A RASIKLAL DALPATRAM THAKKAR

v.

STATE OF GUJARAT AND ORS.

(Criminal Appeal No. 2041 of 2009)

NOVEMBER 06, 2009

B **[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]**

Code of Criminal Procedure, 1973: s.156(3) – Investigating agency cannot decide not to investigate a complaint forwarded to it under s.156(3) on the ground that C *offence complained of was allegedly committed outside its territorial jurisdiction.*

The question which arose for consideration in the present appeal was whether in regard to the order passed under Section 156(3) Cr.P.C., the police authorities D **empowered under Sub-Section (1) of Section 156 can unilaterally decide not to conduct an investigation on the ground that they had no territorial jurisdiction to do so.**

Dismissing the appeal, the Court

HELD: 1.1. A police officer in charge of a police station E **can, without the order of a Magistrate, investigate any cognizable offence which a Court having jurisdiction over such police station can inquire into or try under Chapter III of the Code of Criminal Procedure. Sub-section (2) of Section 156 ensures that once an investigation is** F **commenced under Sub-section (1), the same is not interrupted on the ground that the police officer was not empowered under the Section to investigate. It is in the nature of a "savings clause" in respect of investigations undertaken in respect of cognizable offences. In addition to the powers vested in a Magistrate empowered under** G **Section 190 Cr.P.C. to order an investigation under Sub-section (1) of section 202 Cr.P.C., Sub-section (3) of Section 156 also empowers such Magistrate to order an investigation on a complaint filed before him. Sub-section (4) only indicates that an inquiry or trial of an offence of**

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criminal misappropriation or criminal breach of trust can be conducted by a Court within whose jurisdiction the offence had been committed or any part of the property forming the subject matter of the offence is received or retained or was required to be returned or accounted for by the accused person. The said provisions do not account for a stage contemplated on account of an order made under Section 156(3) Cr.P.C. [Paras 20 and 21] [732-A-C-F-G]

Agencia Commercial International Ltd. v. Custodian of the Branches of Banco National Ultramarino **(1982) 2 SCC 482;** *Satvinder Kaur v. State (NCT of Delhi)* **(1999) 8 SCC 728;** *Naresh Kavarchand Khatri v. State of Gujarat* **(2008) 8 SCC 300;** *Asit Bhattacharjee v. Hanuman Prasad Ojha* **(2007) 5 SCC 786, referred to.**

2. In the instant case, the stage contemplated under Section 181(4) Cr.P.C. has not yet been reached. Prior to taking cognizance on the complaint filed by the Bank, the Chief Judicial Metropolitan Magistrate, Ahmedabad, had directed an inquiry under Section 156(3) Cr.P.C. A final report was submitted by the Investigating Agency entrusted with the investigation stating that since the alleged transactions had taken place within the territorial limits of the city of Mumbai, no cause of action had arisen in the State of Gujarat and, therefore, the investigation should be transferred to the police agency in Mumbai. Both the trial Court as well as the Bombay High Court correctly interpreted the provisions of Section 156 Cr.P.C. to hold that it was not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction. A glance at the material before the Magistrate would indicate that the major part of the loan transaction, in fact, took place in the State of Gujarat and that having regard to the provisions of Sub-section (2) of Section 156 Cr.P.C., the proceedings of the investigation could not be questioned on the ground of jurisdiction of

A the officer to conduct such investigation. It was open to the learned Magistrate to direct an investigation under Section 156(3) Cr.P.C. without taking cognizance on the complaint and where an investigation is undertaken at the instance of the Magistrate a Police Officer empowered under Sub-section (1) of Section 156 is bound, except in
B specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter. [Para 22] [732-H; 733-A-G]

3. It is the settled law that the complaint made in a
C criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The Investigating Agency was required to place the facts elicited during the investigation before the Court in order
D to enable the Court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the Investigating Agency to forward its report with the observation that since the entire cause of action for the alleged offence purportedly arose in the city of Mumbai
E within the State of Maharashtra, the investigation should be transferred to the concerned Police Station in Mumbai. Section 156(3) Cr.P.C. contemplates a stage where the Magistrate is not convinced as to whether process should issue on the facts disclosed in the complaint. Once the
F facts are received, it is for the Magistrate to decide his next course of action. In this case, there are materials to show that the appellant had filed his application for loan with the Head Office of the Bank at Ahmedabad and that the processing and the sanction of the loan was also done in Ahmedabad which clearly indicates that the major part of
G the cause of action for the complaints arose within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. It was not, therefore, desirable on the part of the Investigating Agency to make an observation that it did not have territorial jurisdiction to proceed with the
H investigation, which was required to be transferred to the

Police Station having jurisdiction to do so. [Para 23] [734-A-F] A

4. The Magistrate was fully justified in rejecting the Final Report submitted by the Economic Offences Wing, State CID (Crime) and to order a fresh investigation into the allegations made on behalf of the Bank. The High B **Court, therefore, did not commit any error in upholding the views expressed by the Trial Court. Section 181(4) Cr.P.C. deals with the Court's powers to inquire or try an offence of criminal misappropriation or of a criminal breach of trust if the same has been committed or any part of the property,** C **which is the subject of the offence, is received or retained within the local jurisdiction of the said Court. [Para 24] [734-F-H; 735-A]**

5. The powers vested in the Investigating Authorities under Sections 156(1) Cr.P.C., did not restrict the jurisdiction of the Investigating Agency to investigate into D **a complaint even if it did not have territorial jurisdiction to do so. Unlike as in other cases, it was for the Court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it. [Para 25] [735-C-D]** E

Case Law Reference :

(1982) 2 SCC 482	**referred to**	**Para 10**
(1999) 8 SCC 728	**referred to**	**Para 11**
(2008) 8 SCC 300	**referred to**	**Para 12**
(2007) 5 SCC 786	**referred to**	**Para 13** F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2041 of 2009.

From the Judgment & Order dated 15.03.2007 of the High Court of Gujarat at Ahmedabad in Special Criminal Application Nos. 2149-2153 of 2006. G

Varinder Kumar Sharma for the Appellant.

Gaurav Goel, E.C. Agrawala, Hemantika Wahi, for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted. H

A 2. The Madhavpura Mercantile Cooperative Bank Ltd., which is governed by the provisions of the Multi State Cooperative Societies Act, 2002, has its Registered as well as Head Office at Madhavpura Market, Shastribaug, Ahmedabad, and carries on banking operations in the State of Gujarat, B Maharashtra among other States in India. According to the Bank, all its activities relating to disbursement of loans are conducted from the Head Office at Ahmedabad.

3. In 1992, the appellant's company took loan from the aforesaid Bank which for the reasons prevailing closed down its business operations in 2001. Thereafter, a Scheme of C Reconstruction approved by the Reserve Bank of India was formulated and a new Board of Management (Administration) came to be appointed to implement the same. Several irregularities were discovered regarding the grant of loans to borrowers with the connivance of the then Chief Executive D Officer, Managing Director and Chairman of the Bank. Several complaints came to be registered against the said officers and several borrowers. Five such complaints were filed against the appellant on 9th July, 2003, before the Chief Metropolitan Magistrate, Ahmedabad, who directed the Economic Offences Wing, State C.I.D. (Crime), Ahmedabad, under Section 156(3) E Cr.P.C. to carry out an investigation. The Investigating Agency submitted a report stating that the allegations complained of had been committed within the territorial limits of the city of Mumbai, Maharashtra, and that the investigation should, therefore, be transferred to the Investigation Agency in Mumbai, Maharashtra.

F 4. The said report was rejected by the Chief Metropolitan Magistrate, Ahmedabad, on the ground that it was not for the Investigating Agency to decide not to investigate a complaint forwarded to it under Section 156(3) Cr.P.C. on the ground that the offence complained of was allegedly committed outside the G territorial jurisdiction of the Investigating Agency. The learned Magistrate by his order dated 31.5.2006, directed the Investigating Agency to carry out a further investigation and report whether the alleged offence had been committed or not.

5. The said order of the learned Chief Judicial Magistrate, Ahmedabad, was challenged by the appellant herein before the H

City Civil and Sessions Court at Ahmedabad in revision which was dismissed on 22.9.2006 by the City Sessions Judge Court No.11, Ahmedabad. A writ petition was filed in the High Court by the appellant on 21.11.2006 being Writ Petition No.2366 of 2006, challenging the decision of the Sessions Court.

6. Before the High Court it was reiterated that the loan had been availed of by the appellant's company from the Mandvi Branch of the Bank in Mumbai which had an independent identity as a registered co-operative Society under the Maharashtra Co-operative Societies Act. It was also reiterated that the loan amount had been disbursed from the said Branch in Mumbai. It was contended that since the cause of action for the alleged offence had arisen outside the territorial jurisdiction of the Chief Judicial Magistrate, Ahmedabad, he could not direct the Investigating Agency under his jurisdiction to conduct an investigation into the complaint made against the appellant in respect of such cause of action.

7. Accepting the views expressed by the Chief Metropolitan Magistrate that the Investigating Agency was only required to state the outcome of the investigation pursuant to an order under Section 156(3) Cr.P.C. and that it had no authority to state which Court had jurisdiction to inquire into the alleged offence, the High Court by its impugned judgment dated 15.3.2007 dismissed the writ petition filed by the appellant, inter alia, on the following grounds :-

(i) That the Investigating Agency had travelled beyond its jurisdiction in expressing its views regarding the territorial jurisdiction in regard to a criminal offence which was for the Courts to decide.

(ii) That the Station House Officer is vested with the authority to investigate any cognizable offence in respect of which an F.I.R. is lodged.

(iii) The powers reserved to the High Court under Section 482 Cr.P.C. could not be interfered with or curtailed on the ground that the Investigating Officer had no territorial jurisdiction over the investigation.

8. It appears that when the writ petitions were taken up for

A hearing a prayer was made for amendment of the prayers by incorporating paragraph 14(BBB) in each of the writ petitions. By virtue of the amended prayer, the appellant wanted the High Court to quash and set aside Enquiry Case No.21 of 2003 filed before the Chief Metropolitan Magistrate, Ahmedabad, and to also quash the order directing investigation under Section 156(3) Cr.P.C. and the proceedings arising therefrom. The said prayer was rejected by the High Court on the ground of delay and also on the ground that the order of the Magistrate dated 9.7.2003 had not been challenged for a period of four years.

9. Learned counsel Mr. I.H. Syed, appearing for the appellant submits that the High Court had dismissed the appellant's Writ Petition on an erroneous interpretation of the provisions of Section 156(3) and 181(4) Cr.P.C. Learned counsel submitted that the High Court had failed to notice that Sub-section (2) of Section 156 Cr.P.C. conferred exclusive jurisdiction on the Investigation Officer to investigate into a case and no proceeding of a police officer in any case in which he is entitled to investigate shall at any stage be called in question. Alleging that the power of the Magistrate under Sub-section (3) was circumscribed by the powers vested in the Investigating Agency under Sub-Section (2) of Section 156 Cr.P.C, and that it was only the Investigating Agency which could decide the question relating to the territorial jurisdiction in respect of the crime committed, learned counsel submitted that the High Court had erred in upholding the views expressed by the learned Chief Metropolitan Magistrate that the Investigating Agency was only required to state the outcome of the investigation conducted pursuant to an order under Section 156(3) Cr.P.C. and that it had no authority or right to state as to which Court had jurisdiction to inquire into the alleged offence in question. Learned counsel submitted that the High Court had erred in law in observing that it was a settled proposition of law that when a Magistrate directs an investigation to be conducted in exercise of his powers under Section 156(3) Cr.P.C. the main duty of the Investigating Agency is to submit a report as to the commission of an offence and, thereafter, it was for the Court concerned to accept such Report and to decide the question of jurisdiction and that the learned

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Magistrate had rightly rejected the Final Report on the ground that the Investigating Agency had no authority under the law to express its opinion on the merits of a case.

10. Learned counsel re-emphasized the submissions made before the High Court that although the Registered Office and Head Office of the Bank were in Ahmedabad in Gujarat, each of its Branches in the other States was an independently registered Co-operative Society and was a unit of its own under the provisions of the Maharashtra Co-operative Societies Act. Furthermore, the loan was availed of and disbursed in Mumbai. Consequently, since the entire cause of action relating to the application and disbursement of the loan had arisen in Mumbai, the Gujarat High Court had committed an error of law in passing the impugned order and the same was liable to be quashed. In support of his aforesaid contention, learned counsel referred to the decision of this Court in *Agencia Commercial International Ltd. vs. Custodian of the Branches of Banco National Ultramarino* [(1982) 2 SCC 482], wherein while considering a similar question, this Court held that in the case of a body corporate its branches are not distinct entities and the Branches are mere components through which the corporate entity expresses itself and all transactions entered into with the Branches are transactions with the corporate body itself. However, a distinction was made in cases of Banks which also operate through its Branches which are regarded for many purposes as separate and distinct entities from the Head Office and each other.

11. Learned counsel then relied on the decision of this Court in *Satvinder Kaur vs. State (NCT of Delhi)* [(1999) 8 SCC 728} in support of his submission that in view of the provisions of Section 156(1) Cr.P.C. a police officer was competent to investigate any cognizable offence and was also competent to forward the same to the police station having territorial jurisdiction if he came to the conclusion that the crime had been committed beyond his territorial jurisdiction.

12. Reference was also made to the decision of this Court in the case of *Naresh Kavarchand Khatri vs. State of Gujarat* [(2008) 8 SCC 300], where the question involved was the High

A Court's jurisdiction to transfer an investigation from one police station to another. In the facts of the said case it was held that under Section 156 Cr.P.C. the police authorities exercise statutory powers to direct transfer of an investigation from one police station to another in the event it was found that they did not have jurisdiction in the matter and the Court should not interfere in the matter at an initial stage in regard thereto.

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13. Similar observations were made in *Asit Bhattacharjee vs. Hanuman Prasad Ojha* [(2007) 5 SCC 786], though in a different context involving the transfer of an investigation ordered under Section 156(3) Cr.P.C. to another State where the major part of the offences had taken place. This Court reiterated that only in the event an Investigating Officer arrived at a finding that the alleged crime had not been committed within his territorial jurisdiction could the F.I.R. be transferred to the police having jurisdiction in the matter.

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D 14. Learned counsel urged that once the Investigating Agency in respect of an order under Section 156(3) Cr.P.C. came to a finding that it did not have territorial jurisdiction in the matter, the High Court could not have directed a fresh investigation into the matter on the ground that it was not for the Investigating Agency to decide the question of jurisdiction which is the prerogative of the Courts.

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15. Appearing for the private respondents, Mr. L.N. Rao, Senior Advocate, submitted that except for disbursement of the loan amount to the appellant through the Mandvi Branch of the Bank at Mumbai, the entire transaction had been proceeded and dealt with at the Head Office in Ahmedabad. Even the application for the loan had been made directly to the Head Office at Ahmedabad instead of filing it in the Mandvi Branch at Mumbai.

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16. On the legal question raised on behalf of the appellant, Mr. Rao submitted that Section 156 Cr.P.C. only spelt out the powers of a police officer to investigate a cognizable case and the power of a Magistrate to order such an investigation to be made. In addition, it was also stipulated that no investigation by a police officer at any stage of such investigation could be questioned on the ground that such officer was not empowered to conduct such investigation. Mr. Rao submitted that the

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decisions cited by Mr. Syed did not really make any difference to the appellant's case as the power of the Investigating Officer to transfer an investigation, which he did not have the jurisdiction to investigate, to a police officer having such jurisdiction, was never at issue in the instant case. What was at issue was the Investigating Officer's decision not to conduct an investigation despite an order passed by the Chief Judicial Magistrate, Ahmedabad, under Section 156(3) Cr.P.C. on the ground that he did not have territorial jurisdiction to undertake such investigation. Mr. Rao submitted that an investigation ordered under the provisions of Sub-Section (4) of Section 181 Cr.P.C. would have to be read in that context.

17. Appearing for the State, Mr. Hemantika Wahi, learned Advocate, submitted that the State was ready to carry out whatever directions that may be given by the Court in regard to the investigation directed to be conducted by the Chief Judicial Magistrate, Ahmedabad.

18. The principal question which emerges from the submissions made on behalf of the parties is whether in regard to an order passed under Section 156(3) Cr.P.C. the police authorities empowered under Sub-Section (1) of Section 156 can unilaterally decide not to conduct an investigation on the ground that they had no territorial jurisdiction to do so.

19. Section 156 Cr.P.C. which is the focus of consideration in this case, reads as under :-

> *"156. Police officer's power to investigate cognizable cases.*
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

A 20. From the aforesaid provisions it is quite clear that a police officer in charge of a police station can, without the order of a Magistrate, investigate any cognizable offence which a Court having jurisdiction over such police station can inquire into or try under Chapter III of the Code. Sub-section (2) of Section 156 ensures that once an investigation is commenced under Sub-section (1), the same is not interrupted on the ground that the police officer was not empowered under the Section to investigate. It is in the nature of a "savings clause" in respect of investigations undertaken in respect of cognizable offences. In addition to the powers vested in a Magistrate empowered under Section 190 Cr.P.C. to order an investigation under Sub-section (1) of section 202 Cr.P.C., Sub-section (3) of Section 156 also empowers such Magistrate to order an investigation on a complaint filed before him.

21. As far as the reference made to Sub-section (4) of Section 181 is concerned, the same appears to be misconceived having regard to the contents thereof which read as follows :-

"181. Place of trial in case of certain offences.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Any offence of criminal misappropriation or of criminal breach of trust may he inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

Sub-section (4) only indicates that an inquiry or trial of an offence of criminal misappropriation or criminal breach of trust can be conducted by a Court within whose jurisdiction the offence had been committed or any part of the property forming the subject matter of the offence is received or retained or was required to be returned or accounted for by the accused person. The said provisions do not account for a stage contemplated on account of an order made under Section 156(3) Cr.P.C.

22. In the instant case, the stage contemplated under

Section 181(4) Cr.P.C. has not yet been reached. Prior to taking cognizance on the complaint filed by the Bank, the learned Chief Judicial Metropolitan Magistrate, Ahmedabad, had directed an inquiry under Section 156(3) Cr.P.C. and as it appears, a final report was submitted by the Investigating Agency entrusted with the investigation stating that since the alleged transactions had taken place within the territorial limits of the city of Mumbai, no cause of action had arisen in the State of Gujarat and, therefore, the investigation should be transferred to the police agency in Mumbai. There seems to be little doubt that the Economic Offences Wing, State CID (Crime), which had been entrusted with the investigation, had upon initial inquiries recommended that the investigation be transferred to the police agency of Mumbai. In our view, both the trial Court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 Cr.P.C. to hold that it was not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction. A glance at the material before the Magistrate would indicate that the major part of the loan transaction had, in fact, taken place in the State of Gujarat and that having regard to the provisions of Sub-section (2) of Section 156 Cr.P.C., the proceedings of the investigation could not be questioned on the ground of jurisdiction of the officer to conduct such investigation. It was open to the learned Magistrate to direct an investigation under Section 156(3) Cr.P.C. without taking cognizance on the complaint and where an investigation is undertaken at the instance of the Magistrate a Police Officer empowered under Sub-section (1) of Section 156 is bound, except in specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter.

23. Having regard to the law in existence today, we are unable to accept Mr. Syed's submissions that the High Court had erred in upholding the order of the learned Trial Judge when the entire cause of action in respect of the offence had allegedly arisen outside the State of Gujarat. We are also unable to accept the submission that it was for the Investigating Officer in the

A course of investigation to decide whether a particular Court had jurisdiction to entertain a complaint or not. It is the settled law that the complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The B Investigating Agency was required to place the facts elicited during the investigation before the Court in order to enable the Court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the Investigating Agency to forward its report with the observation that since the C entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the concerned Police Station in Mumbai. Section 156(3) Cr.P.C. contemplates a stage where the learned Magistrate is not convinced as to whether D process should issue on the facts disclosed in the complaint. Once the facts are received, it is for the Magistrate to decide his next course of action. In this case, there are materials to show that the appellant had filed his application for loan with the Head Office of the Bank at Ahmedabad and that the processing and the sanction of the loan was also done in Ahmedabad which E clearly indicates that the major part of the cause of action for the complaints arose within the jurisdiction of the Chief Metropolitan Magistrate, Ahmedabad. It was not, therefore, desirable on the part of the Investigating Agency to make an observation that it did not have territorial jurisdiction to proceed with the F investigation, which was required to be transferred to the Police Station having jurisdiction to do so.

24. On the materials before him the learned Magistrate was fully justified in rejecting the Final Report submitted by the Economic Offences Wing, State CID (Crime) and to order a fresh G investigation into the allegations made on behalf of the Bank. The High Court, therefore, did not commit any error in upholding the views expressed by the Trial Court. As mentioned hereinbefore, Section 181(4) Cr.P.C. deals with the Court's powers to inquire or try an offence of criminal misappropriation or of a criminal breach of trust if the same has been committed or any part of H the property, which is the subject of the offence, is received or

retained within the local jurisdiction of the said Court.

25. The various decisions cited by Mr. Syed, and in particular the decision in *Satvinder Kaur's* case (supra) provide an insight into the views held by the Supreme Court on the accepted position that the Investigating Officer was entitled to transfer an investigation to a Police Station having jurisdiction to conduct the same. The said question is not in issue before us and as indicated hereinbefore, we are only required to consider whether the Investigating Officer in respect of an investigation undertaken under Section 156(3) Cr.P.C. can file a report stating that he had no jurisdiction to investigate into the complaint as the entire cause of action had arisen outside his jurisdiction despite there being material available to the contrary. The answer, in our view, is in the negative and we are of the firm view that the powers vested in the Investigating Authorities, under Sections 156(1) Cr.P.C., did not restrict the jurisdiction of the Investigating Agency to investigate into a complaint even if it did not have territorial jurisdiction to do so. Unlike as in other cases, it was for the Court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it.

26. We, therefore, are not inclined to entertain the appeal and the same is, accordingly, dismissed.

D.G. Appeal dismissed.