

(2020) 03 MP CK 0091

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 43017 Of 2018

Suresh Prasad Khare

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156, 168, 169, 177, 178, 170, 190, 439, 482, 491, 561A

Indian Penal Code, 1860 — Section 34, 420, 498A

Citation : (2020) 03 MP CK 0091

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Anuvad Shrivastava, Ramakanti Shrivastava, Shikha Singh

Final Decision : Dismissed

Judgement

1. Petitioner/accused has filed this petition under Section 482 Cr.P.C. to quash the FIR in Crime No. 203/2017 registered at Police Station Jatara

District Tikamgarh for the offence under Section 420/34 of IPC.

2. One Shailesh Kumar Borse filed a written complaint on 12.11.2016 before the Superintendent of Police District Tikamgarh, it is alleged in this

complaint that he is posted as CFN in E.M.E. Indian Armi at Shriganga Nagar, Rajasthan. Son of petitioner/accused promised respondent No.4 to

make available any four vehicles for 20% discount on fixed price then respondent No. 4 booked a Swift dzire car and he gave Rs. Five lakhs cash and

Rs. six lakhs eighty thousand by cheque to co-accused Rupesh Khare, but Rupesh Khare did not provide any car then complainant/Shailash Kumar

demand his money from co-accused Rupesh Khare but co-accused did not return the said money due to which he lodged the complaint against the

petitioner and co-accused. Matter was inquired by the Police Investigating Officer.

3. Learned counsel for the petitioner/accused submits that alleged offence was committed at Indore or other places. Offence is not committed at

District Tikamgarh. Therefore, police, of Jaitara District Tikamgarh had no territorial jurisdiction to investigate the case. Therefore, he prays for

quashing the FIR. In support of his contention, he has relied the judgments of many states, which is mentioned as under:-

(I) Vijay Kumar and another Vs. Sunita and others reported in 2000(2) MPHT 178.

(ii) T.P. Nandakumar Vs. State of Kerala & another reported in 2008 Cri.L.J. 298.

(iii) Mrs. Prem Kaur & 4 others Vs. State of Haryana & another passed in Criminal Misc. No. 9921/1989.

4. Apart from this, learned counsel for the petitioner/accused submits that name of petitioner/accused is not mentioned in the complaint, therefore, no

case is made out against the petitioner/accused. The Investigation Officer maliciously and arbitrarily implicated the petitioner/accused. The name of

petitioner has been added in the FIR knowingly and as an after thought with the sole intention to pressurize the petitioner. Therefore, the FIR in Crime

No. 203/2017 registered at Police Station Jaitara District Tikamgarh may be quashed.

5. Learned counsel for the State opposes the submissions made by learned counsel for the petitioner and submits that prima facie, the offence is

cognizable offence and investigation is going on in preliminary stage, therefore, FIR cannot be quashed, if any complaint is submitted in police station

then police officer is bound to register the FIR. Therefore, proceeding cannot be quashed on the lack of territorial jurisdiction of Investigating Officer.

Therefore, it is not a proper case in which the inherent jurisdiction can be invoked in this case.

6. Heard both the parties and perused the case diary.

7. It is admitted fact that respondent No. 4 submitted a complaint to the Superintendent of Police, Tikamgarh against the co-accused Rupesh Khare

who is resident at Tikamgarh. It is also not disputed that no offence has been committed under the jurisdiction of Tikamgarh, but Honâ??ble Apex

Court held that police officer is competent to investigate any cognizable offence therefore FIR cannot be quashed on the ground of lack of territorial

jurisdiction of police.

8. The judgment of Honâ??ble Apex Court in the case of Satvinder Kaur Vs. State (Govt. of NCT of Delhi) and another reported in (1999) 8 SCC

728 has held as under:-

8. In our view, the submission made by the learned counsel for the appellant requires to be accepted. The limited question is whether the High Court was justified

in quashing the FIR on the ground that Delhi Police Station did not have territorial jurisdiction to investigate the offence. From the discussion made by the learned Judge, it appears that learned Judge has considered the provisions applicable for criminal trial. The High Court arrived at the conclusion by

appreciating the allegations made by the parties that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction to entertain and

investigate the FIR lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala and that the alleged cause of action for

the offence punishable under Section 498-A IPC arose at Patiala. In our view, the findings given by the High Court are, on the face of it, illegal and erroneous

because:

(1) The SHO has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an FIR is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the investigating officer has no territorial jurisdiction.

(3) After investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial

jurisdiction, then he is required to submit a report accordingly under Section 170 of the Criminal Procedure Code and to forward the case to the Magistrate

empowered to take cognizance of the offence.

9. This would be clear from the following discussion. Section 156 of the Criminal Procedure Code empowers the police officer to investigate any cognizable

offence. It reads as under:

â??156. Police officer's power to investigate cognizable case.â??(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate

any cognizable case which a court having jurisdiction over the local area within

the limits of such station would have power to enquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.â??

10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII.

However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on

the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required

to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer in charge of

the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall

forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial.

Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can

be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires

investigation, the police officer can refuse to record the FIR and/or investigate it.

11. Chapter XIII of the Code provides for â??jurisdiction of the criminal courts in enquiries and trialsâ?. It is to be stated that under the said chapter there are

various provisions which empower the court for enquiry or trial of a criminal case and that there is no absolute prohibition that the offence committed beyond the

local territorial jurisdiction cannot be investigated, enquired or tried. This would

be clear by referring to Sections 177 to 188. For our purpose, it would suffice to refer only to Sections 177 and 178 which are as under:

177. Ordinary place of enquiry and trial.— Every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed.

178. Place of enquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be enquired into or tried by a court having jurisdiction over any of such local areas.

12. A reading of the aforesaid sections would make it clear that Section 177 provides for ordinary place of enquiry or trial. Section 178, inter alia,

provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in

one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having

jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate

the crime.

13. This Court in *State of W.B. v. S.N. Basak* [AIR 1963 SC 447 : (1963) 2 SCR 52] dealt with a similar contention wherein the High Court had held that the

statutory powers of investigation given to the police under Chapter XIV were not available in respect of an offence triable under the West Bengal Criminal Law

Amendment (Special Courts) Act, 1949 and hence the investigation was without jurisdiction. Reversing the said finding, it was held thus:

“The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that chapter

deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to

investigate into the circumstances of any alleged cognizable offence without

authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure

Code. As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in *King Emperor v. Khwaja Nazir Ahmad* [(1944)

71 IA 203, 212 : AIR 1945 PC 18] (IA at p. 212) observed as follows:

“The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance

of law and order is only to be obtained by leaving each to exercise its own function, always, of course subject to the right of the court to intervene in

an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case

as the present, however, the court's functions begin when a charge is preferred before it, and not until

then. It has sometimes been thought that Section 561-A has given increased powers to the court which it did not possess before that section was enacted. But this

is not so. The

section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted, as their Lordships think,

lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power

had survived the

passing of that Act.”

With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord. The High Court was

in error therefore in interfering with the powers of the police in investigating into the offence which was alleged in the information sent to the officer in charge of

the police station.”

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9. The another judgment of Honorable Supreme Court in the case of *State of A.P. Vs. Punati Ramulu and others* reported in 1994 Supp (1) SCC

590 has held as under:-

4. The case as put forward by the prosecution was that PW 1 went to Narasaraopet from the scene of the occurrence. He contacted PW 13 to draft the report

addressed to the Circle Inspector of Police. PW 1 was projected by the prosecution as an eyewitness who is the nephew of the deceased and had accompanied the

deceased when the latter went to realise debts from the villagers. On reaching the police station at Narasaraopet he was informed by the constable on duty that

the Circle Inspector, PW 22, had already received information about the occurrence and had left for the village. The police constable at the police station refused

to record the complaint presented by PW 1 on the ground that the said police station had no territorial jurisdiction over the place of crime. It was certainly a

dereliction of duty on the part of the constable because any lack of territorial jurisdiction, could not have prevented the constable from recording information

about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.

10. It is also evident from the case diary, that after registration of FIR, the matter was sent for further investigation to Police Station Sayogata Ganj,

Indore, therefore, FIR can not be quashed on the ground of lack of territorial jurisdiction.

11. Learned counsel for the petitioner/accused submits that name of petitioner/accused is not mentioned in the complaint which is submitted by the

respondent No. 4, so, no case is made out against him, but it is clear that the during inquiry, the statement of respondent No. 4 was recorded by the

Inquiry Officer then respondent No. 4 stated that when he gave Rs. 5 lakhs in cash to the co-accused Rupesh Khare, and at that time

petitioner/accused was present with co-accused, thereafter, on the basis of said inquiry the FIR was registered. Respondent No. 4 also stated that

when he gave said amount to the co-accused at that time 4-5 person were present with him and matter is still under investigation proceeding. The

Honâ??ble Apex Court held that when investigation is incomplete and going on and cognizable offence is committed that FIR can not be quashed.

12. The another judgment of Honâ??ble Supreme Court in the case of State of Tamil Nadu Vs. S. Martin and others reported in (2018) 5 SCC 718

has held as under:-

8. We are not expressing any opinion on merits or demerits of either the case of the prosecution or the defence of the accused but we are of the firm opinion that while the investigation was still incomplete, the High Court ought not to have interfered in the present case. Leaving all questions open to be agitated at appropriate stages in the proceeding, we set aside the view taken by the High Court and allow these appeals. Consequently Crime No. 304 of 2012 stands restored to its file and the appellant is free to conduct investigation and take the matter to its logical conclusion.

13. The judgment of Honâ??ble Supreme Court in the case of Satvinder Kaur (Supra) has held as under:-

14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.

14. Therefore, it is evident that the prima facie cognizable offence is committed and investigation is still incomplete. Respondent No.4 also made against allegations the petitioner/accused. Therefore, it is not a proper case in which the inherent jurisdiction can be invoked in this case.

15. Accordingly this petition is hereby dismissed.