

(1993) 12 KL CK 0035
In the High Court Of Kerala
Case No : Criminal M.C. No. 1465 of 1992

S.P. of Police C.B.I.

APPELLANT

Vs

Firozuddin Basheeruddin and Others

RESPONDENT

Date of Decision : 11-12-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 185

Citation : (1993) 1 KLJ 552

Hon'ble Judges : K.T. Thomas, J;K.K. Usha, J

Bench : Division Bench

Advocate : K. Kunhirama Menon and K.j. Antony, for the Appellant; T.V. Prabhakaran, M.K. Domodaran, B. Raman Pillai, S.U. Nazar and P.K. Aboobacker (Edathala), for the Respondent

Judgement

Thomas, J.—Petitioner (Superintendent of Police, Central Bureau of Investigation, Cochin Unit) prays for a direction that a sessions case now pending before the 2nd additional sessions court, Ernakulam, be tried by the 3rd or 4th additional sessions court, Ernakulam, as those courts have been created for trying cases investigated by the Central Bureau of Investigation (for short "the CBI",. Learned single Judge before whom the petition came up felt that the question involved must be decided by a Division Bench. The case originated as crime No. 229/89 of Kasaragod Police Station. It relates to the death of one K. M. Hamsa and hence this case is described as "Hamsa murder case". The following points are not disputed: "Hamsa murder case" was investigated and charge sheeted by the CBI Pursuant to a direction issued by the Central Government under Sec. 5 of the Delhi Special Police Establishment Act, 1946 with the consent of the State Government as provided in Sec. 6 of the said Act. The charge sheet in the case was laid before the court of a special magistrate at Ernakulam (in the rank of Chief Judicial Magistrate) which court has been established for dealing with cases investigated by the CBI within the State of Kerala. The place of occurrence in "Hamsa murder case" (as per the prosecution case) is situate within the local limits of Kasargode Sessions Court. The said special magistrate committed the

case to the court of Session, Ernekulam and the Sessions Judge made over the case to the 2nd additional sessions court, Ernakulam.

2. The 3rd and 4th additional sessions court. Ernakulam are the two wings of the special sessions court created by the State Government for trial of cases investigated by the CBI. Those courts have been designated as 3rd and 4th additional sessions court since powers have been conferred on the judges concerned to function as regular additional sessions judges. Thus, the 3rd and 4th additional sessions courts have jurisdiction to deal with all cases made over to them by the sessions judge, Ernakulam, in addition to the powers to try the cases investigated by the CBI.

3. The question is whether 2nd additional sessions court, Ernakulam (before which the case is now pending) has jurisdiction to try the present case. Shri T. V. Prabhakaran, learned counsel for the accused, contended that so long at the case was committed to the sessions court, Ernakulam it is open to the sessions judge to make over the case to any one of the additional sessions courts within Ernakulam sessions division and thus the 2nd additional sessions court has jurisdiction to try the case.

4. Shri. K Kunhlrama Menon, Special Public Prosecutor appointed for the present case, disputed the aforesaid contention and submitted that it is not the committal order which determines the jurisdiction of the sessions court to try the case. According to him, the case can be tried only by 3rd or 4th additional sessions court which are specially empowered to try cases investigated by the CBI, though he did not admit that session court, Kasaragod has also the jurisdiction when a special court has been established to try such cases.

5. Chapter II of the Code of Criminal Procedure, 1973 (for short "the Code") deals with constitution of criminal courts. Sec. 6 says that there shall be courts of session among the classes of criminal courts in every State. Sec. 7 says that either every State shall be a sessions division or a sessions division can consist of one district or more than one district. Sec. 9 enjoins on the state government a duty to establish a court of session for every sessions division and the High Court is empowered to appoint a Judge to preside over the court of session and to appoint additional sessions judges and assistant sessions judges to exercise jurisdiction in a court of session.

6. The special court of Judicial Magistrate of First Class has been established at Ernakulam by the State Government in consultation with the High Court as per its powers under Sec. 11(1A) of the Code in respect of cases charge sheeted by the CBI. The said court has statewide jurisdiction. The final report in this case was submitted by the CBI before that court and hence it was that court which held committal proceedings in the case.

7. Chapter XIII of the Code consists of provisions relating to jurisdiction of the criminal courts. Normally, a case can be tried only by a court within whose local jurisdiction the offence was committed. This principle has been recognized in

Sec. 177 of the Code. Secs. 178 to 184 deal with different aspects of the said general rule, such as cases in which the offence was committed partly in one local area and partly in another etc. But the basic principle stands unaltered that ordinarily the case shall be tried by the court in whose local limits the offence was committed. The Supreme Court has observed in *Purushottamdas Dalmia Vs. The State of West Bengal*, : "Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge leveled against him and the convenience of the witnesses who have to appear before court. It is therefore that it is provided in Sec. 177 that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed."

8. Sec. 185 of the Code contains one of the exceptions to the said general rule. Sec. 185 empowers the state government to direct either one particular case or any class of cases to be tried in any sessions division. The proviso to the section imposes a restriction on the State government in issuing the above direction that no such direction shall be repugnant to any other direction issued by the High Court or the Supreme Court.

9. Since it is not disputed that Government of Kerala has established the Special Sessions Court (3rd and 4th additional sessions courts at Ernakulam are the two wings of the said special court) with statewide jurisdiction for the trial of cases investigated by the CBI, it admits of no doubt that those additional courts have jurisdiction to try the present case. However, we are not now deciding the question whether, with the establishment of a court and by the issuance of a direction under Sec. 185 of the Code, the Kasaragod Sessions Court (within whose local limits the offence was committed) would still have jurisdiction. It is not necessary to decide such a question in this context.

10. It follows from the above discussion that no sessions court, other than the 3rd and 4th additional sessions courts, Ernakulam has jurisdiction to try the cases investigated and charge sheeted by the CBI. (Without deciding the question whether courts having jurisdiction under Secs. 177 to 184 of the Code would continue to have jurisdiction) Consequently, the 2nd Additional sessions court, Ernakulam before which the case is now pending cannot try the "Hemsa murder case". The mere fact that the case was committed to the session's court, Ernakulam is, therefore, insufficient to cloth the said sessions court with jurisdiction to try the case.

11. We, therefore, direct that the case (S. C. 66/92 now pending before the 2nd additional sessions court, Ernakulam) will stand transferred to cloth 4th additional sessions court, Ernakulam. We direct 2nd additional sessions judge to transmit all the records relating to the said case to the 4th additional sessions court, Ernakulam, as early as possible. Counsel for the accused made a plea for issuing a direction to post the case expeditiously since some of the accused are still under detention. It is open to the accused to urge before the additional

sessions judge concerned to make posting of the case by taking into consideration the aforesaid reason also.

With these observations and directions, this Criminal Miscellaneous Case is disposed of.