 and 180 of the Code of Criminal Procedure. Without meaning to determine finally on this matter, it can at best be said that both Courts, i.e., at Ambala and Chandigarh have the jurisdiction. So, out of the two, it would be appropriate in the interest of justice to have the case tried before the Special Judge, Chandigarh.

(6) Thus, on account of both the above considerations, I am of the considered view that the trial of the petitioner shall be held before the Special Judge, Chandigarh. Accordingly, instead of ordering the challan to be returned by the Special Judge, Ambala to the Prosecutor for fresh presentation before the Special Judge, Chandigarh. I order its transfer to the Special Judge, Chandigarh. Parties through their counsel are directed to put in appearance before the learned Special Judge, Chandigarh, on 12th June, 1986.

H.S.B.

Before : D. V. Sehgal, J.

RAM KUMAR,—Appellant.

versus

CHELU RAM,—Respondent.

Second Appeal from Order No. 7 of 1986

May 14, 1986.

Code of Civil Procedure (V of 1908)—Order VI Rule 9 and Order VII Rules 11 and 14—Plaint filed along with a copy of the document relied upon—Said plaint rejected as not disclosing any cause of action as being premature—Averments made in the written statement—Whether can be considered before passing the order of rejection—Documents attached with the plaint—Whether can be considered for passing such an order—Order rejecting the plaint—Whether valid.

Held, that to find out as to whether a plaint discloses a cause of action or not, the Court has to look into the averments made in the plaint assuming them to be correct for the time being. It cannot depend on the averments made in the written statement or any other