

(2000) 03 PAT CK 0012
In the Patna High Court
Case No : Cr.W.J.C. No. 157 of 2000

Sharda Devi and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 406, 408, 420, 467

Citation : (2000) 3 PLJR 257

Hon'ble Judges : Ravi S. Dhavan, C.J.;Aftab Alam, J

Bench : Division Bench

Advocate : Uma Kant Prasad I and Parmanand Pd. Nr. Sahi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition has been presented before this Court after learned Counsel for the Petitioners Mr. Parmanand Prasad Nr. Sahi made a mention when the Court convened at 10.30 A.M. Counsel said it is a matter of urgency and the registry would not entertain the petition and instead has recorded an objection. The objection of the registry is re-produced below:

This petition does not lie in Patna High Court jurisdiction as it arises from Mumbai Police Station. A writ may be filed at Mumbai High Court.

2. Below the objection of the registry counsel raised his counter objection, to the effect, that the writ petition is maintainable. The counter objection reads:

The application is maintainable in the light of certain decision wherein it has been held that writ petition is maintainable at a place where apprehension of arrest arises and since the Petitioners apprehend their arrest within jurisdiction of this Court. Hence the petition is maintainable.

Let the case be placed before the Bench for decision of jurisdiction with defect.

3. The contention on the petition is that the petition is also maintainable before

the High Court of Judicature at Patna.

4. This Court has gone through the text of the petition. Clearly, the Petitioners are avoiding to appear before a Court in Mumbai where the Petitioners acknowledge a First Information Report has been instituted with allegations for criminal breach of trust, criminal breach of trust by agent, forgery of valuable security, forgery for the purpose of cheating using genuine as a forged document, cheating and dishonestly inducing delivery of property by several persons in furtherance of common intention. The allegations are under Sections 406, 408, 467, 468, 471 and 420 read with 34 of the Indian Penal Code. The Petitioners acknowledge that a First Information Report has been registered with Kidwai Marg Police Station, Mumbai, against case No. 8 of 1989. The Petitioners also acknowledge that a case is pending in the Court of XIII Metropolitan Magistrate, Dadar, Mumbai. The Petitioners also mention that one Pawan, an Assistant Inspector of the Police Station at Mumbai, is the Investigating Officer. The Petitioners also mention that they have engaged a very busy lawyer at Mumbai but the First Information Report is not being made available.

5. The writ is sans a copy of the First Information Report. The Petitioners seem to have all the details of the allegations against them and the case, which has been registered. As given in the petition the controversy seems to be that the Petitioners are agent of M/s. Sigma Laboratories Pvt. Ltd. 43 (South) Wadala Mumbai-31, Respondent No. 4. The latter is the Principal and the Petitioners are the agents.

6. From the narration of the Petitioners' side of the story it appears that the Petitioners have to account for some money as an agent to his Principal. The Principal has registered a case for cheating and dishonest intentions by the agent. The cause of action clearly has taken place at Mumbai. The Petitioners are answerable to his Principal where it does so under civil law or answer the allegations against the First Information Report instituted by appearing before an appropriate Court where the matter is pending, which the Petitioners seem to be aware that it is pending at the XIII Metropolitan Magistrate, Dadar at Mumbai. The Petitioners have to make up his mind as to where they will offer the defence.

7. Instituting a petition invoking the extraordinary remedy of the High Court under Article 226 of the Constitution of India, in the circumstances as above, is an abuse of the process of the Court. The registry has rightly not entertained the petition for presentation.

8. A Full Bench of this Court in the case of Syed Zafrul Hasan and Ors. v. State of Bihar 1986 PUR 274 has settled the law on the matter that even if in a matter relating to anticipatory bail, which cause of action may have arisen within the jurisdiction of the Ranchi Bench, presenting a petition before the Principal Court at Patna would be inappropriate. By this decision it was also held:

It is not that the accused person's presence would carry the jurisdiction with him to any court where he may fortuitously be present or where he may deliberately

have chosen to flee. It seems rather manifest that on larger principle wherever the jurisdiction of the criminal court for trial and inquiry of the offence lies, there alone would lie the jurisdiction for grant of bail and equally for anticipatory bail, unless the statute expressly provides otherwise.

9. In the circumstances, this Court does not find any merit in this petition. It is, accordingly, dismissed.

10. A copy of this order will be sent to the Registrar, High Court of Judicature at Bombay and also to the Court of the XIII Metropolitan Magistrate, Dadar, Mumbai, by the Registrar General of this Court immediately.