

(2005) 05 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : Pet. U/S 561-A No. 56 Of 2004

Haji Gh. Mohammad Bhat and Others	APPELLANT
Vs	
State of Jammu and Kashmir and Others	RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(2), 178, 190, 195, 251
Ranbir Penal Code, 1989 — Section 120B, 385, 420

Citation : (2005) 05 J&K CK 0014

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : R.A. Jan, for the Appellant; M.A. Rathore, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—The petitioners have sought indulgence of this Court for quashing the proceedings initiated against the petitioners

and respondent No. 2 in terms of challan presented by Crime Branch, Srinagar under Sections 420, 385, 120B of RFC in the Court of learned

Chief Judicial Magistrate, Srinagar and, dated 3rd April, 2004, 8th May, 2004, 29th June 2004 and 7th August, 2004, passed by the learned

Chief Judicial Magistrate, Srinagar, on the grounds taken in the petition.

2. The brief facts of the case are as under;--

A complaint has been lodged before Crime Branch, Srinagar by the persons who seem to be the parents of the students of Mithalya Minority

Dental College and Hospital Darbanga, Bihar. The Crime Branch after receiving the complaint registered FIR No. 270 of 2001 u/s 420, 385,

120B of RFC and after conducting investigation presented the challan before the court of learned Chief Judicial Magistrate, Srinagar on 2nd of

July, 2003.

3. The petitioners have moved so many applications in order to avoid to cause appearance before the Court of learned Chief Judicial Magistrate

which is evident from the interim orders dated 3rd of April, 2004, 8th May, 2004, 29th June, 2004, 7th August, 2004, 29th September, 2004 and

17th November, 2004, for a period of one year and four months from the date of presentation of the challan till filing of the petition in hand.

4. The argument of Mr. Jan is that the entire proceedings are without jurisdiction and the abuse of process of law for the following reasons;--

1. That alleged occurrence has taken place at Bihar, hence the Crime Branch has no power to investigate the matter and learned Chief judicial

Magistrate, Srinagar is lacking territorial jurisdiction to try the case;

2. The evidence collected does not disclose commission of any offence.

5. Mr. Rathore while addressing arguments argued that the occurrence has also taken place within the territorial jurisdiction of learned Chief

Judicial Magistrate, Srinagar and the material collected by Investigating Officer disclose the commission of offence(s).

6. Perused. Considered. Whether the Chief Judicial Magistrate, Srinagar has the jurisdiction to try the case or not, is not a ground for quashing the

proceedings for the following reasons;--

The learned Chief Judicial Magistrate has powers to take cognizance and it is for the accused to plead that the Judicial Magistrate is not having the

jurisdiction and Magistrate has to pass appropriate orders in terms of Section 251(d) of Cr.P.C.

7. In Trisuns Chemical Industry Vs. Rajesh Agarwal and others, Apex Court has observed as under;-

11. The only restriction contained in Section 190 is that the power to take cognizance is ""subject to the provisions of this Chapter,"" There are 9

Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an

offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the Old

Code of Criminal Procedure (1898) the commencing words were like there: ""Except as hereinafter provided."" Those words are now replaced by

Subject to the provisions of this Chapter."" Therefore, when there is nothing in

Chapter XIV of the Code to impair the power of a judicial

magistrate of first class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a magistrate of

the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of

taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Any way that is a different matter.

8. In *Manohar M. Galani Vs. Ashok N. Advani and Another*, the Apex Court has observed as under; -

4. So far as the quashing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, we also find that the High

Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in

coming to the conclusion that Section 195 of the Code of Criminal Procedure will be a bar. In our opinion, it was rather premature for the High

Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled.

We, therefore, set aside the orders quashing the two complaints and the investigation made thereunder and direct that those cases may proceed in

accordance with law.

Needless to mention that our setting aside the impugned order does not tantamount to expression of our opinion on merits and the accused,

therefore, may not feel aggrieved and are entitled to take any appropriate remedy that is available to them under the law.

9. In *Medchl Chemicals and Pharma Pvt. Ltd. v. Biological E. Ltd., and Ors.* AIR 2000 SC 1869, the Apex Court has observed as under; ""16.

Be it noted that in the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding

would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and

in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as

noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction.

10. The Apex Court has held in *State of Andhra Pradesh Vs. Golconda Linga*

Swamy and Another, that the courts should normally refrain from giving prima facie opinion when entire facts of the case are incomplete and hazy. The FIR/challan cannot be quashed on the grounds that investigating agency and the Court at Srinagar are not having territorial jurisdiction.

11. The Apex Court in *Satvinder Kaur v. State (Govt. of N.C.T. of Delhi)* reported in 1999 CriL.J 4566 observed as under; -

10... Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police

station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean

that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it.

11. Chapter XIII of the Code provides for "jurisdiction of the Criminal Courts in inquiries and trials." It is to be stated that under the said chapter

there are various provisions which empower the Court for inquiry or trial of a criminal case and that there is no absolute prohibition that the offence

committed beyond the local territorial jurisdiction cannot be investigated, inquired or tried...

15. Hence, in the present case, the High Court committed grave error in accepting the contention of the respondent that Investigating Officer had

no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of police

station at Delhi. The appreciation of the evidence is the function of Courts when seized of the matter. At the stage of investigation, the material

collected by an Investigating Officer cannot be judicially scrutinized for arriving at a conclusion that police station officer at particular police station

would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is

uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said

offence can be inquired into or tried by a Court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that

S.H.O., Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the fact of it, illegal and erroneous. That apart,

Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of respondent No. 2 on the ground of want of territorial jurisdiction.

12. While applying the test to the instant case the question of jurisdiction cannot be a ground for quashing the proceedings. Whether the material collected by the Investigating Officer disclose prima facie the commission of offence and whether that can be a ground for quashing proceedings?

The argument of Jan is devoid of any force, because it is within the domain of the Magistrate to hold whether there are grounds to presume that

accused are involved in the commission of offence(s) or not. In case that question will be decided by this Court, that will amount to depriving, the

Magistrate from giving his opinion and, the aggrieved person from the right of appeal/revision whichever is available.

13. While going through the file, it appears that Crime Branch at Srinagar has swung into action after complaint was lodged in terms of which FIR

No. 270 of 2001 has been lodged. The Investigating Officer has tried to make all efforts to collect all material and after collecting the material has

come to the conclusion that all the accused are involved in the commission of offence. There is nothing on record which suggests the fact that the

proceedings are the abuse of process of law.

14. The Apex Court in Union of India and others Vs. B.R. Bajaj and others, has observed that when the facts of the case disclose commission of

offence, FIR or investigation cannot be quashed.

15. The petitioner and respondent No. 2 have from the date of presentation of the challan i.e. 2nd July 2003 avoided to cause appearance and

after getting adjournments from 2nd July 2003 have failed to get any favorable order in terms of the application presented for exemption of the

presence of the accused, have presented this petition just to avoid causing appearance before learned Chief Judicial Magistrate, Srinagar,

16. The orders impugned are well reasoned, speaking and are legally correct. The said orders are not in any way abuse of process of law.

In the given circumstances, it is proper to refrain from offering comments that whether there are grounds to presume that accused are prima facie

involved in the commission of offence or otherwise because that will amount to prejudging the case prematurely.

17. Having glance of the above discussion, the petition merits to be dismissed. Be it noted that the dismissal of the petition does not amount to

expression of opinion on merits. The accused are at liberty to seek appropriate remedy available to them under law.

18. Viewed thus the petition is dismissed. Send down the trial court file along with a copy of this order. The parties present are directed to cause

appearance in the court below on 31.05.2005. At this stage Mr. R. A. Jan submitted that three weeks time be granted for seeking appropriate

remedy. Prayer is granted.