

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 4th December, 2018

+ **W.P.(CRL) 3159/2017**

RAJEEV SIKKA

... Petitioner

Represented by: Mr.Vikas Pahwa, Sr.Advocate with
Ms.Aashita Khanna, Advocate

versus

STATE OF NCT OF DELHI & ORS

... Respondents

Represented by: Ms.Nandita Rao, ASC for the State
with SI Pankaj Kumar, PS Shalimar
Bagh
Mr.Anupam S. Sharma, SPP for CBI
with Mr.Prakarsh Airan, Advocate for
respondent No.4

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner prays as under:

A. Issue a writ in the nature of Mandamus or any other appropriate writ(s)/order(s)/directions to the concerned IO, PS: Shalimar Bagh to perform their duties in connection with the complaint filed by the petitioner on 29.05.2014 and the CC No. 24176/2015 pending before Ld. MM, Rohini Court.

B. Issue an appropriate Writ(s)/order(s)/directions to Delhi Police to perform their part of the obligatory duty to take action against the erring officer who has failed to discharge the duties in registering the FIR on the basis of the complaint filed by the petitioner on 29.05.2014.

C. Direct for transfer of complaint to CBI so that an FIR is registered in the present case and investigation is done into the matter.

2. Unfortunately, the son of the petitioner namely Rohan Sikka aged about 24 years died and the petitioner alleges that it was due to gross medical negligence of the doctors at Medanta hospital, Gurugram. In the petition it is stated that Rohan Sikka was hospitalized at Fortis hospital, Shalimar Bagh, New Delhi from 3rd July, 2013 to 7th July, 2013 where he was diagnosed of Lymphoma. On the advice of his family doctor, the petitioner admitted Rohan Sikka to Medanta hospital, Gurugram, where he was administered chemotherapy for Lymphoma from 13th July, 2013 till 20th July, 2013 and was discharged on 22nd July, 2013. Rohan Sikka was again admitted at Medanta on 27th July, 2013 on the complaint of abdominal pain, when a biopsy was conducted. As per the reports of Medanta hospital, Rohan Sikka was diagnosed with Thymoma and not Lymphoma. It was suggested that the patient should undergo a surgery without any kind of consultation with the formal histopathology report. Rohan Sikka was discharged on 30th July, 2013 in a stable condition. Later, a surgery was performed on Rohan Sikka on 3rd August, 2013 and he was discharged from the hospital on 5th August, 2013. He was re-admitted on 13th August, 2013 with various complaints including breathlessness. Later, CEST Chest and Pleurodesis were performed on Rohan Sikka on 16th August, 2013. On 20th August, 2013, he was discharged. Thereafter, he was admitted several times when sessions of chemotherapy were given and finally he was discharged from Medanta hospital on 21st October, 2013. Thereafter, he was admitted to Fortis hospital, Gurugram on various dates where he was administered

chemotherapy several times. In January, 2014, the petitioner took his son to USA where he succumbed to the disease.

3. Case of the petitioner is that despite the fact that Rohan Sikka was suffering from Lymphoma, the doctors at Medanta did not give proper treatment rather performed surgery of Thymoma and again administered him medicines for Lymphoma causing ordeal to Rohan Sikka resulting in his death. Aggrieved by the conduct and alleged offence committed by the doctors at Medanta hospital, Gurugram, the petitioner filed a complaint with the Police Station Shalimar Bagh on 29th May, 2014. Petitioner thus claims that since the complaint discloses commission of a cognizable offence, FIR ought to have been registered on the said complaint by the SHO, PS Shalimar Bagh.

4. The Constitution Bench of the Hon'ble Supreme Court in the decision reported as (2014) 2 SCC 1 Lalita Kumari Vs. Govt. of U.P. laid down the following guidelines:

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of

the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

5. It is thus evident that as per the Constitution Bench decision in case the complaint discloses commission of a cognizable offence, there is no scope of preliminary inquiry and the SHO is duty bound to register the FIR except in cases as mentioned in para 120.6 or cases akin thereto.

6. On a query put to learned senior counsel for the petitioner as to how the territorial jurisdiction of PS Shalimar Bagh is made out to get the preliminary inquiry conducted when the allegations of negligence are against doctors of Medanta hospital, Gurugram, learned senior counsel fairly states that there was no negligence on the part of Fortis hospital, Shalimar Bagh where the petitioner's son was firstly admitted and also underwent treatment but since the consequences of the negligence ensued within the jurisdiction of PS Shalimar Bagh, SHO, PS Shalimar Bagh was duty bound to register the FIR.

7. High Court of Himachal Pradesh in the decision reported as 2018 SCC OnLine HP 1315 Brij Lal & Ors. Vs. State of Himachal Pradesh interpreting Section 179 Cr.P.C. held :

“1. Interpretation of Section 179 of the Criminal Procedure Code (hereinafter referred to as the Code) arises for consideration in the present petition. What is the meaning of the words “an act is a reason of anything done” and “consequence” “which has ensued” contained in the said

Section needs to be examined. To put it shortly if an act which is offence by reason of anything done in a place 'A' and the "consequence" which has ensued at a place 'B', then whether place 'B' would have jurisdiction to conduct the trial or not. Chapter-XIII of the Code stipulates the jurisdiction of the Courts where inquiry or trial can take place. For the purposes of ready reference, relevant provisions are reproduced as under:—

179. Offence triable where act is done or consequence ensues. - When an act is an offence by "reason of anything which has been done" and of a "consequence which has ensued", the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. At the threshold, it stands clarified that remaining provisions from Sections 181 to 189 of the said Chapter are not relevant, in view of undisputed facts borne out from the record of the present petition. On facts, record reveals that in relation to an offence falling under Section 302 of the Indian Penal Code, an FIR No. 132, dated 25.05.2016 was registered at Police Station, Shimla (West), District Shimla, H.P. As per averments made in the FIR, in the night intervening 24-25.05.2016, allegedly, petitioners herein, namely, Brij Lal, Ranveer Sankyan, Sanjeev Kumar @ Sanju and Mohinder Singh, gave beatings to deceased Ankush and Madan at Brahmpukhar-Ghaghas - a place falling within the territorial jurisdiction of Sessions Judge, Bilaspur - outside the territorial jurisdiction of Sessions Judge, Shimla. Thinking deceased Ankush to have died on the spot, the assailants went away. But however, it was not so and both the injured came to Shimla. For treatment of injuries, Ankush was admitted for medical treatment at the Government Hospital, IGMC, Shimla, where, he was declared dead. The postmortem was conducted in the said hospital and on the basis of complaint lodged by his relatives, aforesaid FIR came to be registered at Shimla. Brahmpukhar-Ghaghas do not fall within the territorial jurisdiction of Police Station (West) District Shimla, H.P.

Nor does the Sessions Judge has the same. Since FIR was registered at Police Station (West), Shimla, falling within the jurisdiction of Sessions Judge, Shimla and investigation was carried out by the officers thereof, challan was presented for trial in the Court having competent jurisdiction at Shimla. The jurisdictional issue raised by the petitioners stands rejected by the trial Court, vide order dated 27.11.2017, passed in Case No. 2-S/7 of 17, titled as State of H.P. v. Brij Lal, and they stand charged for having committed offences punishable under the provisions of Sections 302, 382 and 323 read with Section 34 of IPC, to which they plead not guilty and claim trial. This was vide separate order of the very same date i.e. 27.11.2017. This petition under Section 407 read with Section 482 of the Code of Criminal Procedure (for short 'Code') preferred by the petitioners is with a prayer to transfer the Sessions Trial No. 2-S/7 of 2017, pending before the Court of Additional Sessions Judge-II, Shimla, H.P., to the Court of Learned Sessions Judge, Bilaspur, H.P. Before this Court, it could not be disputed that the deceased travelled all the way from Brahmpukhar-Ghagas to Shimla where he succumbed to the injuries. It is in this factual backdrop, one appreciates the relevant provisions of the Statute. Section 177 of the Code postulates that every offence shall ordinarily be inquired and tried by a Court in whose local jurisdiction the offence stands committed. The Apex Court in Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300, has clarified that whether an Officer Incharge of a Police Station has the requisite jurisdiction to make investigation or not would depend upon large number of factors, including those contained in Sections 177, 178 and 181 of the Code. As per the provisions of Section 178 of the Code, when an offence is a continuing one and continues to be committed in more than one local area, it may be inquired into or tried by a Court having jurisdiction over anyone of such local area(s). Undisputedly, it is nobody's case that the assailants followed the victims from Ghagas to Shimla or travelled outside the territorial limits of Bilaspur. Hence this Section is not

applicable. However, what needs to be considered is as to whether the case would fall under Section 179 of the Code or not. From the bare reading of the Section it is clear that for its invocation following ingredients must exist: (a) where an act is an offence by reason of anything which has been done; (b) and of a consequence which has ensued. With the fulfillment of these two essential ingredients, the offence may be tried by a Court within whose local jurisdiction such act stands committed or consequence ensued. Thus, what needs to be considered is, as to what is the meaning of the word “consequence” which has “ensued” for there is no dispute about the act being an offence. Only whether consequences have ensued or not needs to be examined. Oxford English Dictionary Indian Edition, defines the word “consequence” as:—

‘1 a result or effect. 2 importance or relevance. 3 (Consequences) a game in which a narrative is made up by the players in turn, each ignorant of what has already been contributed.

- Phrases in consequence as a result. take (or bear) the consequences accept responsibility for negative results or effects.

- Origin Me: via OFr. From L. consequential, from consequent-, consequi ‘follow closely’.

and word “ensue” as:

‘- happen or occur afterwards or as a result.

- Origin Me: from Offr. Ensivre, from L. insequi, based on sequi ‘follow’. Further, Black's Law Dictionary, Tenth Edition, defines the word “Consequence” as:—

‘Consequence. (14c) A result that follows as an effect of something that came before. See Effect.’

And word “ensue” as:—

‘Ensue-Term that means to come later or to follow.’

2. The book *Words and phrases* (Permanent Edition 8A) defines the word “Consequence” as:—

‘Consequence means that which follows something on which it depends; that which is produced by a cause or ensues from any form of necessary connection or from any set of condition; a natural or necessary result (Board of Fireman's Relief & Retirement Fund Trustees of Houston v. Marks, Tax. Civ. App., 237 S.W.2d 420, 423.’

and Permanent Edition 14A Book defines word “ensue” as:—

‘Ensue-the word “ensue” means to follow, to come afterwards, to follow as a consequence or in chronological succession, to result as an ensuing conclusion or effect or the year ensuing.’

3. Thus, grammatical expression and meaning is plain and simple. Consequence is a result or effect and ensue is what happens or occurs afterwards or as a result.

4. In *Lee Kun Hee, President, Samsung Corporation, South Korea v. State of Uttar Pradesh*, (2012) 3 SCC 132, the Apex Court observed that in Section 179 aforesaid, two phrases need to be noticed: Firstly, “anything which has been done”, with reference to the offence; and secondly, “consequence which has ensued”, also with reference to the offence. Both the aforesaid phrases substantially enlarge and magnify the scope of jurisdiction contemplated under Section 179 aforesaid, so as to extend the same over areas contemplated by the two phrases. The Court was dealing with a case where pursuant to agreement dated 01.12.2001 executed outside the jurisdiction of the Courts at Ghaziabad, but goods were dispatched from there to a place outside its territorial limits and also payments were received in Ghaziabad, the Court observed that the words “anything which has been done”, for the present controversy, would extend to anything which has been done in furtherance of the execution of the agreement dated 1.12.2001. The facts constituting the performance of obligations by the complainant, actually constitute the foundational basis for the criminal accusation levelled against the accused (in refusing to honour

the corresponding obligation). The instant foundational basis for establishing the commission of the offence, in my view, would fall within the ambit of the words “anything which has been done” sufficient to vest jurisdiction under Section 179 of the Code of Criminal Procedure, with a competent Court at Ghaziabad. It categorically held that:

“35. Besides the aforesaid, under Section 179 of the Code of Criminal Procedure, even the place(s) wherein the consequence (of the criminal act) “ensues”, would be relevant to determine the court of competent jurisdiction. Therefore, even the courts within whose local jurisdiction, the repercussion/effect of the criminal act occurs, would have jurisdiction in the matter.”

5. Noticeably in the very same decision, the Court reiterated its earlier view taken in Mobarik Ali Ahmad v. State of Bombay, AIR 1957 SC 857, wherein it was observed that:—

“24.But as is seen above, the principles recognised in International Law in this behalf are virtually based on the recognition of those principles in the municipal law of various countries and is really part of the general jurisprudence relating to criminal responsibility under municipal law. No doubt some of the above dicta have reference to offences actually committed outside the State by foreigners and treated as offences committed within the State by specific legislation. But the principle emerging therefrom is clear that once it is treated as committed within the State the fact that he is a foreigner corporeally present outside at the time of such commission is no objection to the exercise of municipal jurisdiction under the municipal law. This emphasises the principle that exercise of criminal jurisdiction depends on the locality of the offence and not on the nationality of the alleged offender (except in a few specified cases such as ambassadors, Princes etc.)”

6. In Banwari Lal Jhunjhunwala v. Union of India, AIR 1963 SC 1620, the Apex Court reiterated its earlier view, rendered in Purushottam Das Dalmia v. State of West Bengal, AIR 1961 SC 1589 and L.N. Mukherjee v. State of Madras, AIR 1961 SC 1601, that a Court trying an accused for an offence of

conspiracy is competent to try him for all the offences committed in pursuance of that conspiracy, irrespective of the fact that any or other all other offences were not committed within its territorial jurisdiction.

7. In a case where the product stood manufactured at a place other than the place where it was sold, in a prosecution launched under the Prevention of Food Adulteration Act, 1954, the Apex Court in State of Punjab v. Nohar Chand, (1984) 3 SCC 512, held that the manufacturer could be sued along with the seller at the place where such product stood sold. [State of U.P. v. Mandleshwar Singh, 1988 SCC (Cri) 58].

8. In Vishwanath Gupta v. State of Uttaranchal, (2007) 11 SCC 633, the Apex Court had an occasion to deal with a case where the victim was kidnapped from a place 'A', taken to a place 'B', from where demand for ransom was made and thereafter taken to yet another place 'C', where he was murdered. The Court observed that territorial jurisdiction to deal with the crime in its entirety would be at any one of the three places.

9. In a case of an offence arising out of matrimonial dispute, the Apex Court in Sunita Kumari Kashyap v. State of Bihar, (2011) 11 SCC 301, observed that the place where the 'consequence' of the dowry "ensued", which was other than the place where the marriage took place, being parental house of the lady, would have jurisdiction to conduct the trial. [State of M.P. v. Suresh Kaushal, (2003) 11 SCC 126].

10. The Apex Court in Babita Lila v. Union of India, (2016) 9 SCC 647, while dealing with a case where the premises of the assessee were searched at Bhopal and Aurangabad, observed that confining the jurisdiction within the territorial limits only to one Court, the principal place where the returns were filed by the assessee, would amount to impermissible and illogical truncation of the ambit and scope of Sections 178 & 179 of the Code. The Court further observed as under:—

“75. Though the concept of “cause of action” identifiable with a civil action is not routinely relevant for the

determination of territoriality of criminal courts as had been ruled by this Court in Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, their Lordships however were cognizant of the word “ordinarily” used in Section 177 of the Code to acknowledge the exceptions contained in Section 178 thereof. Section 179 also did not elude notice.”

11. Section 179 Cr.P.C. elucidates the meaning of the language used. The section is only applicable where the act and its consequence, both of which have to be proved to constitute the offence, have taken place in two different local areas. In such an event, the alleged offence may be tried either where the act took place or where its consequence ensued. It is also clear that the “consequence” here is part of the offence to be established. It is by virtue of the consequence that the act becomes a complete offence is also the issue taken by the Allahabad High Court in M.N. Bhatia v. State of U.P., 1968 Cri. L.J. 555.

12. In a case relating to an offence of defamation, it stands settled that both the Courts, from where the letter is written, posted and/or received and read, would have jurisdiction to try the offence. [Rekhabai v. Dattatraya, 1986 Cri. L.J. 1797 (Bombay High Court); S. Bangarappa v. Ganesh Narayan Hegde, 1984 Cri. L.J. 1618 (Karnataka High Court) & Shaukatali Ibrahim Rangrez v. Mohommad Siraj, 1997 Cri. L.J. 1352 (Bombay High Court)].

13. Applying the aforesaid procedures to the given case, here the beatings given at Bilaspur, resulted into death at Shimla. Accepting the averments made in the FIR to be true, it cannot be disputed that the act of assault committed at Bilaspur is one of the ingredients of the Section and that the other ingredient stands fulfilled with a consequence which has ensued at Shimla.

14. In support of his contentions, Mr. N.S. Chandel, learned counsel, referred to and relied upon the decisions rendered by the Apex Court in Manoj Kumar Sharma v. State of Chhattisgarh, (2016) 9 SCC 1; Naresh Kavarchand Khatri v. State of Gujarat, (2008) 8 SCC 300; & Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728.

15. These decisions do not deal with the issues at all, for the issue in the said case(s) was transfer of investigation to an officer having competent jurisdiction. The Court cautioned that the jurisdictional fact, would emerge only during the course of investigation and it would not be prudent for the Court to transfer the investigation from one Police Station to another.

16. In view of the aforesaid discussion, it cannot be said that the Court of Sessions Judge, Shimla, has no jurisdiction to conduct the trial in Sessions Trial No. 2-S/7 of 2017, titled as State of H.P. v. Brij Lal. As such, present petition, devoid of any merit, is dismissed. Records be immediately sent back.

17. Pending application(s), if any, also stand disposed of accordingly.”

8. In the present case the son of the petitioner was initially treated at Fortis hospital, Shalimar Bagh, thereafter, at Medanta hospital, Gurugram where the alleged negligence took place followed by treatment at Fortis hospital, Gurugram and thereafter, was taken to U.S.A. where he succumbed to the ailment. Hence, the consequence, if any ensued at U.S.A. and not in Delhi.

9. Learned senior counsel for the petitioner further submits that the State has not placed on record any document to show that no case to conduct a preliminary inquiry is made out, which fact is refuted by learned Additional Standing Counsel for the State who has taken this Court through the affidavit of the DCP, North West District dated 29th January, 2018 in which the copy of the complaint register has been placed on record wherein the gist of complaint and gist of inquiry has also been placed on record which notes that “as the treatment was done by the doctors at Medanta hospital at Gurugram, jurisdiction for the same would be under Police Station of

Gurugram, hence, the complaint may be sent to SSP, Gurugram for necessary action.”

10. As noted above, in para 120.6 the Hon’ble Supreme Court clearly laid down that cases of medical negligence are where preliminary inquiry may be made which exception is in consonance with the decision of the Hon’ble Supreme Court in (2005) 6 SCC 1 Jacob Mathew Vs. State of Punjab & Anr. warranting a preliminary inquiry. It is well settled that unless a finding by an expert body qua negligence is made out against the doctors at Medanta, no FIR much less a Zero FIR could have been registered at PS Shalimar Bagh. It is in the light of this observation of the Hon’ble Supreme Court that the police officers at PS Shalimar Bagh, Delhi transferred the complaint to the SSP, Gurugram, who was required to take action thereon. Since this Court has no territorial jurisdiction on the inaction on the part of SSP, Gurugram, the petitioner would be at liberty to take remedies as available to him in law. Needless to note that the petitioner has also filed complaint along with an application under Section 156(3) Cr.P.C. before the learned Metropolitan Magistrate where also the learned MM vide order dated 19th July, 2018 has returned the complaint to be presented before the Court of competent jurisdiction. This Court finds no ground to pass any further direction in the matter.

11. Petition is dismissed with liberty to the petitioner to take remedies as available in law.

(MUKTA GUPTA)
JUDGE

DECEMBER 04, 2018
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