

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42393 of 2014

Arising Out of Case No.-183 Year-2013 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Mukesh Kumar Son of Panchanand Singh Resident of Mohalla - Subash
Nagar, Ward No. 15, P.S. Dehri District - Rohtas, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Satya Narayan Mehta Son of Sri Ramji Mehta Resident of Village - Keshri
Bigha, P.S. Akodi Gola, District - Rohtas

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate with
Mr. Shashikant and
Mr. Surendra Kumar Mishra, Advocates

For the State : Ms. Madhuri Lata, APP

For the O. P. No. 2 : Mr. Sudama Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-02-2019

Heard Mr. Yogesh Chandra Verma, learned senior
counsel along with Mr. Shashikant and Mr. Surendra Kumar
Mishra, learned counsel for the petitioner; learned A.P.P. for the
State and Mr. Sudama Singh, learned counsel for the opposite
party no. 2.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the 'Code') for the following relief:

*“ That this is an application for quashing the order
dated 03-12-2013 passed by learned Sub-*



divisional Judicial Magistrate, Dehri passed in compliant case no. 183 of 2013, whereby and where under the said learned court has taken cognizance against the petitioner for the offences u/s-498A, 304B of the Indian Penal Code and section 4 of the Dowry Prohibition Act, upon the complaint of the complainant. Since the Complainant has most maliciously suppressed the fact that the first information reprot, bearing Chakan (Pune) P.S. Case no.-190/2013 dated 09-06-2013 was already instituted for the said occurrence in which charge sheet no.-72/2014 dated 07-03-2014 has already been filed against the Petitioner under section 302, 307, 498A and 201 of the Indian Penal Code; AND/OR

For issuance of any other order/orders, direction/directions, as Your Lordship may deem fit and proper in the facts and circumstances mentioned herein below.”

3. The allegation in the compliant filed by the opposite party no. 2 against the petitioner is of killing the daughter of the opposite party no. 2, who was the wife of the petitioner, in the State of Maharashtra.

4. Learned counsel for the petitioner submitted that due to the daughter of the opposite party no. 2 having been burnt in a natural accident, he had got her admitted in a hospital in Chakan (Pune) in the State of Maharashtra and he was the informant of Chakan (Pune) P.S. Case No. 190 of 2013 dated 09.06.2013. It was submitted that he, being the husband, made best efforts to see that she was properly treated but despite her being referred to Sanjivani



Hospital in Pune, she succumbed to her injuries. It was submitted that though the petitioner was the informant, but due to connivance of the police with the opposite party no. 2, he was made an accused and in fact the opposite party no. 2 is a chargesheet witness. Learned counsel submitted that the opposite party no. 2 is fully aware of such development and suppressing the same, he filed the present compliant case before the Court of Sub Divisional Judicial Magistrate, Dehri in the district of Rohtas, being Complaint Case No. 183 of 2013, on 21.06.2013. Learned counsel submitted that in the same, such fact of there already being a police case in Maharashtra having been suppressed, the complaint itself is fit to be dismissed. For such proposition, he relied upon the decision of the co-ordinate Bench of this Court in **Shashi Kant Tiwari vs. State of Bihar** reported as **2011(3) PLJR 214**, the relevant being at paragraph no. 5. It was further submitted that for the same offence /occurrence two cases cannot proceed at the same time and, thus, there already being an F.I.R. for the same incident in Maharashtra, the present complaint case is not sustainable. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in **T.T. Antony v. State of Kerala** reported as **(2001) 6 SCC 181**, the relevant being at paragraphs no. 18 and 27. Learned counsel submitted that the issue of the



opposite party no. 2 not disclosing the fact that there was already a police case pending and under investigation, has also resulted in the misuse of the process of the Court for the reason that once such fact is not disputed, Section 210 of the Code requires in mandatory terms that the Magistrate before whom it is filed, on being aware of there being a police case and investigation by the police being in progress in relation to the offence which was the subject matter of the inquiry or trial before him, he is required to stay the proceeding of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation. Thus, it was submitted that the F.I.R. being lodged much prior to lodging of the present compliant case, such fact not being even whispered in the complaint, clearly indicates that the opposite party no. 2 had not moved before the Court with clean hands. Learned counsel further submitted that in the present case, the other important legal issue in favour of the petitioner is Section 171 of the Code which in categorical terms relates to the ordinary place of enquiry and trial. It was submitted that the same stipulates that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Learned counsel submitted that in the present case there being no doubt or controversy that the incident took place in Maharashtra and already a police



investigation pursuant to a formal F.I.R. having been initiated, the law also requires that the offence shall be enquired into and tried by the Court within whose local jurisdiction it was committed. Learned counsel submitted that in any view of the matter, when the petitioner, though being the informant in the police case in Maharashtra has now been made an accused and the opposite party no. 2 himself is a chargesheet witness, it cannot be said that there has been miscarriage of justice for the reason that the police in Maharashtra have started prosecution against the petitioner and further the opposite party no. 2 is also a chargesheet witness meaning thereby that he has full opportunity of placing all facts known to him before the Court during his examination at Maharashtra.

5. Learned A.P.P. submitted that though the petitioner appears to have committed offence but since pursuant to an F.I.R., already a case in Maharashtra is pending, which was prior in time to the present complaint case, in law, the present complaint case is not fit to proceed.

6. Learned counsel for the opposite party no. 2 submitted that the petitioner is the sole accused in the murder of his daughter, being the husband, and though the Maharashtra police may have submitted chargesheet but it is equally important



that the witnesses are also properly examined so that justice is done and for conducting case at Maharashtra, witness from the State of Bihar may not be able to even go there which would definitely cause prejudice to the trial in the State of Maharashtra. Learned counsel submitted that Section 186 (b) also stipulates that where there is enquiry or trial at more than two places and the two places fall under the jurisdiction of different Courts, the High Court within the local limits of whose local appellate criminal jurisdiction the proceedings were first commenced, shall decide as to whether the enquiry or trial of the offence shall be conducted. In this connection, he relied upon the decision of a co-ordinate Bench in **Mukesh Patwa v. State of Bihar** reported as **2010 (1) PLJR 138**, the relevant being at paragraph no. 8. It was submitted that the Court has held that taking of cognizance would be the relevant date for considering where the proceedings first commence. Learned counsel submitted that in the present case, cognizance was taken in the complaint case on 03.12.2013 whereas in the case in Maharashtra cognizance has been taken on 01.03.2014. Thus, learned counsel submitted that this Court has the jurisdiction to decide the issue and the compliant case is fit to continue and the case in Maharashtra should not continue. Learned counsel submitted that though the police in Maharashtra had recorded the



statement of the victim girl when she was alive and in which she had stated with regard to the petitioner demanding dowry, torturing her and also setting her on fire after pouring kerosene and still making the statement of the petitioner as the F.I.R., itself shows that the case in Maharashtra was not properly handled and, thus, there is chance of miscarriage of justice. Learned counsel submitted that the judgments cited on behalf of the petitioner are not applicable for the reason that in those two cases, the question was of lodging of F.I.R. and in that context it was held that two F.I.Rs. for the same offence were not permissible. However, it was submitted that in the present case, the opposite party no. 2 had filed a complaint case and not F.I.R. before the police. It was submitted that in one of those cases the fact was that the person had lodged an F.I.R. after three years on the ground that he was living at the place where he had instituted the F.I.R. and thus, the Court had held it to be not maintainable. On a direct query of the Court to learned counsel as to how Section 186 of the Code would help him for the reason that such provision being under Chapter XIII of the Code is only to be applied when there is a doubt with regard to the district where enquiry or trial shall take place and the High Court is required to decide and in the present case, once Section 177 of the Code clearly specifying that every offence shall



ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed and in the present case there being no controversy or doubt with regard to the death of the daughter of the opposite party no. 2 taking place in Maharashtra, learned counsel was not able to give any suitable reply. Further, with regard to there being a specific provision in Section 186 of the Code that the “High Court to decide, in case of doubt, district where enquiry or trial shall take place”, would include the enquiry by the police also and, thus, in that context sub section (b) of Section 186 of the Code, which mentions about the proceedings first being commenced, the obvious import would be that it would include the enquiry also and in the police case, the investigation by the police also being an enquiry, how the same shall be limited to only taking of cognizance, which is the stage after the enquiry, either by the police in a criminal case lodged by them pursuant to an F.I.R. or by the Magistrate after he holds an enquiry and then takes cognizance, learned counsel again could not show the difference. Learned counsel summed up his argument by submitting that there has been injustice with the father.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.



8. From the undisputed factual position, the opposite party no. 2 had gone to Maharashtra to a Hospital at Chakan where his daughter was initially admitted and later shifted to another Hospital in Pune, where she died later on and, thus, it cannot be said that the opposite party no. 2 was not aware of there being a criminal case instituted there for the reason that had there been no case instituted, the first and foremost and natural reaction of any mature person would be to inform the authorities concerned with regard to the incident. This is more relevant for the fact that there had been burning of the daughter of the opposite party no. 2 which was an unnatural occurrence and without there being a proper police clearance, no Hospital could have treated her in that condition. Moreover, there is no denial that the opposite party no. 2 was not present during the last rites of his daughter, which also leads to the obvious presumption that there was an F.I.R. pursuant to which there would have been a postmortem and then body would have been released by the Hospital concerned. Moreover, there is not even a whisper or any averment by the opposite party no. 2 in the complaint that the police had refused to register any case at his behest and that the police had not taken his statement. Obviously, a father being faced with the situation where his daughter is badly burnt, unless being satisfied that he has made a



complaint to the authorities and recorded his statement, he would not have just remained an idle spectator and returned to Bihar. Him not making any grievance in Maharashtra with regard to there being no case lodged or the police not recording his statement, it can be safely presumed that the opposite party no. 2 was fully aware of the criminal case and also satisfied with the said case. Be that as it may, it is for the party who moves before the Court to be first fully aware of the factual position and even for the sake of argument, if it is accepted that he was unaware, then also the onus was on him and it was obligatory to first enquire the factual position in the State of Maharashtra which he was required to get from the authorities concerned before filing the case before the Court and it was his duty to mention the same in the petition. This not having been done by him in the complaint, clearly would amount to major suppression of fact as it would have changed the picture, since the Court below would have had to act in accordance with Section 210 of the Code, for the reason that once being aware that already there is a police enquiry, the Court has to ask for a report with regard to the same. Moreover, this Court finds that even in the case in Maharashtra, from perusal of chargesheet of the case, it is clear that the same has been submitted under Sections 302, 307, 498A and 201 of the Indian Penal Code and, thus, the



allegation under Sections 498(A) and 304(B) of the Indian Penal Code in the compliant are more than adequately covered in the cognizance taken against the petitioner in the State of Maharashtra.

9. The judgments relied upon by learned counsel for the opposite party no. 2 in **Mukesh Patwa** (supra), this Court would only observe that the same cannot be said to be a precedent with regard to the proceedings having commenced only after cognizance is taken, for the reason that the same is not discussed in the judgment and more importantly the judgment does not take note of the very language of Section 186 of the Code which 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 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.”

10. At the cost of repetition, the heading itself states that the High Court is to decide, in case of doubt, district where enquiry or trial shall take place. Thus, in the opinion of the Court,



it leaves no doubt that the term “enquiry” would include a police enquiry /investigation. Thus, the reference to the “proceedings were first commenced” cannot be restricted only with regard to the actual taking of cognizance. Moreover, looking from another angle, if the commencement of the proceedings is directly linked with taking of cognizance it would lead to an absurd position in law, where, in a criminal case the investigation by the police, due to various unavoidable factors, takes long, whereas in the complaint case on the same day the concerned party can get the evidence recorded and within a few days it can result in taking of cognizance. Thus, the mere fact of taking of cognizance in no way can be said to be the “commencement of the proceeding”, as any criminal proceeding is deemed to have commenced the moment information is given to the local police with regard to commission of a cognizable offence, which leads to lodging of the F.I.R., followed by enquiry/investigation by the police. Thus, the Court finds that Section 186 (b) of the Code is of no help to the opposite party no. 2, also for the reason that it is applicable only if there is “doubt” and when, as per Section 177 of the Code there is no doubt with regard to local jurisdiction of the Court where the enquiry or trial is to be held, which in the present case is



Maharashtra, the Court in the State of Bihar would not have jurisdiction.

11. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 183 of 2013, including the order dated 03.12.2013, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

12. However, it shall be open to the opposite party no. 2 to move before the appropriate forum/court, if at all he has serious apprehension with regard to the trial proceeding at Maharashtra and if he desires the same to be held in the State of Bihar.

(Ahsanuddin Amanullah, J)

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