(1980) 06 MAD CK 0004

In the Madras High Court

Case No : Criminal M.P. 5628/79

A.S.A. Sridaran APPELLANT

Vs

State RESPONDENT

Date of Decision : 16-06-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 408

Citation : (1980) 06 MAD CK 0004

Hon'ble Judges : Sathar Sayeed, J

Bench : Single Bench

Advocate : Mr. A.A. Selvan for the Petr, for the Appellant; The Public Prosecutor on behalf of the State, for the Respondent

Final Decision : Allowed

Judgement

Sathar Sayeed, J.—The above petition has been filed by the petitioner to quash the proceedings in a first information report pending on the

file of the Sub Divisional Judicial Magistrate, Sattur in Crime No. 3 of 1979 of the District Crime Branch, Ramnad West at Madurai. The petitioner

herein contends that he has been accused of an offence under Ss. 408, 420 and 477-A, I,P.C. in a first information report filed by the respondent

before the Sub Divisional Judicial Magistrate, Sattur, Ramanathapuraro District in Crime No. 3 of 1979, on the ground that the petitioner, as the

Branch Manager for Thilagam Match Industries and also Rajarathina Match Industries situate at Hassan in Karnataka State, has falsified the

accounts and made false entries in the daily reports about the purchase of timber and has thus misappropriated amounts to a tune of Rs. 2. 25

lakhs.

2. The petitioner mainly contends that as the Branch Manager, he had no functions or deifiers at Sivakasi at any time and, therefore the laying of

the impugned first information report in the Court of the Sub Divisional Judicial Magistrate, at Sattur against him is without jurisdiction and void.

The petitioner further contends that the alleged offence could, if at all, relate only with reference to his functioning as the Branch Manager of

Thilagam Match Industries at Hassan in Karnataka State and the Sub Divisional Judicial Magistrate, Sattur of Tamil Nadu State has no jurisdiction

to take on his file the first information report filed by the respondent. The petitioner inter alia contends that the filing of the first information report

against him and the proceedings against him in the State of Tamil Nadu are nothing but abuse of process of Court, and just because the Head

Office of Thilagam Match Industries is situate at Sivakasi jurisdiction cannot be created or clothed or vested within the State of Tamil Nadu. No

amounts whatsoever have misappropriated by him and that the belated and baseless charges leveled against him arise out of the enmity of the

complainant against the petitioner for having left his service, and taking up an employment in a rival concern. With reference to the allegations in the

first information regarding the entries made by the petitioner and with reference to excess measurements alleged therein the petitioner contends that

the excess measurements were made with knowledge and under the implicit orders of the proprietor. Further, at the time when such entries of

excess measurements were made by the petitioner, no objections whatsoever were raised by the complainant. The entries made by him with

respect to the accounts during his period of employment were periodically checked and counter-checked by the petitioner''s superior officers and

the present charges? against the petitioner under the aforesaid sections are mala fide, baseless and are intended only to harass the petitioner. With

these contentions the petitioner has filed the above petition under S. 482, Crl. P.C., to call for the records of investigation against the petitioner and

to quash the proceedings against him.

3. The Inspector of Police, District Crime Branch, Ramnad West at Madurai has filed a counter contending that the. petitioner was appointed as

Branch Manager, Thilagam Match Industries at Hassan by the Head Office at Sivakasi with effect from 7th June, 1976 and in; the year 1978 the petitioner was appointed to hold additional charge as Manager of Rajarathinam Match Industries, Branch at Hassan with Head Office at Sivakasi.

The respondent states that there is no flaw in law regarding the jurisdiction and denies that the first information report against the petitioner has

been filed to create jurisdiction in the State of Tamil Nadu. He further contends that this is a matter that has to be investigated and this petition filed

by the petitioner cannot be gone into by this Court, as it is primarily the function of the investigating officer to find out the allegations leveled against

the petitioner in the first information report. It is further averred in the counter filed by the State that the specific averment in the first information

report is to the effect that the petitioner had taken monies from Sivakasi which has got to be enquired into. Regarding the misappropriation of the

amount of Rs. 2.25 lakhs, the respondent in his counter contends that monies have been parted with at Sivakasi on the false representation

communicated by the petitioner and, therefore, part of the offence had taken place at Sivakasi, thereby giving jurisdiction to the respondent to file

the first information report in the State of Tamil Nadu. The respondent further contends that he is empowered to investigate into the offences of

cheating, breach of trust, misappropriation and falsification of accounts of the petitioner and there is no legal bar for the respondent in investigating

into this matter.

4. As far as the allegations of the petitioner that the complaint against him has been filed since he has taken another appointment, the respondent

contends, that these allegations have again to be enquired into, to find out, whether there was any ill-will or enmity against the petitioner by the

complainant. With reference to the delay in filing the first information report, the respondent contends that the delay may be due to the late

detection and further- it is contended, that at this stage the matter cannot be gone into by this Court. The respondent further contends that the delay

of investigation would amount to interference with the investigation which is a statutory right vested with the respondent, and that this Court cannot

exercise its powers under S. 482, Crl. P. C, and therefore, prays that this petition be dismissed and the stay granted with reference to the

investigation be vacated.

5. On perusing the petition and the counter, the question that arises for

consideration at this stage is, whether the respondent has jurisdiction to file

the first information report in Crime No. 3 of 1979 before the Sub-Divisional Judicial Magistrate, Sattur. For this purpose, the learned counsel

appearing for the petitioner has brought to my notice a decision of the Supreme Court reported in P. P. Kapur v. State of Punjab 1960 3 S.C.R.

368. The Supreme Court has held in the above decision as follows :-

The inherent jurisdiction of the High Court could be exercised to quash proceedings in a proper case either to prevent the abuse of the process of

any Court or otherwise to secure the ends of justice. The following are some categories of cases where the inherent jurisdiction could and should

be exercised to quash proceedings:

(i) Where there was a legal bar against the institution or continuance of the proceedings :

(ii) Where the allegations in the first information report or complaint did not make out the offence alleged; and

(iii) Where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the

charge.

Basing these principles, we have to see whether the first information report filed by the respondent herein against the petitioner, could be quashed

by this Court under S. 482, Crl. P.C.

6. The first information report is dated 3rd August, 1979. It states that the petitioner during the year 1978 falsified the accounts and made false

entries in the daily reports about the purchase of timber and misappropriated the complainant''s amount of RS. 2ï¿½ lakhs and utilized it for his

own and thus the petitioner has misappropriated and cheated the complainant. The complaint lodged by the complainant is under SS. 408, 320

and 477-A, I.P.C. It states as follows:

The accused was appointed as Branch Manager. Thilagam Match Industries, Hassan, in this Office Order S.M.I 106, dated 7th June, 1976 and

he was working from 10th June, 1976. Since January, 1978 he was holding additional charge as Manager for Rajarathinam Match Industries at

Hassan a sister concern having its office in the same place. He was in charge of both the branches and he was responsible for the purchase of timbers for making split to be dispatched to Sivakasi.

(underlining is mine).

Inter alia, it is further found in the first information report that.

On 12th February, 1979, the accused was transferred to Sivakasi, because of his malpractices and misappropriation. The accused refused to obey

the orders and sent false petitions and telegrams as if they were sent by the Workers Union of the factory-to retain him as manager. He also issued

unauthorized gate passes in white papers and allowed the waste wood to be taken away in large quantity by the workers for his support.

Finally the accused was terminated from service on 8th June, 1979 and he is at Sivakasi with the amount misappropriated by him.

The accused had fabricated records, cheated the proprietor and misappropriated a sum of Rs. 2 1/2 lakhs of the company and he is liable for the

prosecution under SS. 408, 420 and 477A. I.P.C.

It is on the basis of these allegations in the first information report against the petitioner, the learned counsel for the petitioner contends that the

petitioner has not committed any such offence as alleged in the first information report and in any event assuming, but without admitting that the

petitioner has committed the offences as alleged in the first information report, action against the petitioner can be taken only at Hassan, Karnataka

State and not in Tamil Nadu State. It is this point that is urged by the petitioner''s counsel, and it is strenuously contended that the respondent has

no jurisdiction to file the first information report in Tamil Nadu State before the Sub Divisional Judicial Magistrate, Sattur.

7. I have perused the first information report and I also find that a statement has been filed to show as to the '' quantum of amount that the

petitioner has misappropriated. At the top of the statement filed, it is shown as ""Rajarathinam and Thilagam Match Industries, Hassan (Karnataka

State) Period from 1st January, 1978 to 31st December, 1978."" In another statement, it is shown as ""Rajarathinam Match Industries, Hassan and

Thilagam Match Industries, Hassan."" These two statements have been filed along with the first information report to show as to how the sum of

RS. 2 1/4 lakhs has been misappropriated by the petitioner. It is specifically averred in the first information report that month-war statement is

enclosed.

8. Learned counsel appearing for the petitioner contends that as far as the maintainability of a'' petition under S. 482, Crl. P. C. is concerned, the

Supreme Court has held in R.P. Kapur Vs. The State of Punjab, that this Court has got inherent jurisdiction and proceedings against the petitioner

of the present kind, can be quashed where there is a legal bar against the institution or continuance of the proceedings and where the allegations in

the first information report or complaint did not make out the offence as alleged and where either there was no legal evidence adduced in support

of the charge or the evidence adduced clearly or manifestly failed to prove the charge.

9. Learned counsel for the petitioner further contends that on the first information report placed and filed before the Sub-Divisional Judicial

Magistrate along with its enclosures, it is clear that the alleged offence was committed only at Hassan in Karnataka State and such being so, the

State of Tamil Nadu has no jurisdiction to take on file the first information report against the petitioner under SS. 408, 420 and 477-A, I.P.C.

10. A perusal of the First Information Report makes it clear that the accused-petitioner was working as a Branch Manager for Thilagam Match

Industries and also Rajarathinam Match Industries at Hassan, Karnataka State and that he was appointed as Branch Manager, Thilagam Match

Industries at Hassan in the office order S.M.I,. 106, dt. 7th June, 1976 and was working there. The question for consideration would be whether

the Karnataka Stare has got jurisdiction to try the charges against the petitioner or the Tamil Nadu State. It is contended by the learned counsel for

the petitioner that the petitioner was appointed only at Hassan, as Branch Manager in the office order issued at Hassan in S.M.I. 106, dt. 7th June

1976, and, therefore, the Tamil Nadu State has no jurisdiction to try the offences committed by the petitioner. The counsel further contends that

even the statements of accounts filed along with the first information report also show that the petitioner, while in office from 1st January, 1978 to

31st December, 1978 and from 4th January, 1979 to 17th January, 1979, has committed the alleged offence at Hassan where the aforesaid

factories are situated and not in Tamil Nadu State and there is nothing in the statements (enclosures) filed to show that money was taken from

Sivakasi. The learned counsel also contends that even though the Head Office is at Sivakasi, the appointment order was issued to the petitioner at

Hassan and the transaction is said to have (sic) taken place at Hassan and that the petitioner, in spite of his transfer, has never gone to Sivakasi nor

worked at any time at the Head Office at Sivakasi and it is on this ground also, the counsel contends that the petitioner cannot be charged with the

aforesaid offence at Sattur in Tamil Nadu State.

11. The learned counsel appearing for the petitioner and the learned Public Prosecutor have taken me through the first information report in entirety

and I find in it that ""the accused was appointed as Branch Manager, Thilagam Match Industries, Hassan in this office order, S.M.I. 106, dated 7th

June, 1976 and he was working from 10th June, 1976."" Therefore, it is clear that the accused-petitioner was appointed by the office at Hassan

and, therefore, the jurisdiction to institute any proceedings against the petitioner would lie only at Hassan in Karnataka State and not in Tamil Nadu

State. I am fortified with this from the statements of accounts filed by the prosecution along with the first information report which clearly show the

place where the petitioner has committed the offence as alleged by the prosecution and nowhere in the statements of accounts it is stated that

monies were drawn from Sivakasi and that the petitioner has committed the offences at Sivakasi, within the State of Tamil Nadu. Just because the

Head Office is at Sivakasi, the respondent cannot (sic) clothe the court with jurisdiction to file the first information report against the petitioner

before the Sub Divisional Judicial Magistrate, Sathur. As pointed out by the Supreme Court in R. P. Kapur v. State of Punjab 1950 3 S.C.R. 388,

if it is found that there is a legal bar against the institution or continuance of the proceedings, this Court, under S. 482, Crl. P. C, can quash the

proceedings against the petitioner.

12. The learned counsel appearing for the petitioner has also cited a decision reported in Kameshwar Prasad Singh Vs. Nalanda Sales

Corporation, , wherein it has been held :-

Where, from the statement of facts in the complaint, it appears that all acts constituting the offence of criminal misappropriation, breach of trust and

falsification of accounts, were committed within local limits of jurisdiction of a particular Court, the offence ought to have been tried by it, and

complaint ought not to have been filed in the Court within whose jurisdiction the consequence alleged to have been so ensued.

It is on the basis of this observation of the Supreme Court, the learned counsel for the petitioner contends that cheating or embezzlement of the

amount, according to the first information report, had taken place only at Hassan and the petitioner could be tried only at Hassan by a Court which

had territorial jurisdiction over Hassan and not in the Tamil Nadu State. On the other hand the learned Public Prosecutor contends that the entire

matter is still in an embryonic stage and only a first information report has been filed with respect to certain offences against the petitioner and, at

this stage of investigation by the police, this Court should not quash the proceedings against the petitioner under S. 482, Crl. P. C, for, it would be

premature. The learned Public Prosecutor further contends that, may be, the further evidence to be collected by-the police in the course of

investigation would confirm or falsify the allegations made in the first information report. But, he would argue that this is not the proper stage to

quash the proceedings when a first information report is filed against the petitioner be-'' fore the Sub-Divisional Judicial Magistrate at Sathur. No

doubt, the learned Public Prosecutor is justified in contending that the court''s function begins, when a charge sheet is preferred or filed before it.

But, the question in this case for consideration, as stated above, is, when the petitioner was appointed as Branch Manager by the office order at

Hassan and when he has falsified the accounts or misappropriated the amounts or cheated the complainant at Hassan, which court has got

jurisdiction to try the case, whether the Court in Tamil Nadu State has got jurisdiction, or the place where the petitioner has committed the offence

has got jurisdiction?

13. For this purpose, we have again to look into the first information report in this case. As stated earlier by me, the first information report clearly

brings forth the fact that the petitioner was appointed as Branch Manager only at Hassan and that even the enclosures and the statements of

account filed by the prosecution along with the first information report show that the petitioner has misappropriated to the tune of RS. 2| lakhs at

the office at Hassan which lies in Karnataka State and nowhere has it been stated that the petitioner has committed the offence in Tamil Nadu

State. Just because the Head Office of the complainant is situate at Sivakasi, that cannot clothe or empower the respondent therein to file a first information report within the jurisdiction of the Tamil Nadu State. We have to see in which part of the State the offence was committed. It is clear

from the records that the offence was committed only at Hassan, and if that is so, it is only the Karnataka State that has got jurisdiction and not the

Tamil Nadu State. Learned Public Prosecutor cites a decision reported in Jehan Singh v. Delhi Administration 1974 2 S.C.J. 252 and on the

analogy of this decision, he contends that the first information report does disclose the commission of a cognizable offence by the petitioner and,

therefore, it is only the Tamil Nadu State that has got jurisdiction to try the case of the petitioner and an enquiry by the court, if it is found that the

Tamil Nadu State has no jurisdiction, then the case will have to be transferred to the proper court which has its jurisdiction. The learned Public

Prosecutor further argues that if the allegations in the first information report are found; to be correct and constitute an offence as alleged, then

there is no legal bar to institute the proceedings against the petitioner in the Sub-Divisional Judicial Magistrate Court at Sattur and in any event,

pending enquiry by the Court where the first information report was filed, this court, under S. 482, Crl. P.C. cannot appraise the evidence

collected by the police in their investigation and, therefore, the present petition filed by the petitioner under S. 482, Crl. P.C. is premature and

incompetent. The learned Public Prosecutor not only relies on Jehan Singh v. Delhi Administration but also relies on a decision reported in King

Emperor v. Khwaja Nazir Ahmed 1945 I M.L.J. 36 P.C. : 58 L.W.57 wherein it has been observed :

Where there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any

authority from the judicial authorities the High Court cannot, in the exercise of its powers of inherent jurisdiction under S. 561-A, Crl. P.C.

interfere with those rights and quash the police investigation.

It is on the basis of this observation of the Privy Council the learned Public Prosecutor contends that this Court is restrained to interfere at this

stage, more particulate under S. 482, Crl. P.C, when the first information report is filed before the Sub Divisional Judicial Magistrate, Sattur.

14. It cannot be doubted that there is a statutory right on the part of the police to investigate into the alleged cognizable crime or offence committed

by the petitioner. But, the short question that has been raised by the petitioner''s counsel in this case is, whether on the sum and substance of the

first information report, can a case be filed in the State of Tamil Nadu when the petitioner, according to the first information report, has committed

an offence at Hassan which place is within the jurisdiction of Karnataka State? The order of appointment of the petitioner was issued at Hassan

which place is within the jurisdiction of Karnataka State. If that be so, and which is evident from the records filed before me, there is a legal bar

against the institution or continuance of the proceedings in the State of Tamil Nadu. Just because the Head Office is at Sivakasi which controls the

factories at Hassan and other places, I am of the view that the Sub Divisional Judicial Magistrate at Sattur cannot have jurisdiction to investigate

into the crime. That apart, even the complainant in the complaint, lodged against the petitioner, has stated ""though the accused was working at

Hassan in Karnataka State, the Head Office is at Sivakasi where also he had taken money for his transaction. The offence under the above

sections can be prosecuted at their end"". I am afraid just because the Head Office is at Sivakasi, the Sub Divisional Judicial Magistrate at Sattur

situate in Tamil Nadu State cannot have jurisdiction to take on its file the case against the petitioner at Sattur. From the first information report, it is

so clear that the petitioner was appointed as Branch Manager at Hassan and the offences as alleged by the prosecution are said to have taken

place at Hassan as is evidenced from the enclosures filed along with the first information report. The petitioner has contended that no dealings or

functions as Manager or in any other capacity were done by him at any time in Sivakasi and hence contends that the filing of the first information

report in the Sub Divisional Magistrate''s Court at Sattur is only to create jurisdiction in the State of Tamil Nadu.

15. It is true, the police is entitled to investigate into the offence committed by the petitioner. But the question, as stated above, is, where should the

charge-sheet be filed, when the enclosures filed along with the first information report, clearly show that the offence was committed at Hassan and

when nothing is mentioned in the enclosure, with respect to the monies drawn from Sivakasi? I am of the view, on going through the entire records,

to the Sub Divisional Judicial Magistrate, Sattur has no jurisdiction to take on file the first information report in Crime No. 3 of 1979 against the petitioner. The respondent is entitled to go ahead with the further enquiry into the matter against the petitioner and if it is found that the petitioner

has committed the offence, the respondent can take action against the petitioner in appropriate court and not in the State of Tamil Nadu, for, prima

facie the first information report arid the enclosures filed clearly show that the offence is said to have been committed riot at Sivakasi but at Hasan

which lies within the jurisdiction of the State of Karnataka.

16. Under these circumstances, this petition is allowed and the first information report filed in Crime No. 3 of 1979 of the District Crime Branch,

Ramnad West at Madurai, before the Sub-Divisional Judicial Magistrate, at Sattur is quashed.

