



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF AUGUST, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO.7320/2017 (GM-CPC)

C/W

CRIMINAL PETITION NO.200927/2016

IN WRIT PETITION NO.7320/2017

BETWEEN

KARNATAKA POWER CORPORATION LIMITED
SHAKTHI BHAVAN,
RACE COURSE ROAD,
BENGALURU
REPRESENTED BY
MANAGING DIRECTOR

...PETITIONER

(By SRI. PRAMOD NAIR, ADVOCATE)

AND

1 . GOPALKRISHNA
AGED ABOUT 39 YEARS,
DECEASED, REPRESENTED BY HIS LRS.

1 (A) KAVERI GAONKAR
W/O LATE GOPALKRISHNA
AGED ABOUT 66 YEARS

1 (B) SHIVARAM GAONKAR
S/O LATE GOPALKRISHNA
AGED ABOUT 52 YEARS

1 (C) NARAYAN GAONKAR
S/O LATE GOPALKRISHNA
AGED ABOUT 50 YEARS

1(D) SHREEGANGA GAONKAR
D/O LATE GOPALKRISHNA
AGED ABOUT 48 YEARS

ALL ARE RESIDING AT
KANAKANAHALLI (DODDAPPA MANE)
DONGRI GRAM PANCHAYAT
HALLVALLI POST, KALESHWAR TALUK
ANKOLA
KARWAR-581 314

2 . THE SPECIAL LAND ACQUISITION OFFICER
KALINADI PROJECT
DANDELI-581325

...RESPONDENTS

(BY SRI.VISHWANATH HEGDE, ADV. FOR
LRS. OF R1, R1(A), R1(B), R1(C), & R1(D)
SRI.S.S.MAHENDRA, AGA FOR R2
V/O DATED 22.01.2021
SRI.BASAVARAJ S., ADV. IS REQUESTED
TO ASSIST THE COURT AS AMICUS CURIAE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 27.10.2016 PASSED BY THE SR. CIVIL JUDGE, SIRSI IN EX.NO.51/2005 AT ANNEX-A TO THE INSTANT PETITION AND SET ASIDE THE IMPUGNED ATTACHMENT ORDER DATED 11.11.2016 PASSED BY TEH SR. CIVIL JUDGE, SIRSI IN EX.NO.51/2005 AT ANNEX-B TO THE INSTANT PETITION AND ETC.

IN CRIMINAL PETITION NO.200927/2016

BETWEEN

1. SHASHIL S/O GANGADHAR NAMOSHI
AGED 55 YEARS
OCC: BUSINESS
R/O 10-2/35/1, ANAND NAGAR
S.B.COLLEGE ROAD
KALABURAGI
(EX-PRESIDENT, HKES GULBARGA)

2. BABURAO S/O SHIVASHARANAPPA MANGANE
AGE 65 YEARS
OCC: ADVOCATE
R/O PLOT NO.110/B
VENKATESH NAGAR, KALABURAGI
(EX. VICE-PRESIDET HKES GULBARGA)
3. SHARAD S/O MAHADEVAPPA RAMPURE
AGE: 58 YEARS
OCC: BUSINESS
R/O "JAIDEEP", PDA ENGG. COLLEGE ROAD
KALABURAGI
(EX. SECRETARY, HKES GULBARGA)
4. DR.SAMPATH KUMAR LOYA
S/O DWARAKADAS LOYA,
AGED ABOUT 59 YEARS
OCC: MEDICAL PRACTITIONER
R/O MARWADI GALLI,
BEHIND KIRANA BAZAR
KALABURAGI

...PETITIONERS

(BY SRI.ASHOK MULAGE, ADV. FOR
SRI.PRAMOD NAIR, ADVOCATE)

AND

1. O.H. AMRESH S/O HANUMANTHAPPA
AGED 90 YEARS
OCC: RETD. POLICE OFFICER
R/O H.NO. 1165-11,
AIWAN E -SHAHI
KALABURAGI
2. LINGANGOUDA S/O RUDRAGOUDA
AGE: 71 YEARS
OCC: R/O H.NO.38-208, SFS,
OPP. MOTHER DIARY, YELAHANKA
BENGALURU-560 064

...RESPONDENTS

(BY SRI.PATIL AMRUTGOUDA MAHADEVAPPA ADV. FOR R1
SRI.SHIVA KUMAR MALIPATIL, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C. PRAYING TO QUASH THE COMPLAINT REGISTERED IN

P.C.NO.1/16 AND SET ASIDE THE ORDER PASSED BY THE HON'BLE III ADDL. SESSIONS JUDGE & SPL. JUDGE COURT (PML ACT) D.K., MANGALORE DATED 24/5/16 IN SPL. CASE NO.120/16 (PML ACT) AND ETC.

THESE WRIT PETITION AND CRIMINAL PETITION COMING ON FOR HEARING AND HAVING BEEN HEARD AND RESERVED ON 02.07.2021 THIS DAY, **SATISH CHANDRA SHARMA, J.**, PRONOUNCED THE FOLLOWING:

ORDER ON REFERENCE

Regard being had to the similitude in the controversy involved in these two cases, they were heard analogously together and a common order is being passed.

2. The facts of the case reveal that W.P.No.7320/2017 filed by the Karnataka Power Corporation Limited at the Principal Seat at Bengaluru is arising out of the order dated 27.10.2016 passed by the Senior Civil Judge, Sirsi, in Execution No.51/2005, which is arising out of LAC.No.10/1998. The order dated 11.11.2016 was also under challenge passed by the learned Senior Civil Judge, Sirsi, in Execution No.51/2005.

3. The undisputed facts makes it very clear that Gopalkrishna/respondent in the writ petition is a resident of Hallavalli Post, Kalleshwar Taluk, Ankola, Uttara Kannada District and the execution proceedings are pending before the Senior Civil Judge, Sirsi, which comes under the territorial jurisdiction of Dharwad Bench. Notices were issued in the matter and the sole

respondent submitted an application to the Registrar General, High Court of Karnataka on 29.7.2018 stating that he is aged about 69 years, the dispute relates to land acquisition and his land was acquired in 1993. It was stated categorically by him that the Court at Sirsi comes within the territorial jurisdiction of Dharwad Bench of the Karnataka High Court and the petition under Article 227 of the Constitution of India could not have been filed in the Principal Seat at Bengaluru.

4. The matter was listed before the learned Single Judge and the learned Single Judge has passed an order dated 11.2.2021 directing the Registry to place the matter before Hon'ble The Chief Justice for consideration and for constituting a Full Bench.

5. The order dated 11.2.2021 is reproduced as under;

"The orders dated 27.10.2016 and 11.11.2016 challenged in this writ petition have emanated from Execution No.51/2005 pending on the file of learned Sr. Civil Judge, Sirsi; the 1st respondent- Gopal Krishna Goankar has addressed a letter dated 27.09.2018 requesting the Registrar General for transferring the writ petition to the Dharwad Bench of this court since Sirsi town is comprised in the territorial jurisdiction of the said Bench by virtue of the notification dated 04.06.2008 whereby two Circuit Benches outside Bengaluru had been established and also the Presidential Notification dated 14.08.2013 whereby the same

became the Permanent Benches i.e., one at Dharwad and the other at Kalaburagi.

2. A short but significant question as to the jurisdiction of the said two Benches to the exclusion of the Principal Bench at Bengaluru, in respect of cases comprised in their territorial jurisdiction has arisen for consideration in this Writ Petition. A Division Bench of this Court in *Abdul Wajid -vs- State of Karnataka*, ILR 2014 KAR 5805 having treated the said question and answered at para 44 as under:

"44. The High Court registry under the guise of scrutinizing the Writ Petition cannot raise an objection regarding maintainability of the Writ Petition and call upon the petitioner or his Advocate to take back the papers and present it before the Benches at Dharwad or Gulbarga. When we have held that neither the Hon'ble Chief Justice nor the Full Court of the High Court has the jurisdiction to decide whether any particular Bench in the High Court of Karnataka has the jurisdiction to entertain the Writ Petition and that the said issue has to be decided in an individual case by the Judge or Judges hearing the matter, the High Court office cannot raise such an objection and ask the petitioner or his Advocate to comply with the same. The party or his Advocate are not expected to convince the High Court registry on this aspect. Assuming that the High Court registry is of the view that the Writ Petition is not maintainable in any particular Bench, what they are expected to do is to put up a note in the order sheet, bringing the said fact to the notice of the Learned Judge and list the Writ Petition before the Court for preliminary hearing. It is the Learned Judge alone who has the jurisdiction to decide the question of

maintainability of the Writ Petition. The Learned Judge may in his or her discretion decide the question either before ordering notice or after the appearance of the respondent. Therefore, the Registry cannot raise the said office objection and call upon the petitioner to satisfy them before the Writ Petition is listed for preliminary hearing. Hence, the office objection is unsustainable in law and accordingly, it is over ruled".

3. Since this Court prima facie found the ratio of the aforesaid case arguably to be per incuriam, Sri.S.Basavaraj, a senior & learned member of the Bar was appointed as amicus curie; he has ably assisted the court by filing his preliminary submissions dated 10.2.2021; in his argument he specifically draws attention of this Court to the Apex Court decision in State of Rajasthan Vs. Prakash Chand & others, (1998) 1 SCC 1 which went uncited & unadverted in Abdul Wajid Case, supra. Learned counsel for the petitioner and learned AGA support the views of the amicus curie.

Regard being had to the profundity of the question and the enormity of the consequences of the answer thereto, this Court in exercise of power under u/s.8 of the Karnataka High Court Act, 1961 directs the Registry to place the papers at the hands of Hon'ble the Chief Justice for consideration by a Bench of appropriate number of judges, as may be decided by His Lordship.

This court places on record its deep appreciation for the assistance rendered by the said amicus curie. "

6. The learned Single Judge has referred to the judgment delivered by the Division Bench of this Court in the case of **Abdul Wajid v. State of Karnataka**, reported in ILR 2014 KAR 5805 and his contention is that the ratio laid down in the aforesaid case is prima facie per incuriam. Hence, the matter has been referred to the Full Bench.

7. This Court has heard the learned counsel for the parties at length and perused the record.

8. The Benches at Dharwad and Kalaburagi were inaugurated on 4th and 5th July 2008. The Circuit Bench at Dharwad became permanent Bench w.e.f., 25.8.2013 and the Circuit Bench at Kalaburagi became permanent Bench on 31.8.2013. After the Circuit Benches were established at Dharwad and Gulbarga (Kalaburagi) pursuant to a resolution passed by the Full Court, in respect of the matters to be heard by the Circuit Benches a notification was issued on 4.6.2008 and the same reads as under;

"In exercise of powers under Section 51(3) of the State Re-organisation Act 1956 and with the approval of His Excellency the Governor of Karnataka, the Hon'ble Chief Justice, High Court of Karnataka, vide Notification dated 19.10.2004, was pleased to notify sittings of Judges and

Division Courts of the High Court of Karnataka at Dharwad and Gulbarga. It was stated in the Notification dated 19.10.2004 that the date of sitting will be notified later.

The Full Court of the High Court, vide Resolution dated 03.06.2008, has resolved to commence the sitting of Judges and Division Courts at the Circuit Benches at Dharwad and Gulbarga on 7.7.2008. The Full Court has also resolved that the cases arising from the Districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada - Karwar and Koppal will be heard and decided at the Circuit Bench at Dharwad and cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur will be heard and decided at the Circuit Bench at Gulbarga. It has been further resolved that pending cases from the above mentioned districts will be transferred to the respective Circuit Bench before 07.07.2008 and that filing of new cases at the Circuit Benches will be permitted from 07.07.2008.

In the above circumstances, the Hon'ble Chief Justice, High Court of Karnataka has been pleased to order that sitting of Judges and Division Courts at the Circuit Benches at Dharwad and Gulbarga will commence on 07.07.2008; that cases arising from the Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada - Karwar and Koppal will be heard and decided at the Circuit Bench at Dharwad; that cases arising from the Districts of Bidar, Bijapur, Gulbarga and Raichur will be heard and decided at the Circuit Bench at Gulbarga; that pending cases from the above mentioned districts will be transferred to the respective Circuit Bench before 07.07.2008 and that filing

of new cases at the Circuit Benches will be permitted from 07.07.2008.”

9. The aforesaid notification makes it very clear that in respect of certain Districts Dharwad Bench is having territorial jurisdiction and in respect of certain Districts the Gulbarga (Kalaburagi) Bench is having territorial jurisdiction.

10. The relevant statutory provisions for establishing permanent Benches as contained under the High Court of Karnataka (Establishment of Permanent Benches at Dharwad and Gulbarga) Order, 2013, was notified on 14.8.2013 and the same is reproduced as under;

“G.S.R.....(E):- The following Order made by the President of India under sub-section (2) of section 51 of the States Reorganization Act, 1956 (37 of 1956) is hereby published as required by that sub-section, namely:-

THE HIGH COURT OF KARNATAKA (ESTABLISHMENT OF PERMANENT BENCHES AT DHARWAD AND GULBARGA) ORDER, 2013

In exercise of the powers conferred by sub-section (2) of Section 51 of the States Reorganization Act, 1956 (37 of 1956), the President, after consultation with the Governor of Karnataka and the Chief Justice of the High court of Karnataka is pleased to make the following Order, namely:-

1. Short title – This Order may be called the High Court of Karnataka (Establishment of Permanent

Benches at Dharwad and Gulbarga), Order, 2013.

2. Establishment of Permanent Bench of High Court of Karnataka at Dharwad – The Permanent Bench of the High Court of Karnataka at Dharwad shall come into operation on 24th August 2013.
3. Establishment of Permanent Bench of High Court of Karnataka at Gulbarga – The Permanent Bench of the High Court of Karnataka at Gulbarga shall come into operation on 31st August, 2013.
4. The Chief Justice of the High Court of Karnataka may, from time to time, nominate the Judges of the High Court of Karnataka, who shall sit, -

(i) at Dharwad in respect of cases arising in the Districts of Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada-Karwar and Koppal; and

(ii) at Gulbarga in respect of cases arising in the Districts of Bidar, Bijapur, Gulbarga and Raichur

in order to exercise the jurisdiction and powers of the time being vested in that High Court in the State of Karnataka.

5. Notwithstanding anything in sub-paragraphs (i) and (ii), of paragraph 4, the Chief Justice of the High Court of Karnataka may, in his discretion, order that any case or class of cases arising in any such district shall be heard at Bangalore.”

11. The territorial jurisdiction of the Benches is well defined. The judgment which has been referred by the learned Single Judge in his order dated 11.2.2021 reveals that the Division Bench of this Court in the case of **Abdul Wajid** (supra) held that neither the Chief Justice nor the Full Bench of the High Court has the jurisdiction to decide whether any particular Bench in the High Court of Karnataka has the jurisdiction to entertain the writ petition or not and the issue has to be decided in an individual case by the Judge or the Judges hearing the matter and therefore, the High Court Registry cannot raise an objection in respect of the maintainability of a case on the ground of territorial jurisdiction.

12. Learned Amicus Curiae has placed reliance upon a judgment delivered in the case of **State of Rajasthan v. Prakash Chand**, reported in (1998) 1 SCC 1. Paragraphs 7, 8, 9, 10 and 59 of the judgment reads as under;

"7. Before proceeding further, it is necessary to first examine the powers of the Chief Justice in the matter of constitution of Benches, providing of roster and in particular his prerogative to transfer even a part-heard case from the board of a learned Single Judge to a Division Bench for disposal on being satisfied that the case involved constitutional issues, which under the High Court Rules was required to be heard by a Division Bench.

8. Para 44 of the Rajasthan High Court Ordinance, 1949 deals with the distribution of business and administrative control of the High Court. It provides:

"44. Distribution of business and administrative control.—(1) The High Court may, by its own rules, provide as it thinks fit for the exercise by one or more Judges, or by Division Courts constituted by two or more Judges, of the High Court, of its original and appellate jurisdiction.

(2) The Chief Justice shall be responsible for the distribution and conduct of the business of the High Court, and shall determine which Judge in each case will sit alone and which Judges of the Court will constitute a Bench.

(3) The administrative control of the High Court shall vest in the Chief Justice who may exercise in such manner and after such consultation with the other Judges as he may think fit or may delegate such of his functions, as he deems fit to any other Judge of the High Court."

9. By virtue of the powers conferred by the Rajasthan High Court Ordinance, 1949 read with Article 225 of the Constitution of India, the High Court of Rajasthan, with the approval of the Governor of the State, framed Rules of the High Court of Judicature for Rajasthan, 1952. Chapter V of the Rules deals with the constitution of Benches. Rule 54 provides:

"54. Constitution of Benches.—Judges shall sit alone or in such Division Courts, as may be constituted from time to time and do such work, as may be allotted to them by order of the Chief Justice or in accordance with his direction."

10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (*supra*) shows that the administrative control of the High Court vests in the Chief

Justice of the High Court *alone* and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work *only* as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus:

"73. *Daily Cause List.*—The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state

the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."

59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (*supra*) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8) That Shethna, J. had no authority or jurisdiction to send for the record of the disposed of writ petition and make comments on the manner of transfer of the writ petition to the Division Bench or on the merits of that writ petition.

(9) That all comments, observations and findings recorded by the learned Judge in relation to the disposed of writ petition were not only unjustified and unwarranted but also without jurisdiction and make the Judge *coram non judice*.

(10) That the "allegations" and "comments" made by the learned Judge against the Chief Justice of the High Court, the Advocate of the petitioner in the writ petition and the learned Judges constituting the Division Bench which disposed of Writ Petition No. 2949 of 1996 were uncalled for, baseless and without any legal sanction.

(11) That the observations of the learned Judge against the former Chief Justices of the High Court of Rajasthan to the effect that they had "illegally" drawn full daily allowance while sitting at Jaipur to which they were not entitled, is factually incorrect, procedurally untenable and legally unsustainable.

(12) That the "finding" recorded by the learned Judge against the present Chief Justice of India, Mr Justice J.S. Verma, that till his elevation to the Supreme Court, he had, as Chief Justice of the Rajasthan High Court, "illegally" drawn a daily allowance of Rs 250 while sitting at Jaipur and had thereby committed "criminal misappropriation of public funds" lacks procedural propriety, factual accuracy and legal authenticity. The finding is wholly incorrect and legally unsound and makes

the motive of the author not above personal pique so wholly taking away dignity of the judicial process.

(13) That the disparaging and derogatory comments made in most intemperate language in the order under appeal do no credit to the high office of a High Court Judge.

(14) That the direction of Shethna, J. to issue notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him, for transferring a part-heard writ petition from his Bench to the Division Bench for disposal, is not only subversive of judicial discipline and illegal but is also wholly misconceived and without jurisdiction."

The aforesaid judgment defines the powers of the Chief Justice and the Chief Justice is the master of the roster.

13. In exercise of the powers conferred by Article 225 of the Constitution of India and Section 54 of the States Reorganization Act, 1956 read with Sections 122 and 129 of the Code of Civil Procedure, 1908, and Section 19 of the Mysore High Court Act (I of 1884), the High Court of Karnataka, with the previous approval of the Government of Karnataka, framed the High Court of Karnataka Rules, 1959.

14. Rule 6 of the High Court of Karnataka Rules, 1959 reads as under;

"6. Benches shall be constituted and judicial work of the Court allotted or distributed to them by or in accordance with the directions of the Chief Justice."

15. The aforesaid Rule makes it very clear that Constitution of Benches and allotment of judicial work/distribution of judicial work has to be done only and only by Hon'ble The Chief Justice. The same view has been expressed by the Hon'ble Supreme Court in the case of **State of Rajasthan v. Prakash Chand (supra)**.

16. In the light of the aforesaid, it is crystal clear that it is only Hon'ble The Chief Justice, who can allocate the work to a particular judge, issue a roster, transfer a case from one judge to another judge, pass an order in respect of transfer of a case from one Bench to another Bench and by no stretch of imagination a puisne judge can transfer a case from one Bench to another Bench. Every judge of the High Court does not have the power, whether he is sitting singly or whether it is a Division Bench or whether it is a Full Bench, to transfer a case from one Bench to another Bench or from main Seat to Benches or vice versa.

17. The present petition has been filed under Article 227 of the Constitution of India before this Court and in the

considered opinion of this Court, as it is a petition under Article 227 of the Constitution, it should have been filed at Dharwad Bench. At the first place, the petition was not maintainable at the Principal Seat. However, now as the issue is in respect of transfer of case from Principal Seat to Dharwad Bench, it is only and only Hon'ble The Chief Justice, who can pass an order of transfer from Principal Seat to Dharwad Bench.

18. It is a settled proposition of law that "forum convenience" is not a fundamental right similar to 'access to justice'. 'Access to Justice' is recognized as a fundamental right (see *Manohar Joshi v. State of Maharashtra*, reported in (2012) 3 SCC 619; *Roger Mathew v. South Indian Bank Limited*, reported in 2020 6 SCC 1). However, 'forum convenience' cannot be claimed as fundamental right and the right to choose jurisdiction of the court is again subject to the powers of the Chief Justice as discussed above. Forum convenience cannot become 'forum shopping'. The Hon'ble Supreme Court in the case of **Ambica Industries v. CCE**, reported in (2007) 6 SCC 769, had an occasion to consider similar issue. In paragraphs 13 and 38, the Hon'ble Supreme Court has observed as under;

13. ... the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court

shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

38. ... It would also give rise to the problem of forum shopping. ... For example, an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. ... "

19. It may be noted that 'forum convenience' is a double edged sword. It applies to both the petitioner/appellant and respondent. If a litigant from Kalaburagi approaches the Principal Seat at Bengaluru, he drags even the private respondents to the Principal Seat, their inconvenience notwithstanding. There may be cases where the same judgment or order is challenged by both the parties before the High Court. In such an eventuality, if the judgment of this High Court in **Abdul Wajid's case** (supra) is accepted, one party can file appeal in Kalaburagi Bench and the other at the Principal Seat. Because of this, in the words of the

Hon'ble Supreme Court, "some sort of judicial anarchy shall come into play".

20. In the considered opinion of this Court, merely because it was convenient for the petitioner to file a petition at the Principal Seat the petition at the Principal Seat was not maintainable on account of the territorial jurisdiction, otherwise, people will start forum shopping/forum hunting while filing cases before the Principal Seat or before the Benches keeping in view their comfort level as well as the other factors.

21. Resultantly, this Court is of the opinion that the judgment delivered in the case of **Abdul Wajid** (supra), deserves to be clarified. Every judge of the High Court, keeping in view the judgment delivered by the Hon'ble Supreme Court in the case of **State of Rajasthan v. Prakash Chand** (supra), does not enjoy the power to transfer cases from one Bench to another Bench or from Principal Seat to Benches and vice versa.

22. In the light of the aforesaid, the matter be now placed before the learned Single Judge again to proceed ahead in accordance with law.

23. In the connected matter i.e., CrI.P.No.200927/2016, the learned Single Judge by an order dated 22.4.2021 has passed the following;

"Accused persons in P.C.No.1/2016 presently pending on the file of III-Additional Sessions Judge and Special Judge, Mangalore in Special Case No.120/2016 are before this Court with a following prayer:

"to allow the petition and quash the complaint registered in P.C.No.1/2016 and set aside the order passed by the Hon'ble III-Addl. Sessions Judge and Spl. Judge Court (PML Act) D.K.Mangalore dated 24.5.2016 in Spl. Case No.120/2016 (PML Act) and consequently quash entire proceedings against the petitioners."

The notice is yet to be issued to respondents.

A private complaint came to be filed in P.C.No.1/2016 on the file of Principal District and Sessions Judge and Special Court for Prevention Of Money Laundering Act, Raichur. Later on, by virtue of the Notification No.C-180153/2013 Ad.Ed. issued by the Government of India, Ministry of Finance, Department of Revenue dated 12.02.2016, the said case was transferred to Special Court at Mangalore and the same pending.

Learned counsel for the petitioners among various grounds, urged that the Special Court erred in taking cognizance of the offences without following mandatory procedure and thus, sought for quashing of further proceedings.

In regard to territorial jurisdiction at Kalaburagi Bench of High Court of Karnataka, he has submitted that since the incident is said to have occurred at Raichur and the said incident is now triable by Mangalore, the order passed by

the Mangalore Court is amenable to the jurisdiction of the High Court of Karnataka, Kalaburagi Bench.

In support of his case, he has relied on a decision of the Division Bench of this Court in the case of Sri Abdul Wajid vs. The State of Karnataka, rep., by its Secretary, Department of Transport and Another reported in ILR 2014 KAR 5805, in paragraph No.44 of the said order, the Division Bench has observed as under:

"44. The High Court registry under the guise of scrutinizing the Writ Petition cannot raise an objection regarding maintainability of the Writ Petition and call upon the petitioner or his Advocate to take back the papers and present it before the Benches at Dharwad or Gulbarga. When we have held that neither the Hon'ble Chief Justice nor the Full Court of the High Court has the jurisdiction to decide whether any particular Bench in the High Court of Karnataka has the jurisdiction to entertain the Writ Petition and that the said issue has to be decided in an individual case by the Judge or Judges hearing the matter, the High Court office cannot raise such an objection and ask the petitioner or his Advocate to comply with the same. The party or his Advocate are not expected to convince the High Court registry on this aspect. Assuming that the High Court registry is of the view that the Writ Petition is not maintainable in any particular Bench, what they are expected to do is to put up a note in the order sheet, bringing the said fact to the notice of the Learned Judge and list the Writ Petition before the Court for preliminary hearing. It is the Learned Judge alone who has the jurisdiction to decide the question of maintainability of the Writ Petition. The Learned Judge may in his or her discretion

decide the question either before ordering notice or after the appearance of the respondent. Therefore, the Registry cannot raise the said office objection and call upon the petitioner to satisfy them before the Writ Petition is listed for preliminary hearing. Hence, the office objection is unsustainable in law and accordingly, it is over ruled. "

It is pertinent to note that in Abdul Wajid's case, issue involved was with regard to the orders passed by the Karnataka Administrative Tribunal. As such, this Court is of the prima facie opinion that the said judgment may not be applicable in deciding the territorial jurisdiction of this Bench in dealing with a matter arising out of Special Court situated at Mangalore.

It is not in dispute that Karnataka High Court Kalaburagi Bench is having jurisdiction over the matters pending in Kalaburagi, Bidar, Vijayapura, Raichur and Yadgir.

Therefore, it is desirable to thrash out the issue with regard to territorial jurisdiction by Division Bench or Larger Bench.

Hence, office is directed to place the file before the Hon'ble the Chief Justice, High Court of Karnataka for further orders."

24. In the aforesaid case, a petition was preferred under Section 482 of the Code of Criminal Procedure arising out of the order passed by the III Additional Sessions Judge and Special Judge, Mangaluru in Special Case No.120/2016 for quashment of the complaint registered under the Prevention of Money

Laundering Act, 2002. The order passed by the Special Judge, Mangaluru, was under challenge before the Kalaburagi Bench.

25. Undisputedly, the Courts at Mangaluru fall under the territorial jurisdiction of the High Court of Karnataka at Principal Seat and by no stretch of imagination, a petition could have been filed under Section 482 of the Code of Criminal Procedure at Kalaburagi Bench and therefore, as the Kalaburagi Bench was not having the territorial jurisdiction over the Special Court for Prevention of Money Laundering Act at Mangaluru, the petition should have been filed before the Principal Seat and thereafter, it is only Hon'ble The Chief Justice, who could transfer the matter to Kalaburagi Bench and no other puisne judge. The law laid down in **Abdul Wajid's** case (supra), treating each and every judge of the High Court to transfer a case warrants interference. The Registry can always raise an objection regarding the maintainability of a case if it is filed at Principal Seat/Benches not having territorial jurisdiction and the learned Single Judge before whom the matter is placed shall certainly be free to pass an order in respect of jurisdiction keeping in view the notifications relating to jurisdiction in accordance with law. Therefore, in the considered opinion of this Court, Kalaburagi Bench, keeping in view the notifications issued, which have been

referred to in earlier part of the order, is having jurisdiction only in respect of Kalaburgi, Bidar, Vijayapura, Raichur and Yadgir and therefore, the office can raise an objection in respect of the jurisdiction and the learned Judge, before whom the matter is placed, shall certainly be free to pass an order in respect of the jurisdiction keeping in view the notifications relating to jurisdiction in accordance with law.

26. The issues are answered accordingly and the matter be placed before the learned Single Judge, Kalaburagi Bench for further orders in accordance with law.

27. This Court also appreciates the assistance provided in the matter by learned counsel Shri S.Basavaraj.

Sd/-
JUDGE

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