

(2005) 11 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 20907 of 2004

Ratan Agrawal and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 186, 406, 407

Citation : (2006) 1 PLJR 651

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Navaniti Pd. Singh, Ramesh Kr. Agrawal, Vinay Krishna Tripathy and Gopi Krishna, for the Appellant; Ram Krishna Pd. Yadav for the State and Mr. Arun Shrivastava for Opp. Party No. 2, for the Respondent

Judgement

Barin Ghosh, J.—A person, which includes a company, covered by the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act") is required to make contribution to the extent as prescribed by the Act and is also required to file return in relation thereto. In the event such person fails to pay such contribution or fails to submit return, he is liable to be punished. In order to ensure such punishment previous sanction of the Insurance Commissioner is required and. thereupon a complaint is required to be filed before a Metropolitan Magistrate or a Judicial Magistrate of first class. The sanction to prosecute was granted by the Insurance Commissioner or by the person authorized to grant such sanction on 27th September, 2001 against the applicants herein. On the basis thereof the complaint was presented before the Chief Judicial Magistrate, Patna on 10th October, 2001. The petitioners contend that such complaint could not be lodged at Patna for no part of the alleged offence was committed within the jurisdiction of the Chief Judicial Magistrate, Patna. The offence is nonpayment of contribution and non-filing of return. The obligation in relation to both of them were required to be discharged at Jamshedpur.

2. The learned counsel for opposite party No. 2, complainant, submits that the

offence as alleged in the complaint was committed at Jamshedpur and, accordingly, the complaint case should be transferred to Jamshedpur. The learned counsel for the petitioners submitted that in view of Section 407 of the Code of Criminal Procedure this Court has no power to transfer the complaint case pending before the Chief Judicial Magistrate, Patna to the appropriate court having jurisdiction over Jamshedpur. The learned counsel for the petitioners has drawn my attention to Sections 89 and 91 of the Bihar Re-organisation Act, 2000. In terms thereof pending proceeding by reason of a legislative mandate stood transferred to a corresponding court of the State of Jharkhand notwithstanding any thing contained is inconsistent to any other law. It was submitted that if case had been lodged before the appointed day as mentioned in Bihar Reorganisation Act, 2000, probably it could be said that by reason of legislative mandate the complaint case stood transferred to the appropriate court at Jharkhand but in as much as the complaint case was lodged subsequent to the appointed date, to which there is no dispute, it was submitted by the learned counsel for the petitioners that this court, while considering this application, cannot direct transfer of the complaint case to the appropriate court at Jamshedpur.

3. A reading of Section 407 of the Code of Criminal Procedure (hereinafter referred to as "the Code") would show that the High Court has power to transfer cases and appeals within its jurisdiction and does not have power to transfer cases to courts over which it does not have jurisdiction or superintendence. Such power has been granted to the Hon"ble Supreme Court by Section 406 of the Code.

4. Section 186 of the Code provides that where two or more courts had taken cognizance, the question as to which of those two courts may enquire into or try the offence may be decided, amongst others, by the High Court within whose local limits one of those courts is situate and thereupon all other proceedings in respect of that offence shall be discontinued. Although, in the instant case the complainant has not moved two courts and, accordingly, strictly speaking Section 186 of the Code is not applicable but section 186 of the Code gives a clear indication that once the High Court is of the opinion that the court, within whose local limits one of those courts is situate, is not competent to try the offence or proceedings pending before, that court in respect of that offence, the same shall be discontinued and, accordingly, I have no other option but to allow this application and direct discontinuation of the proceedings initiated by the subject complaint case which will, however, not prevent the opposite party No. 2 to lodge a fresh complaint before the appropriate court in accordance with law. This disposes of the application.