

(2018) 10 DEL CK 0480

In the Delhi High Court

Case No : Criminal Miscellaneous Case .No. 1369 Of 2015 And Criminal Miscellaneous AppealNos.5003, 10282- 10283 Of 2015 And 21044 Of 2017

Tarun Kumar & Ors

APPELLANT

Vs

State Of Nct Of Delhi & Ors

RESPONDENT

Date of Decision : 08-10-2018

Acts Referred:

Code of the Criminal Procedure, 1973 — Section 173, 177, 178, 179, 180, 181, 182, 183, 184, 186, 482

Indian Penal Code, 1860 — Section 120B, 409, 420, 464, 467, 468, 471

Citation : (2018) 10 DEL CK 0480

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Sunil Fernandes, Arnav Vidyarthi, Arun Bhardwaj

Final Decision : Dismissed

Judgement

1. The petitioners are facing prosecution as accused in the criminal case in the court of the Additional Chief Metropolitan Magistrate (South-East) at

Saket Court Complex, arising out of the first information report (FIR) no.43/11 involving offences punishable under Sections 120B, 409, 420 of Indian

Penal Code, 1860 (IPC) of police station Economic Offences Wing. On the basis of the report (charge-sheet) under Section 173 of the Code of the

Criminal Procedure, 1973 (Cr. PC) submitted upon conclusion of investigation into the said FIR, the Magisterial court in Delhi took cognizance and

issued process against them by order dated 04.06.2012. It appears that besides them, there are six other accused in the array, they being a company

known as DD Build Well Pvt. Ltd., DD Group, DD Township, DD Infrastructure and two other individual accused namely Rajeev Gambhir and

Karan Gambhir.

2. Apart from the present case arising out of FIR No.43/2011, the petitioners are also facing criminal prosecution in eleven other cases, all of them

pending in the court of the Judicial Magistrate (Ist Class) at Faridabad, Haryana, they including criminal complaint case RBT no.523/11 lodged on

14.12.2011, the other ten being State cases arising out of FIR nos.09/2011, 82/2011, 132/2011, 134/2011, 181/2011, 205/2011, 209/2011, 45/2012,

185/2012, 186/2012, the criminal cases registered being nos.827/2012, 745/2012, 740/2012, 741/2012, 742/2012, 739/2012, 744/2012, 743/2012,

815/2012, 187/2012 respectively.

3. It may be mentioned here that in the abovesaid ten State cases pending at Faridabad, Haryana, the Judicial Magistrate had taken cognizance and

issued process by orders dated 15.06.2012, 04.07.2012, 03.07.2012, 03.07.2012, 03.07.2012, 02.07.2012, 04.07.2012, 04.07.2012, 24.08.2013 and 24.08.2013.

4. There is no dispute as to the fact that the second and third petitioners herein are accused in the court of the Judicial Magistrate at Faridabad,

Haryana in cases arising out of FIR nos.9/11, 132/11, 134/11, 205/11, 209/11, 185/12, 186/12 and the complaint case 523/11. Further, the second

petitioner is an accused in cases arising out of FIR nos.181/11 and 45/12. Similarly, two other accused namely Rajeev Gambhir and Karan Gambhir

are also accused in some of the cases at Faridabad, the company DD Build Well Pvt. Ltd. with which all these persons are connected being a

common accused in all the cases including the one at Delhi.

5. By the petition at hand presented under Section 482 Cr. PC, it has been prayed that the orders of cognizance passed in the cases pending before

the Judicial Magistrate at Faridabad, Haryana be quashed and such proceedings be discontinued, and it be held and declared that the court of the

ACMM at Saket Court Complex at New Delhi is the competent court to enquire and try the alleged offences as reflected in the FIR (43/11) of

Economic Offences Wing, New Delhi and, in the alternative, it to be held that offences in the cases of Faridabad can only be tried at Delhi,

reference in this context being made to the provision contained in Section 186 Cr. PC.

6. The petition has been resisted by the State of Haryana and the SHO of

Economic Offences Wing, Faridabad, Haryana. The Govt. of NCT of Delhi has taken a neutral stand leaving it to the discretion of the court.

7. Having heard both sides, this court finds no merit in the petition in so far as it seeks discontinuance of the proceedings in the criminal cases pending on the file of the Judicial Magistrate (Ist Class) at Faridabad, Haryana, in the ten State cases and one complaint case referred to above. The reasons may be set out hereinafter.

8. References were made at the hearing to the allegations in all the above mentioned cases, one registered by the Delhi Police, ten registered by

Haryana Police at Faridabad and one arising out of the private complaint case presented before the Court of the Magistrate at Faridabad. The

allegations in all the cases are more or less similar, but they have been levelled by different victims of offences either for cheating or for criminal

breach of trust, each relating to offers made to the public at large by the company DD Build Well Pvt. Ltd. or its associate companies or entities or

the private individual accused who are connected thereto for development and allotment of land in Sector 77, Faridabad. The said company appears to

have operated from offices situated both in New Delhi and in Faridabad. The members of the public at large who approached the said company or its

associates made huge investments. It is alleged that the representations made leading to such investments were false and dishonest. It is also alleged

that the public at large having been allured, huge money was collected but no plots of land were developed or allotted. The allegations have been made

in most of the cases at Faridabad of forgery and fabrication of certain documents including in the nature of valuable security and their use, such

allegations constituting offences punishable under Sections 464, 467, 468, 471 IPC, there in addition to criminal intimidation.

9. The provision contained in Section 186 Cr. PC reads thus :-

“186. High Court to decide, in case of doubt, district where inquiry or trial shall take place” Where two or more Courts have taken cognizance

of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided” (a) if the

Courts are subordinate to the same High Court, by that High Court; (b) if the Courts are not subordinate to the same High Court, by the High Court

within the local limits of whose appellate criminal jurisdiction the proceedings

were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued.â??

10. While it is correct on the part of the State of Haryana to point out that the first case registered respecting the transactions involving various victims

constituting offences of cheating, etc. was in the form of FIR no.9/11 of police station Bhupani, Faridabad lodged on 22.01.2011, it preceding FIR

no.43/11 of Delhi (registered on 03.03.2011), there is no denial that upon submission of the charge-sheet by the police, the order of cognizance was

taken by the Delhi court on 04.06.2012 ahead of such orders being passed by the Judicial Magistrate at Faridabad in respect of the cases pending

there. But, on this fact alone, it is not correct for the petitioners to argue that all the cases will have to be brought together before the court at Delhi.

The provision contained in Section 186 Cr. PC only guides as to which High Court is to take a call on the issue as to which criminal court

â??ought to inquire into or tryâ?? the case if â??two or more courts have taken cognizance of the same offenceâ??.

11. Since the cases in which context the prayer is made and pressed under Section 186 Cr. PC pertain to the courts subordinate to two different High

Courts, clause (b) of Section 186 would apply here and since the court of ACMM at Saket, New Delhi had taken cognizance first, it is for this court to

consider as to which of the courts ought to inquire and to try all the aforementioned cases, this assuming that they involve â??the same offenceâ??.

12. The issue of jurisdiction is to be decided not with reference to Section 186 Cr. PC but primarily in accordance with the guidance provided by

Section 177 to 184 Cr. PC. As is the general rule (per Section 177) every offence shall ordinarily be inquired into and tried by a court within whose

local jurisdiction it was committed. Section 178 Cr. PC, inter alia, states that where an offence is committed partly in one local area and partly in

another or 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. Similarly, Section 179 Cr. PC permits trial of an offence by a court within whose local jurisdiction the incriminating acts have been done or

the court within whose local jurisdiction the sequence of such acts constituting offence has ensued.

13. Having regard to the background facts of the solitary case at Delhi and the

eleven cases before the court of the Judicial Magistrate at Faridabad, it does appear that there is lot of commonality. The background facts leading to the offences alleged by different victims in each of these cases are similar. The persons who are accountable for such acts and consequently to be prosecuted to a large extent are also common. But then, transaction of each victim was distinct and, therefore, each of these cases constitute separate offences.

14. There is no reason why the case at Delhi be given primacy or be treated as the master case. There is no justification for the prayer for discontinuance of the proceedings in the eleven cases pending on the file of the Judicial Magistrate (Ist Class), Faridabad, Haryana on such account, particularly with reference to the provision contained in Section 186 Cr. PC.

15. The petition and the applications filed therewith are dismissed.