
(2013) 09 PAT CK 0019

In the Patna High Court

Case No : Criminal Miscellaneous No. 6473 of 2013

Dr. Ambarish Soni

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 4 PLJR 823

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Sandeep Kumar, for the Appellant; Nand Kumar for the State, Sudama Singh and Rajani Kant Singh for the O.P. No. 2, for the Respondent

Judgement

Ahsanuddin Amanullah, J.—Heard learned counsel for the petitioner, learned A.P.P. for the State and learned counsel appearing for the opposite party No. 2. The present application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") seeks quashing of the order dated 20.12.2012 by which cognizance has been taken u/s 420 of the Indian Penal Code by the S.D.J.M., Sasaram in Complaint Case No. C 1383 of 2010.

2. The allegation in the complaint against the petitioner is that he, being an Eye Surgeon, had operated the petitioner for cataract at Dhanbad which later on was found not to have been performed as required inasmuch as the lens which was said to have been implanted was missing when subsequent operation had taken place at Amritsar.

3. Learned counsel for the petitioner submits that from the plain reading of the complaint it is apparent that all the actions of the petitioner which the complainant has alleged had taken place at Dhanbad and not outside. It is submitted that for the purposes of creating jurisdiction in the Courts at Sasaram, a paragraph has been introduced in the complaint in which it is stated that since the complainant had talked to the petitioner on telephone at Sasaram before

going to Dhanbad for such operation of his eyes, the local Courts were competent to entertain the said complaint. He submits that the law has now been settled which clearly stipulates that the statutory requirement of Section 177 of the Code confers specific power on the Court within whose local jurisdiction the incident occurred to try such a case. In the present case when no cause of action or even part cause of action arose within the local jurisdiction of the Court concerned, any interference in the matter or entertaining of an application/complaint at Sasaram for events entirely taking place at Dhanbad, was an abuse of the process of the Court and in fact not maintainable. It is submitted that for the sake of argument, without admitting the same, if it is accepted that telephonic talk did take place between the petitioner and the complainant, then also even as per the complaint itself there was no inducement or any sort of criminal misconduct committed by the petitioner so as to give any basis for conferring jurisdiction to the local Courts at Sasaram. Learned counsel, in support of his contentions, relies upon the following decisions of the Hon''ble Supreme Court; (i) Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, (ii) Bhura Ram and Others Vs. State of Rajasthan and Another, and (iii) Ramesh and Others Vs. State of Tamil Nadu,

4. Learned A.P.P. for the State submits that the allegations are serious in nature and the Courts at Sasaram do have jurisdiction and the petition is misconceived.

5. Learned counsel appearing for the opposite party No. 2 has also opposed the application and submits that the Courts have also decided in similar matters that inherently no Court of competent jurisdiction is barred from taking cognizance and the matter to reach the stage of Section 177 of the Code will be only after cognizance is taken and enquiry or trial is held. It is submitted that in the present case only cognizance has been taken and thus the petition ought not to be entertained. For such proposition, he has relied upon a decision of the Hon''ble Apex Court in the case of Trisuns Chemical Industry Vs. Rajesh Agarwal and others, a decision of the Jharkhand High Court in the case of Swararaj Thackeray @ Raj Thackeray Vs. The State of Jharkhand and Hamid Raza Khan @ Hamid Raza reported in 2009 (1) East. Cr.C. 376 (Jhr.); and a decision of a Bench of this Court in the case of Ramji Singh and Others Vs. State of Bihar and Others He submits that in the case of Ramji Singh (supra) the Patna High Court had referred to the decision in the case of Y. Abraham Ajith (supra) and still held that the local Court had jurisdiction despite the plea being taken that the cause of action did not arise at that place. He has further submitted that in the case of Y. Abraham Ajith (supra) the stage was prior to taking of cognizance whereas in the present case cognizance has already been taken by the concerned Magistrate.

6. Learned counsel for the petitioner, by way of reply, submits that the objection to the stage cannot be sustained in view of the decision of the Hon''ble Supreme Court in the case of Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, in which it was held that just because the accused has a right to plead at the time of framing of charge will not come in the way of the Court in

exercising its jurisdiction u/s 482 of the Code. Learned counsel further submits that the decisions relied on behalf of the petitioner are much later in time and has been the consistent view of the Hon'ble Apex Court as well as the High Courts. Learned counsel further submits that even as per the decisions relied upon by the opposite party No. 2, the Court has held that after cognizance when the case comes for enquiry or trial the stage would come when the point of jurisdiction will be relevant, which in the present case has arrived in the sense that the next stage after cognizance has necessarily to be the stage of enquiry/trial. Learned counsel further submits that it is a basic principle of law that point of jurisdiction strikes at the root of the matter and in the present case when the jurisdiction of the Court at Sasaram is challenged and it is proved that no cause of action or even part cause of action arose at Sasaram, the maintainability of a criminal proceeding at Sasaram is an abuse of the process of the Court and also beyond the overall contemplation and stipulation as well as harmonious and logical reading of the Code since essentially the spirit of the Code requires that the inquiry and trial should proceed before a Court within whose local jurisdiction the offence is committed.

7. Upon considering the rival contentions, this Court is in agreement with the submissions of learned counsel for the petitioner: From the plain reading of the entire complaint it does not appear that there was any cause of action or even part cause of action for which the proceeding could have been initiated within the local jurisdiction of the Courts at Sasaram. Whatever is alleged against the petitioner, it starts and ends at Dhanbad and not beyond. The decisions relied upon by learned counsel for the petitioner are appropriate and applicable to the facts and circumstances of the present case whereas the decisions relied upon by learned counsel for the opposite party No. 2 are distinguishable both on facts as well as in law.

8. For the reasons aforesaid, this Court exercising its inherent jurisdiction u/s 482 of the Code quashes the proceeding arising out of Complaint Case No. C 1383 of 2010 as well as order taking cognizance dated 20.12.2012. However, the opposite party No. 2 shall be at liberty to institute a fresh proceeding in accordance with law before the Court having jurisdiction as contemplated u/s 177 of the Code. The application accordingly, stands allowed.