

(2015) 03 MP CK 0027

In the Madhya Pradesh High Court

Case No : Misc. Cri. Case No. 9741/2012

Suresh Singh Sikarwar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226 (2), 226(2)

Criminal Procedure Code, 1973 (CrPC) — Section 174, 177, 178(D), 482

Penal Code, 1860 (IPC) — Section 306, 34, 342, 343

Citation : (2015) 2 JLI 302

Hon'ble Judges : B.D. Rathi, J.

Bench : Single Bench

Advocate : R.K. Sharma and D.P. Singh, for the Appellant; Arun Barua, Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.D. Rathi, J.—The instant petition under Section 482 of the Code of Criminal Procedure (for short "the Code") has been filed by the petitioner praying for quashing of FIR registered at Crime No. 537/12 for commission of offence under section 306 and 343/34 of I.P.C. against the petitioner by police station Chhola Mandir, Bhopal including other consequential criminal proceedings initiated pursuant thereto.

2. Brief facts as per prosecution case, on perusal of the record goes to indicate that one Marg No. 62/12 was registered under section 174 of the Code by police station Chhola Mandir, Bhopal in regard to unnatural death of Krishnapal alias Raja Bundela. During inquiry, it was collected that the marriage of Krishnapal was solemnized on 19/2/2007 with Smt. Radha alias Reeta, daughter of one Rajendra Singh Parmar, resident of Shivpuri. It was alleged that Krishnapal was subjected to maltreatment physically as well as mentally by his wife. The detailed discussions were mentioned in the FIR hence need not be proliferated. On 6/9/2012 on being called by his father-in-law Rajendra Singh, Krishnapal

(since deceased) alongwith his friends Prashant and Neelesh reached at Shivpuri in a car. When the car of the deceased passed through the way near front of the residence of the present petitioner, Krishnapal (since deceased) and his friends were restrained by the petitioner and other family members of the wife of Krishnapal and thereafter Krishnapal was illegally confined inside the bungalow of the petitioner where he was also beaten. He was released after four hours. Then Krishnapal returned to his residence at Bhopal and on 7/10/2012 he committed suicide by lying before the running train. During the course of investigation, one suicidal note left by the deceased was also seized by the police from the place of incident. Crime No. 537/12 has been registered for the offence under sections 306 and 342/34 of I.P.C. against Rajendra Singh, Smt. Radha @ Reeta (wife of Krishnapal) and the petitioner Suresh Singh Sikarwar, which is still pending at the stage of investigation.

3. During the course of arguments it is urged by Shri Mody, learned counsel for respondent No. 2 that this petition is not maintainable and this court has no jurisdiction to pass any kind of order as crime has been registered at Bhopal which place falls within the territorial jurisdiction of the Principal Seat at Jabalpur.

4. In view of the objection raised above, with the consent of the parties, we take up the matter firstly for consideration on the point of sustainability of the petition by this court.

5. It is submitted by the learned counsel for the petitioner Shri R.K. Sharma that this objection has also been dealt with earlier and answered in favour of the petitioner by this court vide order dated 20/12/2012, therefore, the said issue cannot again be reopened for assailing the maintainability of this petition before this court.

6. Controverting the submission, learned counsel Shri Mody appearing on behalf of respondent No. 2 submits that the order in question was passed on the office note behind the back of respondent No. 2 and therefore the respondent No. 2 could not get an opportunity of hearing of placing his grievance on the subject. Hence, according to the counsel for respondent No. 2 the order passed on 20/12/2012 in the absence of respondent No. 2 cannot be taken into consideration and the matter requires fresh consideration on this point.

7. In agreement with the contention made by Shri Mody, again, on the issue of territorial jurisdiction of this Court, arguments of both the parties are required to be and heard accordingly.

8. Learned counsel Shri Mody submitted that from perusal of the FIR and suicidal note, prima facie it can be seen that some part of offence was committed at Shivpuri which is situated in the territorial jurisdiction of this court and some part of offence was committed at Bhopal where territorial jurisdiction lies with Principal Seat at Jabalpur but because FIR has been lodged at Bhopal, therefore this court lacks jurisdiction to pass any kind of order. In support of his submission, learned counsel placed reliance on the decision of Hon. Supreme

court in the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, . On the strength of the aforesaid submissions, it is prayed that the petition may be dismissed for want of jurisdiction.

9. On the contrary, it is submitted by Shri Sharma, learned counsel for the petitioner that from perusal of the suicidal note and the facts as mentioned in the FIR it is clear like a noon that some part of offence was committed at Shivpuri and some at Bhopal. It is submitted that the allegations have also been made that the deceased was beaten at Shivpuri by the petitioner after he was being illegally confined in the bungalow of the petitioner at Shivpuri. Therefore, looking to these available facts and because Shivpuri is situated within the territorial jurisdiction of this Court, according to the counsel, this court has very much jurisdiction to pass any kind of order in exercise of powers under section 482 of Cr.P.C., in order to prevent abuse of the process of law or to secure the ends of justice. He also placed reliance on the same decision taken in the case of Navinchandra N. Majithia (Supra).

10. Having regard to the arguments advanced by the learned counsel for parties, the entire case has been examined.

11. Before advertng to the plea of territorial jurisdiction to consider the question whether this court has jurisdiction to interfere under Section 482 of Cr.P.C., the relevant provisions of the Code, 1973 are reproduced below:-

"177. Ordinary place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry 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 a 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 inquired into or tried by a Court having jurisdiction over any of such local areas."

182. Offences committed by letters, etc- (1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received;.....

(2) ** ** ** **"

12. Nowhere it is in dispute that as per provision of section 177 of the Code every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. As per provision of Section 178(D) where

different parts of offence has been committed in different place or in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. It is clearly in the sense that if there are more than courts in different local areas then only one of them can inquire into or try the offence. In other words, we can say that more than one court cannot be permitted to take cognizance.

13. Take it for example, where offence of defamation is committed by an accused by posting a defamatory letter from place "A" to place "B" and the actual publication of the letter takes place at "B" where the letter is opened and read by the son of the addressee, in that case offence can be tried either at place "A" where the posting takes place or at place "B" where the actual publication takes place. But, it cannot be construed that offence can be tried simultaneously at both the places by two different courts. This point was also considered in the case of *Pisupati Purnaiah Sidhanthi Vs. Pisupati Satyanarayana Sidhanthi*, . Reference on this subject may further be made to the decision in the case of *Ivan Anand D" Souza and Another Vs. State of Karnataka*,

14. But nevertheless it can be intended to show by the aforesaid observation that this principle will be applicable during the course of investigation to investigating agency, meaning thereby the matter can be investigated by any police station and ultimately will have to be referred to the concerning police station having jurisdiction. This issue has been elaborately examined and considered in the case of *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, .

15. In the case at hand, the FIR has been lodged at police station Chhola Mandir, Bhopal. Admittedly, in the present case the option was open to the aggrieved person to lodge the FIR for investigation either at Shivpuri or at Bhopal. By exercising such option, the complainant/aggrieved person has lodged the FIR at Bhopal police station where also the part of offence was committed. Therefore, after investigation certainly final report will have to be filed in the court having jurisdiction over area of that police station. In such circumstances, Chhola Mandir police station, Bhopal cannot file final report before the court having jurisdiction in Shivpuri area.

16. In such premises, now once police station Chhola Mandir, Bhopal is opted by the aggrieved for lodging the FIR, certainly in that case, final report will be filed by the police in the court having jurisdiction over area of that police station. In that event the aggrieved person cannot enjoy the fruits of sailing in two boats, meaning to say, he cannot be permitted to file another FIR in another local area where part of the offence was also committed.

17. We can resolve this issue by this way also where suppose after investigation charge-sheet is filed in a court having jurisdiction with the police station at Bhopal and thereafter trial is concluded resulting in the shape of conviction or acquittal, in that eventuality also appeal/revision will be preferred before the High Court having jurisdiction of Bhopal area. In the present case, the place will

be Principal Seat at Jabalpur and so this court has no jurisdiction to interfere with the matter to quash the FIR registered by police station Chhola Mandir Bhopal, situated within the jurisdiction of Principal Seat at Jabalpur.

18. In the case of Navinchandra N. Majithia (Supra), it was held by the High Court of Bombay that it has no jurisdiction to interfere into the matter pending in the court of Shillong in the State of Meghalaya by invoking power under Section 482 Cr.P.C. for quashing the FIR. It was decided so because matter was pending in Shillong, means not within the criminal territorial jurisdiction of Bombay High Court. That point was never set aside by the Hon. Supreme Court, meaning thereby the same was upheld. It was opined by Hon. Supreme Court that under Article 226(2) of the Constitution of India writ of mandamus could be issued by Bombay High Court in view of the relief claimed and ultimately same was issued by the Hon. Supreme Court.

19. For quashing criminal proceedings pending before the criminal court, inherent powers under Section 482 of Cr.P.C. can be invoked and the power under Section 226 of the Constitution of India can not be exercised by the High Court under criminal jurisdiction. In view of that it was not opined by the Hon. supreme Court in Navinchandra N. Majithia (Supra) that Bombay High Court was in error to dismiss the petition for the prayer of quashing the complaint lodged at Shillong. The decision of the High court of Bombay was considered on another aspect of Article 226 (2) of the Constitution of India by the Hon. Supreme Court. Similarly, in case in hand, the criminal proceedings are under investigation at police station Chhola Mandir Bhopal, situated within the territorial jurisdiction of Principal Seat at Jabalpur, therefore, this court has no jurisdiction to quash the FIR and ancillary criminal proceedings by exercising powers under Section 482 of Cr.P.C. The aforesaid view of this court gets fortified on the principles of law laid down in the case of Shri Rajendra Ramchandra Kavalekar Vs. State of Maharashtra and Another, . The principles laid down in the case of Navinchandra N. Majithia (Supra) has been again followed subsequently in the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra, . Para 11 of the decision is relevant and quoted below:-

"We are alive to the possible incongruities that are fraught in extrapolating decisions relating to civil law onto criminal law, which includes importing the civil law concept of "cause of action" to criminal law which essentially envisages the place where a crime has been committed empowers the Court at that place with jurisdiction. In Navinchandra N. Majithia Vs. State of Maharashtra and Others, this Court had to consider the powers of High Courts under Article 226(2) of the Constitution of India. Noting the presence of the phrase "cause of action" therein it was clarified that since some events central to the investigation of the alleged crime asseverated in the Complaint had taken place in Mumbai and especially because the fundamental grievance was the falsity of the Complaint filed in Shillong, the writ jurisdiction of the Bombay High Court was unquestionably available. The infusion of the concept of "cause of action" into the criminal

dispensation has led to subsequent confusion countenanced in High Courts. It seems to us that Bhaskaran allows multiple venues to the Complainant which runs counter to this Court's preference for simplifying the law. Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned. 20. In view of the aforesaid factual and legal aspects of the matter, this court has no hesitation to observe with the norm of same line that it has no jurisdiction to invoke the power under section 482 of Cr.P.C. for quashing the impugned FIR registered by police station Chhola Mandir, Bhopal where matter is still pending under investigation.

21. Subject to above, the petition stands dismissed with no order as to costs.

22. Copy of this order be sent to the concerning Court for compliance.