

**Criminal Revision**

Present:

**The Hon'ble Justice Ashim Kumar Roy**

Judgment on 20.08.2010

**C.R.R. No. 1312 of 2010**

**Mr. Mandar R. Walwalkar & Anr.  
versus  
Phalguni Purkayastha & Anr.**

Points:

**Jurisdiction:** Telecommunication message received by at Barasat –Whether gives jurisdiction at Barasat Court-For quashing whether Court can consider at evidences on record-Code of Criminal Procedure, 1973 S.482

Facts:

The petitioners have moved this Court for quashing of a complaint case relating to an offence punishable under Section 420 of the Indian Penal Code now pending before the Learned Chief Judicial Magistrate, Barasat, 24-Parganas (North) alleging that from the face of the allegations and without controverting the same, no case as against the petitioner no. 2 has been made out and from a bare reading of the allegations, it clearly shows that no cause of action arose within the territorial limit of the Court concerned, where the case is now pending. Entire deal was taken place at Mumbai not at Calcutta.

Held:

A case of cheating has been made out inasmuch as this is case whereby deceiving the complainant into belief that the flat in question is free from all

encumbrances, the accused persons obtained a sum of Rs. 1,00,000/- from him as advance, but subsequently it was found that the said property was already under mortgage with India Bulls Housing Finance Ltd. Furthermore, after obtaining the said cheque in the name of the petitioner no. 2 the cheque was encashed and amount was credited in her account. Therefore, the stage is too early to decide whether she was at all involved in the commission of the alleged offence or not. Her involvement cannot be ruled out without a full-fledged trial.

Para 5

The accused persons contacted the complainant over phone and disclosed their desire to sell their flat at Maharashtra, which according to them was free from all encumbrances but the fact that the said flat was under mortgage, with India Bulls Housing Finance Ltd. was completely suppressed. Only thereafter the complainant had been to Maharashtra and entered into the deal and made the payment in advance. On those allegations it can very well be said that the complainant was induced and deception was practiced by means of telecommunication message which was received by him at Barasat and accordingly, the court at Barasat where the case is now pending certainly possesses requisite jurisdiction to hold the trial.

Para 6

For Petitioners : Mr. Dipanjan Chatterjee  
Ms. Soumi Kundu

For O.P. No. 1 : Mr. Rajdeep Majumder

For State : Mr. Sobhendu Sekhar Roy

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioners have moved this Court for quashing of a complaint case relating to an offence punishable under Section 420 of the Indian Penal Code now pending before the Learned Chief Judicial Magistrate, Barasat, 24-Parganas (North).

2. Appearing on behalf of the petitioners, Mr. Dipanjan Chatterjee with Ms. Soumi Kundu, learned advocates vehemently urged before this Court that from the face of the allegations and without controverting the same, no case as against the petitioner no. 2 has been made out. He further submitted that on a bare reading of the allegations, it clearly shows that no cause of action arose within the territorial limit of the Court concerned, where the case is now pending. According to him, entire deal was taken place at Mumbai not at Calcutta.

3. On the other hand, Mr. Rajdeep Majumder, the learned advocate appearing on behalf of the opposite party no. 1 vehemently opposed the prayer for quashing. According to him the allegations made in the complaint certainly disclose the commission of offence of cheating. He further submitted there is overwhelming material to show that the cause of action arose within the territorial limit of the Court concerned.

4. Now, before advert to the rival contentions of the parties, I am of the opinion that since this is a case for quashing of the complaint on the ground

of lack of territorial jurisdiction as well as on the ground of no offence has been made out so far as the petitioner no. 2 is concerned, the basic allegations contained in the complaint ought to be referred. Some of the allegations made in the impugned complaint which, according to me, is necessary for just decision of the case, are quoted below;

*“3. That to actualize the plan of purchase of one room flat, the complainant relied upon an Advertisement in Internet by a Bengali gentleman, Mr. Ashok Aich [ashokaich@yahoo.com], a broker, who conveyed that he will do his best to assist the complainant to purchase a flat. Accordingly, the complainant visited Mumbai on 29.8.09 along with Mr. Gautam Acharya [ Phone 093322627654 ] son of late Nirmal Acharya & met Mr. Ashok Aich. From his own contact, Mr. Aich could not show any suitable flat. He accordingly, as per practice of net working with other brokers, introduced complainant one Mr. Mandar Ratnakar Walwalkar & Mrs. Aswini Mandar Walwalkar at their residence Flat 503, 5<sup>th</sup> Floor, B Wing, Silver Link, Hiranandani Estate, Ghodbunder Road, Patlipada, Thane (W) Pin 400067 who offered their furnished Flat for sale. No discussion on terms & status of the flat was disclosed by them to the Complainant & when asked for the same they only said that there are many in the line & the information shall be conveyed through his broker.*

*4. That to his surprise, the complainant received a phone call from Mr. Mandar Ratnakar Walwalkar on 1.9.09 from a land line phone that complainant should meet them latest by 2.9.09 & that he is interested to sale the flat with furniture etc as a special consideration as complainant’s wife is Maharastrian &*

*beyond the date specified he will sell to some one else as others are in line. The tone of his conversation was so appealing that the complainant had no pintch of doubt behind his intention of sale of Property which was already mortgaged to the extent of 90% of value of property to Financial Institution. The Complainant misread his intention as the same was to influence him on emotional ground & the complainant requested his wife to reach Mumbai on 2.9.09 by morning Indigo flight reaching Mumbai at 8.30 AM along with a Cheque of Rs. 100001/- written and singed by her.*

*5. That the complainant, his wife & Mr. Gautam Acharya accordingly reached the said premises proposed for sale where Shree Ashok Aich was present around 10.30 Am on 2.9.09. On reaching, Mr. Mandar. R. Walwalkar started saying that he is in hurry & continued talking in Marathi with Mrs. Mndula Purkayastha, the wife of Complainant to influence & mislead her without giving any paper other than Xerox copy of agreement to sale with Roma Builders Pvt. Ltd. On being requested for papers like Mutation papers of the Municipality, Deed of sale, Clearance letter from Financial Institution if any, Search papers of land etc by the complainant. Mr. Mandar Stated that the same will be provided within few days.*

*6. That the way of conversation & behavior of Mr. Mandar was as if is he is selling the flat to his own relative & therefore made complainant to believe that the token booking money of Rs. 100,001 drawn on IDBI Bank, Dum Dum Kolkata 700028 bearing number 182985 in the name of his wife Mrs. Aswini M. Walwalkar handed over to him is to stop other alleged prospective buyer. When he requested complainant & his wife*

*to issue the cheque in his wife's named Mrs. Aswini M. Walwalkar & complainant & his wife agreed to his request in good faith. Complainant & his wife had no pinch of doubt that the request of Mr. Mandar R. Walwalkar was to cheat us as no one is legally entitled to sell property in Mortgaged condition without clearing Mortgage particularly when loan amount is exceeding 90% of value of property."*

5. Now, having gone through the allegations made therein, I have no doubt that a case of cheating has been made out inasmuch as this is case whereby deceiving the complainant into belief that the flat in question is free from all encumbrances, the accused persons obtained a sum of Rs. 1,00,000/- from him as advance, but subsequently it was found that the said property was already under mortgage with India Bulls Housing Finance Ltd. Furthermore, after obtaining the said cheque in the name of the petitioner no. 2 the cheque was encashed and amount was credited in her account. Therefore, the stage is too early to decide whether she was at all involved in the commission of the alleged offence or not. Her involvement cannot be ruled out without a full-fledged trial.

6. Now, question arises for decision whether any part of cause of action arises within the territorial limit of the court concerned where the impugned proceeding is pending. It further appears from the rest of the allegations made in the complaint that the complainant came in touch with one Ashok Aich, a land broker at Calcutta through an internet advertisement and the said Ashok Aich

introduced him with the accused persons. Thereafter, the accused persons contacted the complainant over phone and disclosed their desire to sell their flat at Maharashtra, which according to them was free from all encumbrances but the fact that the said flat was under mortgage, with India Bulls Housing Finance Ltd. was completely suppressed. Only thereafter the complainant had been to Maharashtra and entered into the deal and made the payment in advance. On those allegations it can very well be said that the complainant was induced and deception was practiced by means of telecommunication message which was received by him at Barasat and accordingly, the court at Barasat where the case is now pending certainly possesses requisite jurisdiction to hold the trial. Lastly, I find according to the complaint, at the time of deal the accused no. 2 was very much present and the cheque was drawn in her name and the cheque was encashed through her bank account and the amount was realized.

7. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

8. Before concluding, I find the person who first introduced the complainant to enter into the deal with the petitioner was one Ashok Aich, but no process has been issued against him. Be that as it may, there is no bar to invoke Section 319 of the Code of Criminal Procedure at the appropriate stage if situation so arises against him.

9. The Office is directed to communicate this order to the Learned Court below at once.

10. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*(Ashim Kumar Roy, J.)*