
(2008) 05 SHI CK 0019
In the High Court Of Himachal Pradesh

Indrajeet Mitra and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 498

Citation : (2008) 3 ShimLC 105

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is a petition filed by the petitioners u/s 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing the entire proceedings against the petitioners initiated on the basis of the F.I.R. No. 78 of 2004 dated 25.3.2004, registered at Police Station Chhota Shimla (East), u/s 498/34 I.P.C.

2. A notice of the petition was issued to respondents who filed their replies. Rejoinder was also filed by the petitioners.

3. I have heard the learned Counsel for the parties and have also gone through the record.

4. The submissions made by the learned Counsel for the petitioner were that the offence u/s 498-A is not a continuous offence. He also submitted that no occurrence had taken place within the jurisdiction of this Court and according to the provisions of Section 177 Cr.P.C, every offence shall ordinarily be enquired into and tried by a Court within whose jurisdiction it was committed and since no offence was committed within the jurisdiction of this Court, the proceedings lodged by the petitioners are liable to be quashed.

5. To substantiate his submissions, the learned Counsel for the petitioners had relied upon the following decisions:

6. The decision in *Manish Ratan and Others Vs. State of M.P. and Another*, which shows that in that case, appellant 1's father-in-law lodged a complaint with police at Jabalpur (MP) alleging ill-treatment to respondent No. 2 and demand of dowry from her by appellant 1 and his family members. Respondent No. 2 also lodged FIR alleging that her husband and in-laws ill-treated her so much that she had to leave the matrimonial home and to live with her parents at Datia (MP). It was observed that as to whether the offence was a continuing one such that CJM at Datia had jurisdiction to take cognizance of the offence. Held, offence cannot be said to be continuing one only because complainant respondent No. 2 was forced to leave her matrimonial home and stayed with her parents at Datia. It was held that the offence in question must be inquired into and tried by Court at Jabalpur and not by Court at Datia where no part of cause of action arose.

7. Reliance was placed upon a decision in *Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another*, in which provisions of Sections 177 and 178 Cr.P.C. were considered by their Lordships and the observations made in paras 8 and 9 are relevant, which are reproduced below:

Section 177 Cr.P.C. reiterates the well-established common-law rule referred to in Halsbury's Laws of England that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 Cr.P.C. A significant word used in Section 177 is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in Cr.P.C. No such exception is applicable to the case at hand.

8. On the other hand, the learned Law Officer had submitted that after the filing of the petition, the challan has also been filed before the learned trial Court and there is no prayer for quashing of the challan in question and, therefore, the present petition is not maintainable. Reliance was placed upon the following decisions:

9. The decision in *Mohan Baitha and Others Vs. State of Bihar and Another*, , shows that the plea taken by the accused that since incident constituting offence punishable u/s 304-B IPC had taken place at place "J" in another State, the Court at place "B" lacks territorial jurisdiction. There was scrutiny of narration of event in FIR as well in complaint culminating in death of deceased, however, showed that there was continuity of action and incident constituting offence u/s 304-B can be held to be part of same transaction. Therefore, jurisdiction of Court at place "B" cannot be ousted for offence u/s 304-B, IPC.

10. The decision in *Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee*, was also relied upon, where there were allegations of maltreatment by in-laws and husband. Complaint reveals continuing offence wherein on some occasions all accused had taken part in one local area and on other occasion, only husband

had taken part in another local area where complaint was lodged. It was held that Clause (c) of Section 178 was attracted. Magistrate of local area where complaint is lodged has territorial jurisdiction to proceed against all.

11. It is clear from a perusal of the facts of the case that when the petitioners filed the present petition, it was only for quashing of the FIR lodged against the petitioners and apart from the prayer for quashing of the FIR another prayer was also made that during the pendency of the petition, respondents No. 4 and 5 should not interfere in the investigation. To my mind, the things have changed now since it is not only the FIR which has been lodged against the petitioners and according to the rejoinder filed by the petitioners themselves, the challan has also been filed against, the petitioners which is pending. Once the challan has also been filed as against the petitioner by mere quashing of the FIR it has to-be considered as to whether the proceedings pending against the petitioners before the learned trial Court shall also stand quashed by simply writing the word "consequence to follow" or there has to be specific prayer by the petitioners for quashing of the report filed by the police u/s 173 Cr.P.C. To my mind, after the challan had been filed as against the petitioners, they should have amended the petition and should have specifically prayed also for quashing of the report lodged against them u/s 173 Cr.P.C., since apart from the allegations made in the FIR, there is evidence also as against the petitioners recorded by the police and that evidence has also to be considered whether it was" insufficient to hold that the proceedings lodged against the petitioners are liable to be quashed.

12. FIR is not the complete detail of all the facts and it is lodged for the police to take action on the allegations made in the report to consider as to whether the cognizable offence is made out or not but it is not necessary that all the facts, occurrences should be clearly mentioned in FIR and there is nothing that these cannot be supplemented by the complainant by making statement u/s 161 Cr.P.C. or by making supplementary statement. In regard to the contents of the FIR as to what it should contain or what is the purpose of lodging of FIR, I may refer to three of the decisions relied upon by the learned Law Officer in this regard.

13. The decision in Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, shows that it was observed by the Apex Court as under:

Section 154. FIR-Contents. It is not necessary that the FIR must disclose all facts and details, relating to the offence reported. What is required is that the information given must disclose the commission of a cognizable offence and must provide a basis for the police officer to suspect the commission of such an offence. If it is so, the police officer is bound to record the information and conduct an investigation. Mentioning of all the ingredients of the offence in the FIR, held, not essential.

14. The decision in Rattan Singh Vs. State of Himachal Pradesh, the following observations were made by the Apex Court, which are relevant and are being

reproduced below:

Criminal Courts should not be fastidious with mere omissions in the first information statement, since such statement cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered alongwith the other evidence to determine whether the fact so omitted never happened at all.

15. The decision in *State of U.P Vs. Harban Sahai and Others*, , shows that it was observed as under:

FIR is not a chronicle of the exhaustive details of the occurrence, nor is it a catalogue of everything including minor particulars of the events which took place. Picking out an insignificant discrepancy regarding description of one of the weapons for jettisoning an otherwise sturdy account of the eye-witness is not a commendable approach in the evaluation of evidence.

16. I may refer to two decisions relied upon by the learned Law Officer for the State in regard to the powers of this Court u/s 482 Cr.P.C.

17. The decision in *State of Orissa and Another Vs. Saroj Kumar Sahoo*, , shows that the petition filed for quashing of proceedings where investigation was not completed and where the charge-sheet has been filed by appreciating the evidence, it was held that it was impermissible. It was observed that where investigation is incomplete, it was impermissible for the High Court to look into the materials, the acceptability of which is essentially a matter for trial. It was further held that even at the stage where charge is framed, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused and for that limited purpose it can evaluate material and documents on record but cannot appreciate the evidence. It was observed that inherent power is to be exercised sparingly and that too in the rarest of rare cases. It is to be exercise ex debito justitiae, to do real and substantial justice and not to stifle legitimate prosecution. It was held that High Court should not ordinarily embark upon an enquiry as to reliability of evidence to sustain the allegations, which is the function of the trial Judge.

18. The decision in *Minu Kumari and Another Vs. The State of Bihar and Others*, , was relied upon, wherein it was observed that High Court should refrain from giving a prima facie decision where entire facts are incomplete and hazy, more so when evidence not collected and produced before the Court and the issues

involved, whether the factual or legal, cannot be seen in their true perspective without sufficient material.

19. The provisions of Section 177 Cr.P.C. provide that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The word used is "ordinarily" and not "always". Section 178 Cr.P.C. further in regard to place of inquiry or trial where the part of the offence is committed in local area and partly in another and where the offence is a continuing one. It can be tried by a Court having jurisdiction over any of such local areas.

20. In the present case, no opportunity has arisen for the Court to consider the allegations made in the FIR or the evidence collected during investigation of the case. After the recording of the FIR, the police has also collected evidence and on conclusion of the investigation, it had filed the final report u/s 173 Cr.P.C., therefore, this Court is not only to look into the allegations made but the evidence collected by the police during the investigation of the case, which evidence is not before this Court since no prayer was made for quashing of the challan as against the petitioners. The opportunity has not come before the learned trial Court to consider the evidence as to whether the same is sufficient or not for framing of the charge and once this Court considers the evidence and given an opinion on the basis of the evidence, it will deprive the petitioners to make a prayer before the learned trial Court for discharge of the accused or for the learned trial Court to consider the evidence, once the evidence has been considered by this Court by exercising its powers u/s 482 Cr.P.C.

21. Keeping in view the above discussion, I am of the opinion that this is not the appropriate stage to quash the FIR once the challan has also been filed against the petitioners and it is for the learned trial Court to firstly consider the facts at the time of framing of the charge and in case, charge is framed as against the petitioners, they are at liberty to challenge the said order before this Court. There is no merit in the petition filed by the petitioners, which deserves to be dismissed and the same is dismissed accordingly.

22. In view of the final disposal of the main petition, all the pending Misc. Applications, if any, shall also stand disposed of.