

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 25501 of 2021

Petitioner :- Vinod Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Home. Lko And Others

Counsel for Petitioner :- Amrendra Nath Tripathi

Counsel for Respondent :- G.A.,Aditya Vikram Singh,Nadeem Murtaza

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard Mr. Amrendra Nath Tripathi, learned counsel for the petitioner and Mr. Umesh Chandra Verma, learned AGA for the State as also Mr. Aditya Vikram Singh, learned counsel for the complainant/informant.

This petition has been filed seeking following reliefs:

"i) *To, issue writ or Certiorari quashing the impugned First Information Report of FIR/ Case Crime No. 0248 of 2019, under Sections 406, 419, 420, 467, 468, 471, 504, 506 and 507 of I.P.C., Police Station - Kotwali Nagar, District - Balrampur, dated 10.07.2019 (Annexure No.2).*

ii) *to issue the writ in the nature of writ of Mandamus to the Respondent No. 1 and 2 not to proceed in the impugned FIR and not to make investigations or inquire into any further and/or not to arrest the petitioner in the FIR/Case Crime No. 0248 of 2019, under Sections 406, 419, 420, 467, 468, 471, 504, 506 and 507 of I.P.C., Police Station - Kotwali Nagar, District - Balrampur, dated 10.07.2019.*

iii) *To issue any other writ, order or direction, which this Hon'ble High Court may deem fit and proper in the circumstances of the case."*

On 02.11.2021 following order was passed noticing the arguments of counsel for the petitioner that the registration of FIR at PS Kotwali Nagar, District Balrampur itself was without jurisdiction and contrary to the provisions of Code of Criminal Procedure:

"Sri Nadeem Murtaza along with Sri Aditya Vikarm Singh has put in appearance on behalf of respondent No.3-complainant by filing their Vakalatnama, which is taken on

record.

Under challenge in this petition is the First Information Report, dated 10.07.2019, lodged at Case Crime No. 0248 of 2019, under Sections 406, 419, 420, 467, 468, 471, 504, 506, 507 I.P.C. and Section 66 (D) of Information Technology (Amendment) Act, 2000, Police Station Kotwali Nagar, District Balrampur.

At this juncture itself learned Senior Advocate, Sri Satish Chandra Misra assisted by Sri Amrendra Nath Tripathi, learned counsel appearing for the petitioner has stated that the offence under Section 66(D) of Information Technology (Amendment) Act has been dropped.

Challenging the proceedings being drawn pursuant to the impugned First Information Report, dated 10.07.2019, it has been argued by the learned Senior Advocate representing the petitioner that even if the recitals made in the First Information Report are taken to be correct, legally no cause of action can be said to have accrued for the First Information Report being lodged at Police Station Kotwali Nagar, District Balrampur for the reason that entire act, as complained of, is said to have happened/occurred either at New Delhi or at Bhiwani (Haryana). Submission is that merely because the complainant resides in District Balrampur will not give rise any jurisdiction to the Police Station situate in District Balrampur to lodge the First Information Report and thereafter proceed further pursuant thereto with the allegations contained in the impugned First Information Report. In this view, submission is that the investigation being undertaken by the police personnels belonging to Police Station Kotwali Nagar, District Balrampur is vitiated and the same is in derogation of the provisions contained in the Code of Criminal Procedure.

Sri Nadeem Murtaza, learned counsel appearing for the respondent No.3-complainant has drawn attention of the Court to the provisions contained in Sections 178, 179 and 462 of the Cr.P.C. to justify that the First Information Report can be lodged in this case at District Balrampur and the investigation can also be undertaken by the police personnels of the said Police Station.

When we examine the provision of Section 178, Cr.P.C., what we find is that the said provision permits an enquiry or trial by a court having jurisdiction over any of such local areas which are mentioned in Clause (a),(b), (c) and (d)

of Section 178, Cr.P.C. Clause (a) of Section 178, Cr.P.C. envisages a situation where it is not certain as to in which of the several local areas the offence has been committed. Clause (b) of Section 178, Cr.P.C. contemplates the situation where an offence is committed partly in one local area and partly in another. Clause (c) contemplates a situation where an offence is a continuing one, and continues to be committed in more local areas than one. Clause (d) envisages a situation where offence consists of several acts done in different local areas.

When we examine the allegation contained in the impugned First Information Report, what transpires is that the allegations relating to forgery/fabrication of the documents etc. are said to have committed at Bhiwani (Haryana) for the reason that the Bank where the said forged documentation is said to have made is situated at Bhiwani (Haryana). Similarly, the agreement which is found mentioned in the First Information Report was entered into between the parties at New Delhi.

Accordingly, prima-facie, what we find is that Section 178, Cr.P.C. will have no application in this case.

Section 179, Cr.P.C. relates to the jurisdiction of the court within whose local jurisdiction an offence is said to have been committed or any consequence of the offence is said to have ensued.

When we examine the recitals made in the impugned First Information Report, prima-facie, we do not find that the offences as described in the First Information Report could be said to have occurred within the local jurisdiction of the court situated at District Balrampur.

So far as the submission made by Sri Nadeem Murtaza, learned counsel appearing for the respondent No.3-complainant based on the provision of Section 462, Cr.P.C. is concerned, we may only observe that the said provision relates to the proceedings of the court where any finding, sentence or order is made by the criminal court. Thus, the said provision also does not come to the aid of the complainant.

When enquired from the learned A.G.A. appearing for the State-respondents as to whether after registration of the First Information Report at District Balrampur, the same ought to have been transferred to the Police Station having jurisdiction, he has stated that he may be granted

some time to seek instructions in the matter.

Accordingly, having regard to the overall facts and circumstances of the case and also for the observations made by us herein above, we provide that till the next date of listing, the petitioner shall not be arrested in connection with the impugned First Information Report, dated 10.07.2019, lodged at Case Crime No. 0248 of 2019, under Sections 406, 419, 420, 467, 468, 471, 504, 506, 507 I.P.C., Police Station Kotwali Nagar, District Balrampur.

Respondents shall file their counter affidavit within four weeks. One week's time thereafter shall be available to the learned counsel for the petitioner to file rejoinder affidavit.

List this case immediately after expiry of the aforesaid period.

When the case is next listed, the name of Sri Nadeem Murtaza and Sri Aditya Vikram Singh shall also be shown in the cause list as counsel for the respondents."

Thereafter, the matter came up on 31.07.2023 and the following order was passed:

"Heard.

Perused our order dated 02.11.2021.

The case of the petitioner is that even from a bare reading of the allegations contained in the F.I.R. even assuming that the same could have been lodged at Police Station - Kotwali Nagar, District - Balrampur, as none of the offences are alleged to have been committed within the jurisdiction of the said Police Station, investigation can not be conducted in the matter by the Police of Police Station- Kotwali Nagar, District - Balrampur, yet it is being so conducted.

Inspite of lapse of more one and half years the State has not responded to the queries of the Court contained in the order dated 02.11.2021.

One last opportunity is granted to the State to file a response or seek instructions and assist the Court on the aforesaid issue.

List/ put up on 10.08.2023 amongst first ten cases.

If no response is received then this Court would have no other option but to conclude the proceedings after hearing the parties on the basis of material available on record and pass appropriate orders.

Interim order granted earlier to continue till the next date of listing."

Here again noticing the contention of petitioner's counsel that FIR could not have been lodged at Police Station Kotwali Nagar, District Balrampur as none of the offences are alleged to have been committed within the jurisdiction of the said police station and investigation cannot be conducted in the matter by the police of the said police station, yet, it was being conducted, thereafter the matter was heard at length on several dates. Lastly, on 01.11.2023 we have passed the following order:

"We have heard the matter. However, the learned A.G.A. says that the charge sheet has been prepared the petitioner and it has been forwarded to the superior officer on 28.09.2023.

Let a supplementary counter affidavit be filed by the learned A.G.A. on behalf of the concerned opposite parties before the next date.

The superior authority may take such decision as to submission of charge sheet before the Court, as is deemed proper in the light of the law on the subject.

Learned Counsel for the petitioner may address us on the issue as to why all these pleas cannot be seen by the Court below after filing of charge sheet but at the time of taking cognizance, as ultimately, if the Court below takes a decision that it does not have territorial jurisdiction entirely in the matter then the consequences would follow accordingly, or, if it takes a decision that it has jurisdiction to try the offences alleged only in part then the investigation only to that extent would be saved and for the remaining offences, the F.I.R. would to have to be transferred to the concerned police station having territorial jurisdiction in light of the provisions contained in Cr.P.C., as, prima facie, this is not a case where the FIR could be quashed, therefore, we have to consider only relief number two in the light of the above?

Interim order granted earlier shall continue till the next date of listing.

List/Put up this case on 29.11.2023."

Thereafter, as informed by Mr. Umesh Chandra Verma, learned AGA charge-sheet has been filed against the petitioner herein, namely, Vinod KUMAR in the Court on 24.11.2023. Against other accused, charge-sheet had been filed earlier.

Against the backdrop of our order dated 01.11.2023 quoted hereinabove and the subsequent development regarding filing of charge-sheet against the petitioner before the Court below, we are of the opinion that the plea of the petitioner herein as to the jurisdiction of the Trial Court in the matter needs to be looked into by the Court below itself at the stage of cognizance as consequent to it the issue as to whether the police of Police Station Kotwali Nagar had the jurisdiction firstly to register and then to investigate the said FIR or not would get automatically determined in view of the provisions contained in the Code of Criminal Procedure, especially Section 181 Cr.P.C. and such other provision as may be applicable. The case of the petitioner before us has already been recorded in our earlier orders and also hereinabove which shall be kept in mind by the Court below.

In the event cognizance has already been taken, it shall be open for the petitioner herein to move appropriate application raising jurisdictional issues which shall be considered by the Court below as per law and a decision shall be taken accordingly.

If the petitioner apprehends his arrest, he is at liberty to take recourse of the proceedings under Section 438 Cr.P.C.

The petition is ***disposed of***.

[Ajai Kumar Srivastava-I, J.][Rajan Roy, J.]

Order Date :- 19.12.2023

Santosh/-