

(2021) 04 SHI CK 0087

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 579 Of 2021

Narinder Kumar

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Citation : (2021) 04 SHI CK 0087

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Subhash Sharma, Anil Jaswal, Amit Dhumal

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. The petitioner is co-accused of offences under Sections 376(2)(L), 384, 506, 201 and 120(B) of the Indian Penal Code in context of FIR No.63/2020, registered on 07.12.2020 at Police Station Chintpurni, District Una. He is in custody w.e.f. 23.12.2020. His petition seeking regular bail has been dismissed by the learned Additional Sessions Judge (II), Una, District Una on 25.02.2021. Hence, he has approached this Court under Section 439 of the Code of Criminal Procedure.

2. The FIR was registered on the basis of a written complaint lodged on 07.12.2020 by the husband of the victim. The victim as well as her husband are residents of Kurukshetra, Haryana. The complainant alleged that his wife was mentally sick and under treatment from PGI, Chandigarh. On 11.11.2020, she disclosed him about her sexual exploitation in the hands of the bail petitioner, who had established physical relations with her in co-accused Shallu's home at Kurukshetra. The 'act' was allegedly captured on the camera. On that count, the bail petitioner as well as co-accused Shallu blackmailed the victim and extracted money from her. In this manner, during past about two and a half years, an amount of Rs.20 to 22 Lakhs was parted by the victim under the threat of

blackmail to the accused persons either in cash or in their bank accounts. It was further complained that on becoming aware of these facts on 11.11.2020, the complainant immediately rushed to Chintpurni. He met the bail petitioner in Village Dharamshala Mahantan and confronted him with the allegations. The bail petitioner statedly admitted his guilt, executed certain agreements with the complainant and also returned some articles. It was further alleged that the petitioner has some objectionable photographs and videos of the complainant's wife. On the basis of these allegations, the instant FIR was registered. The bail petitioner was arrested on 23.12.2020.

3. Investigations were carried out. Statement of complainant's wife was recorded under Sections 161 and 164 Cr.PC. Her MLC was obtained. The medical prescription slips relating to treatment of the victim were also obtained. Cumulatively, it was gathered that the victim got acquainted with bail petitioner on 'Tiktok' in the year 2018. Petitioner allegedly started demanding money from her within a month of their acquaintance. The victim used to visit a gym at Kurukshetra (Haryana) where the co-accused Shallu was employed as a gym trainer. The victim aged around 35 years is a house wife. At time when she was unable to talk to the petitioner on phone in confines of her home, then she used to talk to him in the above described gym. This was statedly observed by co-accused Shallu, in whom the victim confided her problem. At co-accused Shallu's insistence, the victim disclosed to her the telephone number of the petitioner. Further allegations are that the co-accused Shallu called the petitioner to her home in Kurukshetra, where the victim also met him. Against victim's wishes, physical relations were established with her by the petitioner many times in October/November, 2018. The 'act' was allegedly captured on camera/video.

Subsequently, the victim was blackmailed by the petitioner as well as by co-accused Shallu. Under the threat of blackmail, the victim had paid around Rupees twenty-two lacks to the accused persons.

Investigation statedly disclosed that money was transferred from the accounts of the victim to the accounts of the co-accused as well as from the account of co-accused Kuljit Kaur @ Shallu to the account of the bail petitioner. Also as per the status report, it was revealed during investigation that at the instance of the bail petitioner, the victim had come from Kurukshetra to a Hotel in Shimla on 10.09.2019, where also the bail petitioner established physical relations with her against her wishes.

Status report further mentions that the mobile phone, through which the alleged offending acts involving the petitioner and victim were captured on the camera, could not be traced as it was statedly destroyed by the petitioner. For this reason, Section 201 IPC was inserted in the FIR.

The co-accused Kuljit Kaur @ Shallu has been granted bail on 31.12.2020 in Cr.MP(M) No.2223 of 2020.

4. Heard learned counsel for the parties and gone through the status report as

well as record produced by the respondent-State.

Learned counsel for the petitioner argued that the petitioner is innocent and has been falsely implicated with the offences. Petitioner is a married man and has no criminal antecedents. He further contended that the offences, if any, are alleged to have been committed in the State of Haryana, therefore, in terms of Section 177 of the Code of Criminal Procedure, the FIR in question could not have been registered in the State of Himachal Pradesh. He further submitted that co-accused Kuljit Kaur @ Shallu has already been enlarged on bail in Cr.MP(M) No.2223 of 2020. Investigation in the matter is complete. Nothing is to be recovered from the bail petitioner. In case of his enlargement on bail, the petitioner will abide by all the terms and conditions, which may be imposed upon him.

Learned Additional Advocate General opposed the bail petition on the ground that the petitioner is accused of serious and heinous offences.

5. For adjudication of the bail petition, the statements and the evidence available at this stage though need not be gone into in depth lest it causes prejudice to the case of either party, however, some relevant facts would need noticing at this stage:-

5(i). The complainant became aware of his wife's alleged misery on 11.11.2020. However, he lodged the FIR on 07.12.2020. The incidents were alleged to have happened about two and a half years prior to the registration of the FIR.

5(ii). MLC of the victim mentions about her disclosing the fact that she had no sexual contact with the accused after November, 2019 and that she also had no sexual contact with her husband ever since then.

5(iii). As per the status report, during investigations, it came out that the victim had visited the Hotel in Shimla at the instance of the bail petitioner on 10.09.2019, where also the petitioner allegedly established physical relations with her against her wishes. The fact, prima facie, runs contrary to the allegations in the FIR. Be that as it may.

5(iv). The victim is a mature lady aged around thirty-five years. She is stated to be mentally sick. The exact nature of her disease is not discernible at this stage from her medical prescription slips covering the period from 2010 to 2016.

5(v). The mobile phone through which the alleged offending acts were statedly captured has not been recovered. As per the status report, it has been destroyed. Even the identity number of the mobile phone is not available.

5(vi). I have also perused the statements of the victim. In the facts and circumstances of the case, whether the petitioner sexually exploited the victim, established physical relations with her against her wishes and whether he blackmailed her, are the issues, which are to be proved during trial by leading cogent evidence. The petitioner has no criminal antecedent and is resident of

Village Dharamshala Mahantan, Tehsil Bharwain, District Una, H.P. He is in custody since 23.12.2020. The investigation is stated to be complete and challan has been presented on 09.02.2021.

5(vii). In respect of the objection raised by learned counsel regarding territorial jurisdiction for registering the FIR, it will be apposite to take note of a recent judgment passed by Hon'ble Apex Court in (2020) 10 SCC 92, titled Kaushik Chatterjee versus State of Haryana and others, wherein the petitioners were seeking transfer of three criminal cases registered against him on ground of incompetence of the Court on count of territorial jurisdiction. The Apex Court observed that:-

"17.the question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject matter of an offence was required to be returned or accounted for, etc., according as the case may be.....".

"18. While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold.

18(1). The first is that the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21 of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.

18(2). The second is that in civil proceedings, a plaint can be returned, under Order VII, Rule 10, CPC, to be presented to the proper court, at any stage of the proceedings. But in criminal proceedings, a limited power is available to a Magistrate under section 201 of the Code, to return a complaint. The power is limited in the sense (a) that it is available before taking cognizance, as section 201 uses the words "Magistrate who is not competent to take cognizance" and (b) that the power is limited only to complaints, as the word "complaint", as defined by section 2(d), does not include a "police report".

After considering the definition clause, Chapter-XIII and fate of irregular proceedings under Chapter XXXV of Cr.P.C., it was observed in paras 32 and 37 as under:-

"32. In other words, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (section 27) or where the victim is a women [the proviso to clause

(a) of section 26]. But Section 461(l) focuses on the offender and not on the offence."

"37. From the above discussion, it is possible to take a view the words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (l). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461 (l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do."

The legal position was summed up in following paras-

"38. But be that as it may, the upshot of the above discussion is:

38.1. That the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence

38.2. That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code

38.3. That these questions may have to be raised before the court trying the offence and such court is bound to consider the same".

"39. Having taken note of the legal position, let me now come back to the cases on hand."

"40. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction, at least as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshalled. Hence the transfer petitions are liable to be dismissed. Accordingly, they are dismissed."

These aspects need not be gone into at this stage. However, in view of above judgment, it shall be open for the petitioner to raise this question at an appropriate stage in accordance with law.

In view of the above discussion, the instant petition is allowed and the bail petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one local surety in the like amount to the satisfaction of the learned trial Court having jurisdiction over the Police Station concerned, subject to the following conditions:-

(i). Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law;

(ii). Petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever:

(iii). Petitioner shall not contact the complainant or his family members in any manner whatsoever. Petitioner shall not contact, threaten or intimidate the victim in any manner whatsoever.

(iv) . Petitioner will not leave India without prior permission of the Court.

(v) . Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;

(vi). In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vii). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, Email, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter.

Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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