

(2019) 03 DEL CK 0249

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1489 Of 2019, Criminal Miscellaneous Application No. 5889, 5890 Of 2019

Prashant Sareen

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 370(50), 417, 420, 468
Code Of Criminal Procedure, 1973 — Section 160, 482

Citation : (2019) 03 DEL CK 0249

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Arvind K.Nigam, Siddharth Agarwal, Sameer Kumar, Nidhi Sahay, Neelam Sharma, Siddharth Luthra

Final Decision : Disposed Off

Judgement

Quashing of notices of 20th July, 2017 and 6th March, 2019 issued by third respondent requiring petitioner, who is resident of Delhi, to appear before third respondent in Kolkata in relation to investigation of FIR No. 119/17, under Sections 370(50)/420/417/468/120B, registered at police station Kotwali, Kolkata is sought in this petition. Learned senior counsel for petitioner points out that Section 160 of Cr.P.C. requires attendance of such persons who reside within the territorial limits. Admittedly, the impugned notices have been issued from Kolkata and petitioner is resident of Delhi.

Learned counsel for petitioner submits that in this FIR, similar notice was issued to Kailash Vijayvargiya, resident of Madhya Pradesh and vide order of 15th November, 2017 (Annexure P-4) High court of Madhya Pradesh has quashed similar notice, while permitting second respondent to record the statement of Kailash Vijayvargiya in office of Additional District General Police, Indore (Madhya Pradesh). So, it is submitted that third respondent can record petitioner's statement at any place in Delhi of the choice of third respondent.

Learned senior counsel for second and third respondents relies upon Supreme Court's decision in Navinchandra N. Majithia vs. State of Maharashtra And Others. (2000) (7) SCC 640 to submit that place of residence of a person moving to the High Court is not criterion to determine the contours of the cause of action. Reliance is also placed upon Supreme Court's decision in State of Telangana vs. Habib Abdullah Jeelani And Others (2017) 2 SCC 779 to submit that the relief sought in this petition can be granted by Calcutta High Court while invoking Article 226 of the Constitution of India and not under Section 482 of Cr.P.C.

As regards the order (Annexure P-4) learned senior counsel for respondents No. 2 and 3 submits that he has instructions to submit that respondents No. 2 and 3 are not willing to extend the concession which was extended to Kailash Vijayvargiya who was member of State Legislative Assembly of Madhya Pradesh and was the senior citizen because petitioner is aged 27 years. It is pointed out that petitioner is Private Secretary to Kailash Vijayvargiya. So, it is submitted that this petition is not required to be entertained by this Court.

It is brought to the notice of this Court by learned senior counsel for respondents No. 2 and 3 that Supreme Court's decision in C.B.I. Anti-Corruption Branch, vs. Narayan Diwakar (1999) 4 SCC 656 has clarified that writ jurisdiction under Article 226 of the Constitution of India cannot be invoked merely on the ground of receipts of notice at the place of receiving it.

Upon hearing and on perusal of impugned notices and the decisions cited, I find that the question of territorial jurisdiction is not required to be dealt as there is no response to petitioner's Communication of 26th July, 2017 calling upon respondent No.3 to record petitioner's statement in Delhi. Supreme Court in its decision in Majithia (Supra) has no doubt clarified that place of residence of a person moving the High Court is not the criteria. The relief sought in this petition is that third respondent be called upon to record the statement of petitioner in pursuance to impugned notices in Delhi. It is relevant to note that in this very FIR, second respondent before the High Court of Madhya Pradesh in W.P. (C) 4635/2017 (Annexure P-4) had taken a stand that if Kailash Vijayvargiya is ready to give a statement, then his statement would be recorded in Indore (Madhya Pradesh), where he was residing. The reason put forth for not extending similar concession to petitioner is that Kailash Vijayvargiya was a senior citizen, whereas petitioner is aged 27 years. The justification not to extend similar concession as has been extended to Kailash Vijayvargiya, is bereft of any rationale. It is relevant to note that petitioner had vide communication of 26th July, 2017 called upon third respondent to record his statement in Delhi and no reason has been given by third respondent not to do so. Particularly when, second respondent had agreed to record the statement of similarly placed person- Kailash Vijayvargiya at the place of his residence, that is Indore (Madhya Pradesh).

In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to third respondent to keep the impugned notices in

abeyance till a proper speaking response to petitioner's communication of 26th July, 2017 is made by third respondent.

With aforesaid directions, this petition and the applications are accordingly disposed of, while leaving the question of territorial jurisdiction open.

Dasti.