

(2008) 05 SC CK 0053

In the Supreme Court Of India

Case No : Criminal Appeal No. 839 of 2008 (Arising out of SLP (Criminal) No. 1944 of 2007) and Criminal Appeal No. 840 of 2008 (Arising out of SLP (Criminal) No. 2258 of 2007)

Naresh Kavarchand Khatri

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Constitution of India, 1950 — Article 136

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(2), 162, 177

Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2008) 2 ACR 1818 : AIR 2008 SC 2180 : (2008) AIRSCW 3340 : (2008) 2 ALD(Cri) 424 : (2008) 3 GLH 161 : (2008) 3 GLR 1932 : (2008) 4 JCR 144 : (2008) 2 KLT 747 : (2008) 2 LW(Cri) 1287 : (2008) 40 OCR 609 : (2008) 4 PLJR 51 : (2008) 8 SCC 300 : (2008) 4 Sup

Hon'ble Judges : S. B. Sinha, J; Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : I.H. Syed and Varinder Kumar Sharma, for the Appellant; Soli J. Sorabjee Hemantika Wahi, V. Madhukar, Sangeeta Singh, Huzefa Ahmadi, Ejaz Maqbool, Mitul Shelat, Vikash Singh and Pradhuman Gohil, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. Whether the High Court has the requisite jurisdiction to transfer an investigation from one Police Station to another is the core question involved in these two appeals which arise out of judgment and order dated 28.12.2006 in Special Criminal Appeal Nos. 2272 and 2271 of 2006.

3. Appellant lodged a First Information Report before the detective Crime Branch, Police Station, Vadodara City under Sections 406, 420 and 120B of the Indian Penal Code against the respondents. According to the appellants, the respondent had assured that the child of the first informants would be admitted in their institution and on that pretext, collected a huge amount from them. The children

of the first informant took admission after depositing the admission fee and miscellaneous charges etc. However, their admission was later on cancelled.

4. The FIR was lodged on 23.12.2006. Vadadora Police initiated the investigation. Applications for transfer of investigation were filed before the High Court. On 28.12.2006, the High Court passed the impugned order in the following terms:

Rule. Mr.P.D. Bhate Ld. APP waive service on behalf of opponent State. At the joint request of the parties the matter is taken up for final hearing today.

By way of these petitions the petitioner has prayed to transfer the Investigation of complaint being ICR No. 89 of 2006 and 90/2006 registered with DCB Police Station, Vadodara city to another police station having territorial jurisdiction or to CID Crime or any other independent agency. Heard the Ld. Counsel for the parties Ld.APA has stated that respondent State has no objection if the complaint in question is transferred to some authority as prayed for.

In that view of the matter Complaint No. ICR 89 of 2006 and 90 of 2006 registered with DCB Police Station, Vadodara city are ordered to be transferred to another police station within whose jurisdiction the institution is situated. With the said direction, the petition stand disposed of. Rule is made absolute.

5. The informant was not impleaded as a party therein. No notice was issued on the said appeals. No reason has been assigned. The Court did not advert to the question as to whether it had any jurisdiction to pass the said order. Why such a concession was made by the learned APP on the very first day of hearing is not known.

The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section 156 of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigating Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.

6. It is of some significance that the High Court exercised its jurisdiction even without notice to the petitioner. The investigation has to be carried out on the basis of the allegations made. The first informant is required to be examined; statements of his witnesses were required to be taken; the accused were also required to be interrogated.

The undue haste with which the High Court has exercised its jurisdiction, in our opinion, should not be encouraged. Whether an officer incharge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178

and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the concerned officer in-charge of the police station which has jurisdiction to investigate in relation thereto. Sub-section (4) of Section 181 of the Code of Criminal Procedure Code would also be relevant therefor.

We need not dilate more on analyses of the aforementioned provisions as the said question has been gone into by this Court on more than one occasion.

In 294450 this Court noticing various provisions of the Code of Criminal Procedure opined:

12. A reading of the aforesaid sections would make it clear that Section 177 provides for "ordinary" place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime.

It was furthermore held:

15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the 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 the police station at Delhi. The appreciation of the evidence is the function of the 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 the police station officer of a 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 enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face 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 2 on the ground of want of territorial jurisdiction.

7. Yet again in 301979 this Court clearly held:

32. No such explicit prayer was made by the respondents in their writ petition, although a prayer for issuance of a writ in the nature of mandamus, directing the

State of West Bengal to transfer Case No. 381 to the State of U.P., had been made. The question of the State of West Bengal's having a legal duty in that behalf did not arise. Only in the event an investigating officer, having regard to the provisions contained in Sections 154, 162, 177 and 178 of the Code of Criminal Procedure had arrived at a finding that the alleged crime was not committed within his territorial jurisdiction, could forward the first information report to the police having jurisdiction in the matter.

33. *Stricto sensu*, therefore, the High Court should not have issued such a direction. Assuming, however, that the High Court could mould the relief, in our opinion, it was not a case where on the face of the allegations made in the complaint petition, the same could be said to be *mala fide*. A major part of the cause of action might have arisen in the State of U.P., but the same by itself would not mean that the Calcutta Court had no jurisdiction whatsoever.

8. Mr. Sorabjee, learned Senior Counsel and Mr. Huzefa Ahmed, appearing for the respondent No. 2 in each of the appeals, however, brought to our notice that charge-sheet has already been submitted. It was contended that proper investigation has been carried out in the matter and even the accused respondent had been taken into custody and, thus, this Court, in a situation of this nature, should not exercise its jurisdiction under Article 136 of the Constitution of India.

9. Investigation has been carried out by the officer incharge of Police Station Waghodia only pursuant to the order of the High Court. If the order of the High Court is to be set aside, the investigation must be held to have been carried out without any jurisdiction. We are not, herein concerned with the quality of the investigation but the effect of the order passed by the High Court. We do not know as to whether proper investigation as contended, has in fact been considered at by the court or not.

10. The first information report was lodged on 23rd December, 2006. The High Court appears to have been approached within a few days, namely 26th December, 2008.

The impugned order has been passed on 28th December, 2008. The first information report *prima facie* shows that a part of cause of jurisdiction arose within the territorial jurisdiction of Vadodara Police Station. We fail to understand as to how at such an early stage, the investigation should have been directed to be transferred, having regard to the fact that Waghodia Police Station where the 'institution' in question is situated is within the jurisdiction of Vadodara (District) and is, therefore, not a case where the accused would have been even otherwise gravely prejudiced in joining investigation.

11. We, therefore, are of the opinion that it is not a case where we should refuse to exercise jurisdiction under Article 136 of the Constitution of India. We, therefore, set aside the impugned orders. Consequently, the charge sheets filed by the Waghodia Police Station stand set aside. The concerned Police Officer of

Vadodara Police Station would initiate appropriate investigation in the matter in accordance with law.

Any document collected as also the statements of any witnesses recorded by the officer in-charge of Waghodia Police Station, however, may be sent to the incharge of Vadodara Police Station.

12. The appeals are allowed with the aforementioned observations and directions.