
(1983) 08 MP CK 0015
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Bahadur Singh and Others

RESPONDENT

Date of Decision : 01-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 186, 190
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (1984) CriLJ 1065 : (1984) ILR (MP) 122 : (1984) JLJ 246

Hon'ble Judges : M.D. Bhatt, J

Bench : Single Bench

Judgement

M.D. Bhatt, J.—The State Government of Madhya Pradesh has filed the present Misc. Petition u/s 186(b) Cr.P.C. 73 for transfer of the particular pending proceedings from the Court of Judicial Magistrate First Class Bassi Pathanan Distt, Patiala (Punjab State) to the Court of competent Magistrate Bhopal (State of M.P.).

2. It is with regard to the particular Truck No. MHV 6088 seized from one Lakhvinder Singh by P.S. Sirhind District Patiala that certain offences were investigated both by P.S. Shajehanabad, Bhopal (M.P.) and by P.S. Sirhind, District Patiala (State of Punjab). One Bahadursingh, claiming himself to be owner of the truck in question, had lodged the report with the police regarding the theft of the vehicle committed during the intervening night of 11th and 12th January. 1983. The offence was registered by P.S. Shahjehanabad as Crime No. 35 of 83. Later, when the said truck was seized by P.S. Sirhind from one Lakhvinder Singh driving the same in suspicious circumstances without the necessary papers of ownership etc. Sirhind police registered the offence as Crime No. 30 of 83 (FIR Number) against Lakhvinder Singh under Sections 379 and 411 of the IPC. Bahadur-Singh on the one hand and so also one Sohansingh and Lakhvinder Singh on the other laid their respective claims before the Judicial Magistrate First Class Bassi Pathanan, District patiala for return of the truck. Objection was equally raised by the Station Officer of the P.S. Shahlehanabad regarding the competency of the Judicial Magistrate First Class Bassi Pathanan

for trial of the case which was already under prior investigation by P.S. Shahjehanabad in Crime No. 35 of 83. Judicial Magistrate First Class Bassi Pathanan directed the State Officer of P.S. Shahjehanabad vide his order dated 5.4.1983, to approach the High Court to seek appropriate orders regarding the trial of the case. In pursuance of this order, the State Government of Madhya Pradesh, apparently at the instance of P.S. Shahjehanabad, has moved the present petition u/s 186(b) of the Code for transfer of the proceedings pending before the Judicial Magistrate First Class, Bassi Pathanan, District Patiala (State of Punjab) and so also all investigation papers of the P.S. Sirhind of its particular Crime No. 30 of 83 to the P.S. Shahjehanabad, in the interest of justice to facilitate the completion of the investigation commenced earlier by P.S. Shahjehanabad.

3. Advocate Shri H.S. Diwana, learned Counsel for the non-applicants Nos. 2 and 3 viz. Sohansingh and Lakhvinder Singh, has vehemently argued that the petition u/s 186(b) of the Code, as laid, is not tenable under the said provisions, inasmuch as, the transfer of the proceedings pending in the Court of Judicial Magistrate First Class, Bassi Pathanan as well as the investigation papers of Sirhind P.S. in Crime No, 30 of 83 (FIR No. 30 of 83 dated 30.1.1983) are sought to be transferred, not to any Court of this State (State of M. P.) but to the P.S. Shahjehanabad. It is, next, urged that proceedings having been first commenced in the Court of JMFC Bassi Pathanan, which was under the local limits of the criminal appellate jurisdiction of the High Court of Punjab and Haryana this Court, i.e. the High Court of M.P. is not competent to decide the question, as to, which of the two Courts i.e. the Court of JMFC Bassi Pathanan (Punjab) or the Court of MFC Bhopal (M.P.) is empowered to try the particular offences.

4. On scrutiny of the petition u/s 186(b) of the Code and the particular prayers as contained therein in Paras 9 to 11, it is painfully observed that the petition is not properly drafted; and the prayers of relief as contained in the last paras 9 to 11 of the petition, are altogether foreign to the provisions of Section 186(b) of the Code, inasmuch as, the provision u/s 186 of the Code is not at all possible to be invoked for transfer of any Court-proceedings or even of the investigation papers of any police-station in any Crime Number, to the P, Section of another State, for purposes of investigation.

5. Clause (a) or (b) of Section 186 concerns itself solely to a situation, where, two or more Courts have taken cognizance of the same offence. Therefore, the present petition u/s 186(b) of the Code is liable to be dismissed on the very ground that the prayers, sought, are not covered within the ambit of Section 186 ibid.

6. However with the filing of the police charge-sheet in the Bhopal Court, during the pendency of the present petition, the learned Government Advocate has, now, strenuously canvassed finally, that the Court of Magistrate First Class at Bhopal, having taken cognizance of the offence and having thus commenced the proceedings, the proceedings pending in the Court of JMFC Bassi pathanan

deserve to be transferred to the Court of MFC Bhopal, within whose jurisdiction, the P. Section Shaiehanabad had started investigation (Crime No. 35 of 83) much prior to the one investigated by police station Sirhind (FIR No. 30 of 83).

7. The sole question to be determined is, whether this Court or the High Court of Punjab and Haryana is competent to decide the crucial question as to which of the two Courts viz. the Court of JMFC Bassi Pathanan or the Court of MFC Bhopal, should inquire into and to try the particular offences concerning the theft and possession of the stolen truck, punishable respectively under Sections 379 and 411 IPC. Copies of documents produced, clearly show that challan No. 84 under Sections 379 and 411, IPC in the matter of the seized truck, against the accused Lakhvinder Singh, had been filed in the Court of Shri J.E. Singla, JMFC. Bassi Pathanan, District Patiala, on 26.4.83. The said Court is found to have furnished the copies of the charge-sheet and other relevant police papers to the accused and to have fixed the case for the next date, for consideration of the documents and for framing of the charge. On the strength of affidavit of the Station Officer of P.S. Shajehanabad. Bhopal and further from the statement made at the Bar, by the learned Government advocate, appearing for the applicant-State, I am satisfied that the police charge-sheet u/s 379 IPC has been recently filed in the Court of Shri S.S. Sinha, Judicial Magistrate First Class, Bhopal on 29.6.1983; and that, he has equally issued the warrant of arrest against the accused Pragatsingh.

8. From the above, it stands undisputed that the two Courts, one subordinate to the appellate criminal jurisdiction of the High Court of Punjab and Haryana and the other, subordinate to the appellate jurisdiction of the High Court of Madhya Pradesh, have already taken the cognizance of the offence of theft pertaining to the particular truck in question. No doubt, in the charge-sheet, filed in the Court of JMFC Bassi Pathanan, cognizance of the offence u/s 411, IPC also, has been taken, in addition to the offence u/s 379 IPC. It is also true that the accused persons of the two cases, instituted in different States, are different, inasmuch as, in the case at Bhopal, the accused is Pragatsingh, and in the case at Bassi Pathanan, the accused is Lakhvinder Singh. However, this difference, as just now pointed out, is of no relevance in the present case, inasmuch as, as is pointed out in *Pramatha Nath Mukherjee Vs. The State of West Bengal*, that "when a Magistrate takes cognizance of offences u/s 190(1)(b), Cr.P.C he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences" (Also see *Supriyo Sarkar Vs. Sunil Ranjan Sarkar*, and *Darshan Singh Ram Kishan Vs. The State of Maharashtra*, . The word "cognizance" does not have any esoteric or mystic significance in criminal law or procedure, As soon as the Magistrate applies his mind to the suspected commission of an offence, he is said to have taken cognizance of the offence (See *Gopal Marwari and Others Vs. Emperor*, ; *R.R. Chari Vs. The State of Uttar Pradesh*, ; *Gopal Das Sindhi and Others Vs. State of Assam* and Another, ; *Ajit Kumar Palit Vs. State of West Bengal*, and *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, . Therefore, it is clear that offence

in question, of which cognizance has been taken in two different Courts, is the same, inasmuch as it relates to the same transaction viz. theft of the particular truck during the particular relevant period and its recovery, later, from some third person as the stolen property. Both the cases are common, having arisen out of the same occurrence or same transaction relating to the truck in question, based on nearly similar sets of facts and circumstances. Mention of "the additional offence u/s 411 IPC in the charge-sheet filed in one Court does not change the nature of the offences under the respective charge-sheets of both the Courts, since commission of the offence u/s 411, IPC is only consequential and in relation to the principal" offence of theft. The factum of accused persons in both these cases being different, is also inconsequential, since their involvement is in relation to the particular offences committed in connection with the same subject matter or the property during the same period, with facts, practically similar.

9. Now, coming to the question of jurisdiction of this Court under Clause (b) of Section 186 of the Code, what is to be seen is, as to in which of the two Courts where cognizance of the offences in question had been taken, "the proceedings were first commenced". The principle of "earlier commencement" has been enjoined in Clause (b), to avoid possible confusion whatsoever, in cases, where two or more subordinate Courts taking cognizance of offence, are not subordinate to the same High Court. The words "first commenced" have a limited scope in respect of High Courts" discretion for interference, as compared with that in Clause (a). The two terms "cognizance" and "commencement of the proceedings" are not synonymous in their connotation. "Cognizance" is taken of offences and not of offenders; and as such, there may be a case, where Magistrate may take cognizance of any offence, even where, the offenders are unknown. However, the fact that the Magistrate may take cognizance does not necessarily mean that there will be judicial proceedings against any one. Cognizance is something prior to, and does not necessarily mean, the commencement of the judicial proceedings against, any one. Proceedings commence, only when the accused person is made a party before the Court (See *Gopal Marwari v. Emperor* AIR 11973 Pat 245 : (1944) CriLJ 177 (SB) relied on.)

10. Now, in the present matter, it is noticed that the proceedings have commenced after taking cognizance in the two competent Courts, subordinate to two different High Courts, and preliminary steps have also "been taken against the offenders. In the case pending before the Court of JMFC Bassi Pathanan, the copies of documents u/s 173 of the Code, are found to be furnished to the particular accused, and the case, then, is found to be adjourned for consideration of documents and for framing of the charge. In the other case, pending in the Court of MFC Bhopal, warrant of arrest has been directed to be issued against the accused person. Now, considering these two cases pending in two Courts under different High Courts, it is indisputably manifest that the proceedings were first -commenced in the Court of JMFC Bassi pathanan on 26.4.1983 : and the commencement of the proceedings in the Court of MFC Bhopal (MP) had taken place much later i.e. on 29.6.1983. It. therefore, follows that the High Court of

Punjab and Haryana, within the local limits of whose appellate jurisdiction, the proceedings had first commenced in one of its subordinate Courts, would alone be competent to decide the question as to which of the two Courts under different High Courts should inquire into and try the particular offences. This High Court (of M.P) is. therefore, not competent to decide the said question, in face of the mandatory nature of the provision of Clause (b) of Section 186 of the Code.

11. The High Court of Punjab and Haryana, being thus, alone, competent u/s 186(b) of the Code, to decide the question regarding the place of trial, the present petition, filed in this Court, being untenable, is dismissed.