

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 381 of 2015**

Jitesh Agarwal S/o Kapoor Chand Agarwal Aged About 36 Years R/o Hatri Chowk, P.S.-Shakti, Civil/revenue District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through: District Magistrate, Bilaspur, District-Bilaspur, Chhattisgarh
2. State Of Uttar Pradesh Through: District Magistrate, Rampur, District-Rampur

---- Respondents

And**CRMP No. 407 of 2015**

Vijay Bhargav S/o Kheduram Bhargav Aged about 38 years, R/o Seepat, Bustand, P.S.Seepat Civil/Revenue District Bilaspur Chhattisgarh

---- Petitioner

Versus

2. State Of Chhattisgarh Through: District Magistrate, Bilaspur, District-Bilaspur, Chhattisgarh
3. State Of Uttar Pradesh Through: District Magistrate, Rampur, District-Rampur

---- Respondents

For Petitioners	:	Shri H.S. Ahluwalia, Advocate
For Respondent No.1/State	:	Shri Lav Sharma, Panel Lawyer
For Respondent No.2	:	None

(None for respondent 2 in Cr.M.P.No.381/2015 though represented)

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

10/03/2016

1. With the consent of the parties, heard the matter finally at the motion stage itself.

2. As both the Cr.M.P.Nos.381/2015 and 407/2015 are connected, they are being disposed of by a common order.

3. Facts in brief applicable for disposal of the both the Cr.M.P are that Police of Tarbahar, Police Station Bilaspur (CG) had registered Crime No.271/2014 for the offence under Sections 420, 467, 468, 470, 471, 411, 403/34 IPC and after due investigation, filed charge sheet against 11 accused persons in which, the petitioners of both the Cr.M.Ps. are accused. After completion of the investigation, charge sheet has been filed before the Court of Chief Judicial Magistrate, Bilaspur (CG) on 10.12.2014. The Court has taken cognizance and registered Criminal Case No.11957/14 and framed charges against all the accused persons as per order dated 15.1.2015. The matter is pending for recording of evidence. The FIR has been lodged on 9.12.2014. The date of incident as reported is 12.9.2014, in which, the property involved is 5 Trucks, 6 Boleros, 1 Tata Safari, 2 Pick Ups, 1 Hundai Car, and 1 Indica Vista are named in the FIR. The allegations are that the aforementioned vehicles are taken to Bilaspur by committing theft from different parts of Uttar Pradesh and Rajasthan and thereafter, by using punch for numbers over the chesis and engine, embossed another numbers at Bilaspur.

4. Facts relevant for Cr.M.P.No.381/2015 are that on 2.7.2014, at 3.30 am, an FIR has been lodged regarding theft of Bolero bearing registration No.DL 12C 0517, Civil Line Police of Rampur, registered Crime No.381/2014 under Section 379, 411, 420, 468, 471/34 IPC and after investigation, Police filed charge sheet against 5 accused persons including the present applicant on 11.3.2015 but till date charges were not framed and the matter is still pending for framing of charges. The Chief Judicial Magistrate, Rampur, Uttar Pradesh registered the case as No.1777/2015. As per facts mentioned in the matter for C.J.M. Bilaspur, the number of the Bolero was changed as CG 04 DV 4161.

5. The facts relevant for Cr.M.P. No.407/2015 are that an FIR has been filed before the Police Station Kamri, District Rampur on 17.9.2014 at 11.30 am regarding theft of 1 Truck bearing registration No.UP 22T 5017. The Police registered the FIR as Crime No.300/2014 under Sections 379, 411 IPC after investigation, Police had filed charge sheet before the Judicial Magistrate, Rampur, Uttar Pradesh. The said Criminal Court registered the matter as Case No.524/2015. Charge sheet has been filed on 24th March, 2015 but till date charges are not framed and the matter is still pending for consideration of the charges. As submitted the registration of said stolen Truck is not changed. The present applicant Vijay Bhargav is also accused in the above matter pending before Judicial Magistrate, Rampur, Uttar Pradesh.

6. By filing both the Cr.M.P., it is submitted that as per the provisions of Section 186 of the Code of Criminal Procedure Code, 1973 (for brevity the Cr.P.C.), if 2 or more Courts have taken cognizance of the same offence and a question arose as to which of them ought to enquire into or try that offence, the same may be decided by the High Court at the local limits of whose appellate criminal jurisdiction the proceedings were first commenced. It is further submitted that thereafter all other proceedings in respect of that offence shall be discontinued. The trial Court at Bilaspur, taken cognizance earlier and with this no any proceeding can be commenced in the Court of Rampur for the aforementioned Cr. Cases. It is further submitted that as per application of Section 177 Cr.P.C. which is regarding ordinary place of enquiry and trial and with the application of Section 180 Cr.P.C. dealing with the place of trial where such offence has been committed. It is further submitted that as the property recovered at Bilaspur Court having local jurisdiction at Bilaspur may be permitted to enquire and tried for the offence as the vehicle in question is seized within the local jurisdiction of Bilaspur itself. In both of the Cr.M.P. on behalf of the petitioners it is submitted that this Court may be pleased to allow the petitions and

quash the impugned order dated 11.3.2015 regarding taking of cognizance in Cr. Case No.1777/2015 and the order dated 24.3.2015 for taking cognizance for the offence in Cr. Case No.524/2016 as aforementioned by the Judicial Magistrate, Rampur, Uttar Pradesh.

7. Heard learned counsel for the parties in both the Cr.M.Ps.

8. Learned counsel while supporting the grounds taken in both the petitions, prayed that provisions of Section 186 (b) Cr.P.C. are applicable hence, as the proceedings first commenced at Bilaspur, High Court of Chhattisgarh having authority to decide the question regarding where the matter be enquired or tried.

9. On behalf of the petitioners reliance has been placed on the decision of **Madhya Pradesh High Court in 1984 (1), The State of Madhya Pradesh Vs. Bahadur Singh and others**, wherein, the High Court of erstwhile State of Madhya Pradesh held that as per the provisions of Section 186 (b) Cr.P.C., the High Court under whose appellate jurisdiction the proceedings were first commenced and thereby ordered accordingly. Learned counsel submitted that the cited case law is applicable in the matter hence, relief as sought may be granted.

10. For the purposes of appreciation of the arguments advanced and the material placed, I have perused the documents annexed.

11. From perusal of the entire material, it goes to show that case pending before the Chief Judicial Magistrate, Bilaspur is against 11 accused persons in relation to theft and other offences regarding many vehicles.

12. On other hand, before the Chief Judicial Magistrate, Rampur, on the basis of the FIR dated 2.7.2014, charge sheet has been filed against 5 accused persons and in another case, charge sheet filed before the Judicial Magistrate,

Rampur against the same petitioner. In both the cases pending at Rampur charges are not framed. While on the other side the case is pending at Bilaspur and charges are framed; charge sheet has been filed much much earlier at Bilaspur in comparison to both of the Criminal Courts at Rampur, goes to show that the trial is commenced before the Chief Judicial Magistrate, Bilaspur and trial is yet to be commenced in both of the Criminal Court at Rampur. For the relevance of the present matter, Section 186 Cr.P.C. reads as under :

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 Court 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.

13. From bare perusal of Section 186, it appears that no question till date arises as to which of the Court ought to enquire into or tried that offence. It does not reflect that before the Criminal Court at Rampur any question arose regarding taking cognizance or trial. When no question arose there, no application is filed in this behalf and for the moment it cannot be said that any question arises regarding the place where trial or enquiry may continue.

14. The case law cited arises out of the application for transfer of a particular pending proceeding from a Criminal Court of Punjab and Haryana to the Court of competent jurisdiction at Bhopal, Madhya Pradesh. The matter decided for the said prayer of transfer in which it is held that since the proceeding first commenced before the jurisdiction of Punjab and Haryana State that is why, which alone has authority under Section 186 (b) Cr.P.C. to decide the question regarding the place of the trial.

15. In the present case, there is no question arises regarding the place of inquiry and trial before both the Criminal Courts at Uttar Pradesh. With the above, as the question has not been arisen, the Cr.M.Ps. are pre-matured for the moment. The case law cited is not applicable for the facts of the case in hand.

16. On due consideration, this Court is of the view that as the question is not arose regarding the place of enquiry and trial before the competent Court, trial commenced by the Criminal Court at Bilaspur and subsequently, charge sheet has been filed, it is required to raise a question before the subsequent Criminal Court regarding double jeopardy or prosecution at 2 places for an offence as provided in Article 20 sub-Article (2) of the Constitution of India. Barring this as the case is pending at Bilaspur Criminal Court in relation to many other accused persons regarding many other theft articles and other facts it would be too early to ascertain for the moment regarding the other facts.

17. Both the Cr.M.Ps. are filed before this Court prematurely. Consequently, both the petitions deserve to be dismissed as premature and are hereby dismissed.

Sd/

(Chandra Bhushan Bajpai)
Judge