

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 136/2023
CM No. 4490/2023

Reserved on:- 09.08.2023
Pronounced on:- 07.10.2023

M/S Ali Shah, 3 Nageen Lake Road, SrinagarAppellant(s)
Th. its Partner Arif Ahmad Shah, Age 40 years,
S/O Ghulam Ahmad Shah, R/O 3 Nageen Lake Road
Srinagar.

Through:- Mr. Nisar Ahmad, Adv.

V/S

1. Union of India Th. Secretary, Ministry of Finance, Government of India, New Delhi.Respondent(s)
2. Commissioner of Customs, Air Cargo Export, New Customs House, near IGI Airport, New Delhi-110037.
3. Joint Commissioner of Customs (SIIB), Air Cargo Export, New Custom House, near IGI Airport, New Delhi-110037.
4. Assistant/Deputy Commissioner, Air Cargo Export (Shed), Cargo Terminal, near IGI Airport, New Delhi.
5. Regional Deputy Director, Wildlife Crime Control Bureau (NR), Bikaner House, Shahjahan Road, New Delhi-110011.
6. DHL Express (I) Pvt. Limited
Th. Vice President, Customer Services,
8th Floor, HDIL Towers, A.K Marg,
next to Bandra Court, Bandra (East),
Mumbai-400051.

Through:- Mr. T.M. Shamsi, DGSI.

LPA No. 137/2023
CM No. 4491/2023

M/S Ali Shah, 3 Nageen Lake Road, Srinagar Appellant(s)
Th. its Partner Arif Ahmad Shah, Age 40 years,
S/O Ghulam Ahmad Shah,
R/O 3 Nageen Lake Road Srinagar.

Through:- Mr. Nisar Ahmad, Adv.

V/s

1. **Union of India Through Secretary,
Ministry of Environment & Forests,
Wildlife Crime Control Bureau (N.R),
2nd Floor, Trikoot-1, Bhikaji Cama Place,
New Delhi-110066.**Respondent(s)
2. **Regional Deputy Director,
Wildlife Crime Control, Buearu (NR),
Bikaner House, Shahjahan Road,
New Delhi-110011.**
3. **Superintendent of Police,
Central Bureau of Investigation,
EO-II/Economic Offences, Unit-V, 4th Floor, B Wing,
CBI Headquarters, 5-B, GCO Complex,
5-B, Lodhi Road, New Delhi-110003.**
4. **Shri R. Ganesan, Inspector of Police,
CBI/EO-II/EOU-V, New Delhi.**

Through:- Mr. T.M. Shamsi, DGSI.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE**

JUDGMENT

(Per:- Chowdhary-J)

1. By this common judgment, it is proposed to decide the above titled both the *intra-Court appeals*, arising out of a common judgment dated 16.06.2023 passed by the learned Single Judge (*hereinafter referred to as the "Writ Court"*) in writ petitions bearing OWP Nos. 251/2015 & 1110/2015 filed by the petitioner-appellant herein, as identical questions of law are involved in both the appeals having been dealt with, by the learned Writ Court.

2. One consignment of Pashmina Embroidered Ladies Shawls vide shipping bill No. 8685517 dated 28.11.2013 were presented for clearance for export to Switzerland on 02.12.2013 to Customs Authorities at IGI Airport, New Delhi and on examination by the Wildlife Crime Control Bureau (Northern Region), New Delhi, it was observed that out of 33 shawls, 20 shawls appeared

to be mixture of Shahtoosh and the fact as to whether the goods contained objectionable yarn or not, the shawls were sent for forensic test. The Regional Deputy Director, Wildlife Crime Control Bureau vide its letter No. 10-10/WN/14/325 dated 29.05.2014 certified that all suspected twenty pieces of shawls contained hair of Tibetan Antelope (*Pantholopes Hodgsoni*), which was prohibited, as there was reason that they were liable for confiscation under the Act, as such, those shawls were seized in terms of Section 110 of the Customs Act, 1962 (*hereinafter referred to as the "Customs Act"*) at New Delhi.

3. A show cause notice bearing No. SES/35/ADC/JC/2014-15 dated 19.01.2015 was issued by the Commissioner of Customs (SIIB), Air Cargo Export, New Delhi (Special Intelligence & Investigation Branch) to the petitioner-appellant, who had dispatched this seized consignment from Srinagar to be delivered in Switzerland. The aforesaid notice was challenged in OWP No. 251/2015 by the appellant-petitioner before this Court.

4. The respondent-Regional Deputy Director, Wildlife Crime Control Bureau (NR), New Delhi issued Communication No. 1-270/WCCB/NR/14/153 dated 13.04.2015 to respondent-Superintendent of Police, Central Bureau of Investigation (CBI), New Delhi, who registered a case vide FIR No. RC220/2015/E-0007-CBI/EO-II/New Delhi under Sections 40, 49, 49-B and 58 read with Section 51 of the Wildlife (Protection) Act, 1972 (*hereinafter referred to as the "Wildlife Act of 1972"*), based on which a notice was issued to the appellant-petitioner by the respondent-R. Ganesan, Inspector of Police, CBI/EO-II/EOU-V, New Delhi alongwith the proceedings initiated. These notices and the FIR were also challenged by the appellant-petitioner through OWP No. 1110/2015 before this Court.

5. Both these writ petitions were heard by the Writ Court and vide impugned judgment, it was held by the learned Single Bench that since the consignment/goods had been seized at Delhi, proceedings emanating as a consequence of seizure of prohibited/banned consignment/goods have been initiated at Delhi, so it would be appropriate for petitioner to approach the Courts/forums at Delhi and both these writ petitions were dismissed by the common impugned judgment.

6. The case set up in both these appeals is, that the appellant-writ petitioner-M/S Ali Shah, in the month of July 2013, got an order for supply of Pashmina Embroidered lady shawls from Switzerland and it asked its suppliers to provide the required number of Pashmina Embroidered lady shawls @ ₹ 17,300/- per shawl and, accordingly, the suppliers supplied those shawls to the appellant-writ petitioner from 3rd November to 5th November, 2013 against proper receipts; that after receiving these shawls from its suppliers, the appellant/firm booked the same on 27.11.2013 at a cost of ₹ 12,870/- Swiss Francs, through DHL Express & Courier Service, under Airway Bill No. 1545575738 from Srinagar; that the consignment was to be delivered in Switzerland within a period of one week, however, due to non-delivery of the consignment, the appellant/firm took up the matter with DHL Express (I) Mumbai, who informed the appellant/firm that the shipment was seized by the Customs Department at IGI Airport, New Delhi on 02.12.2013 and that 20 (twenty) shawls out of 33 have been sent for forensic examination.

7. Based on this information, the appellant/firm sent its representative to New Delhi, in view of having a higher risk of moth/insect damage to the pure pashmina and also submitted an application to the respondent No. 5-Regional Deputy Director, Wildlife Crime Control Bureau (NR), New Delhi on

22.05.2014, requesting him to release the consignment without any further delay, however, the respondent No. 2 vide Communication dated 10.06.2014, informed the appellant that the examination report and 20 (twenty) sealed shawls relating to SB No. 8685517, as received from forensic cell of Wildlife Institute of India, Dehradun, was submitted to the office of Deputy Commissioner of Customs (Export), IGI, Air Cargo, Complex, New Delhi on 11.06.2014, for taking further necessary action.

8. It was further stated that on receipt of letter dated 19.06.2014, the appellant/firm submitted an application on 30.06.2014 before the respondent-Regional Deputy Director, Wildlife Crime Control Bureau (NR), New Delhi, stating therein that no letter as referred to in the Communication dated 19.06.2014 has been enclosed with the Communication; that the appellant/firm received a summons dated 30.07.2014 from Superintendent of Customs (SIIB), New Delhi, asking for attendance, giving evidence in respect of an enquiry being made in connection with illegal export of shawls made of hair of endangered species/animals, which is prohibited under law and the appellant/firm was asked to cause appearance on 11.08.2014.

9. Pursuant to the summons dated 30.07.2014, the appellant caused its appearance through an Advocate before the Superintendent of Customs (SIIB), New Delhi, informing him that the Customs Department has violated the customs law in seizing and sending the seized shawls for tests; that the appellant/firm submitted an application on 14.08.2014 to the Commissioner of Customs, Air Cargo Export, New Delhi and requested him to release the seized shawls in its favour, failing which it would be constrained to initiate appropriate legal action and this application was followed by a reminder dated 26.09.2014.

10. Aggrieved of the show cause notice dated 19.01.2015, the appellant/firm filed a Writ Petition bearing OWP No. 251/2015 before this Court, seeking quashment of the show cause notice and directing the respondents not to proceed against the writ petitioner on the basis of the said show cause notice and also to release the seized shawls forthwith, so that the same are delivered to the customer in Switzerland.

11. The respondent No. 2 also addressed a Communication bearing No. 1-2070/WCCB/NR/14/153 dated 13.04.2015 to the respondent No. 3, whereby he was asked to take up investigation of the case as per the provisions of the Act of 1972. The respondent No. 3 registered an FIR bearing No. RC2202015 E-007 on 28.04.2015 under Section 51 read with Sections 40, 49, 49-B & 58 of the Wildlife (Protection) Act of 1972 and entrusted the investigation of the case to the respondent No. 4-Shri R. Ganesan, Inspector of Police, CBI/EO-II/EOU-V, New Delhi, who issued a notice under Section 41-A of the CrPC to the appellant on 12.06.2015 with a direction to appear before him on 22.06.2015.

12. Aggrieved of the aforesaid actions by the respondent Nos. 2 & 3 being violative of interim order passed by this Court in OWP No. 251/2015 and the same being without jurisdiction, the appellant challenged the same through the medium of Writ Petition bearing OWP No. 1110/2015 before this Court and sought the following reliefs:-

- “(i) By issuance of a writ of certiorari or any other appropriate writ, order or direction, the impugned Communication No. 1-270/WCCB/NR/14/153 dated 13.04.2015 addressed by respondent No.2 to respondent No.3, FIR No. RC220/2015/E-0007-CBI/EO-II/New Delhi under Sections 40, 49, 49-B and 58 read with Section 51 of the Wildlife (Protection) Act, 1972 registered by respondent No.3 against petitioner, as also the Notice bearing No. RC 220/2015/E0007-CBI/EO-II/IND dated 12.06.2015 issued by respondent No.4 to the petitioner alongwith the proceedings initiated against him be quashed;**
- (ii) By issuance of a writ of mandamus or any other appropriate writ, order or direction, the respondents be directed not to**

proceed against petitioner on the basis of the impugned Communication dated 13.04.2015, FIR No. RC220/2015/E-0007-CBI/EO-II/New Delhi and the Notice dated 12.06.2015 issued by the respondent No. 4 to the petitioner, in any manner, whatsoever;

- (iii) The Hon'ble Court may pass any other order or direction, which it may deem fit and proper under the facts and circumstances of the case."

13. The respondent Nos. 3 & 4 have filed their reply affidavit to the writ petitions and thereafter, both the aforesaid writ petitions were clubbed. The respondents took a plea before the learned Writ Court with regard to lack of territorial jurisdiction of this Court. The learned Writ Court vide impugned judgment dated 16.06.2023 dismissed the petitions filed by the appellant-petitioner. While deciding the case, the Writ Court had relied upon the law laid down by the Apex Court in case titled, "*Lt. Col. Khajuri Singh Vs. Union of India*, reported as *AIR 1961 (SC) 532*", wherein it has been held that the act against which the relief has been sought was clearly performed at Delhi, therefore, the Jammu & Kashmir High Court, cannot exercise its jurisdiction under Article 226 of the Constitution of India.

14. The impugned judgment dated 16.06.2023 passed by the learned Writ Court has been assailed by the appellant through the medium of this *Intra-Court Appeal* on the ground that the action of the respondent No. 2 and registering of FIR thereon by the respondent No. 3 were violative of the interim order passed by this Court and the same was without jurisdiction, therefore, the appellant had rightly challenged the same before this Court. However, the learned Writ Court without appreciating the aforesaid material facts, passed the impugned judgment, whereby the writ petition filed by the appellant-writ petitioner was dismissed; that the appellant's writ petition was dismissed on the ground that the seizure of prohibited/banned consignment/goods took place at

Delhi, so it would be appropriate for the appellant to approach Delhi Courts/fora, though a clear stand had been taken before the Writ Court that since the appellant had booked the consignment at Srinagar, so if at all, there is any offence, then the occurrence would have taken place at Srinagar and just seizure is at Delhi, however, Writ Court allegedly without appreciating the matter, simply held that the goods had been seized at Delhi, therefore, the Courts at Delhi had the jurisdiction and this observation of the Writ Court is contrary to law, as such, the impugned judgment deserves to be set aside.

15. By booking the consignment at Srinagar, the cause of action as contemplated under Article 226(2) of the Constitution of India, has arisen to the appellant within the territorial jurisdiction of this Court and all the Communications had also been addressed and received by the appellant at Srinagar; that the appellant while meeting the objection raised by the respondents with regard to maintainability of the writ petition, qua the territorial jurisdiction of this Court, had raised the principle of "*Forum Conveniens*" and under this principle, this Court had the jurisdiction to decide the case.

16. The main thrust/vehemence of the arguments of learned counsel for the appellant-petitioner is that the Courts/Fora at Delhi may have jurisdiction in the matter, since the seizure and proposed confiscation and registration of a criminal case against the appellant-petitioner was at Delhi, however, this Court had also writ jurisdiction vested in it for the reason that the consignment/goods alleged to have seized, had been originated from Srinagar-the business place of the appellant-petitioner, through courier service. Therefore, it can be safely stated that the part of cause of action had accrued at Srinagar and in view of latest judgments of the Apex Court, in terms of Article 226 (2) of the

Constitution of India, every High Court is vested with the powers of writ jurisdiction in a case, where even a part of cause of action had accrued within its territorial jurisdiction. It was argued that the seized consignment was booked by the appellant-petitioner at Srinagar through courier service, to be delivered in a foreign country, therefore, the cause of action had started at Srinagar only and the Notices/Communications have been made/received by the appellant-petitioner at Srinagar.

17. There is no dispute with regard to submission of the learned counsel for the appellant-petitioner that in view of the part of cause of action having accrued within the territorial jurisdiction of the High Court, that High Court can exercise writ jurisdiction in a matter, where some cause of action may have accrued in continuation within the territorial jurisdiction of some other High Court, in view of the law on the point having been authoritatively laid by the Hon'ble Apex Court, in case titled, "*Navinchandra N. Majithia Vs. State of Maharashtra & Ors.*", reported in 2000 (7) SCC 640" the relevant para of the said judgment, for ready reference, is extracted as under:-

"We make it clear that the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct one by simply jutting into the territorial limits of another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not the criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. It depends upon the facts in each case."

18. Adverting to the case of the appellant-petitioner and having regard to the pleadings made by the petitioner in its writ petitions, though it has been pleaded that Pashmina Embroidered Ladies Shawls had been booked on 27.11.2013 from Srinagar through DHL Express (I) Private Limited, Mumbai, to

be delivered in Switzerland within a period of one week, however, the appellant-petitioner though claiming to have received this consignment from its suppliers, did not specify as to who were the suppliers; what was their location and where the seized shawls had been manufactured. Therefore, merely receiving of shawls from its suppliers by the appellant-petitioner, without any descriptive details in its petitions, cannot be said that the part of the cause of action had accrued within the territorial jurisdiction of this Court.

19. It was for the appellant-petitioner, to at least plead and also urge at the time of arguments before the learned Writ Court or even before this Bench substantially, as to wherefrom it had received supplies of the consignment of shawls manufactured from the prohibited yarn, so that the learned Writ Court or this Court in appeal could have said that in view of commission of offences in J&K, the appellant's cause of action had arisen within the territorial jurisdiction of this Court, so as to entertain the writ petitions for their disposal on merits. Merely pleading that the consignment was booked from Srinagar by the appellant-petitioner and the Notice/Communications from the respondents were received by the appellant-petitioner at Srinagar, does not disclose any cause of action having arisen at Srinagar so as to confer territorial jurisdiction on the basis of part of cause of action, exercising writ jurisdiction of this Court. In absence of any specific pleadings in the writ petitions as well as memoranda of appeals, it cannot be said that any part of cause of action had accrued to the appellant-petitioner at Srinagar. The learned Writ Court has rightly held that the seizure of the shawls containing prohibited material had taken place in Delhi, therefore, Delhi Courts/Fora shall be having jurisdiction in the matter and not this High Court.

20. Having regard to the foregoing discussion and reasons stated hereinabove, the impugned common judgment passed by the Writ Court is maintained and upheld. As a consequence, both the appeals are dismissed, alongwith pending application(s). Interim direction, if any, shall stand vacated. Judgment shall be placed across both the appeal files. In peculiar facts and circumstances, parties shall bear their own costs.

21. Both the LPAs alongwith pending application(s) are disposed of as dismissed.

(MA CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Jammu:
07.10.2023
Ram Krishan

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes

