

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

% **Reserved on : 29.11.2019**
Pronounced on : 19.03.2020

+ **CRL.M.C. 4199/2019 & CRL.M.A.34296/2019**

MEGHNA PATEL Petitioner

Through: Mr. Asad Alvi and Ms. Saba Alvi
Advocates.

versus

STATE & ORS. Respondents

Through: Mr. M.S.Oberoi, APP for the State.
Mr. Mahipal Malik and Mr. Siddharth
Chakrovorty, Adv. for R-3 and 4.

+ **CRL.M.C. 5622/2019**

MAHAAKSHAY MITHUN CHAKRABORTY @ MIMOH & ANR.

.... Petitioners

Through: Mr. Mahipal Malik & Siddharth
Chakravorti Advs.

versus

STATE & ANR. Respondents

Through: Mr. M.S.Oberoi, APP for the State.

Mr. Asad Alvi and Ms. Saba Alvi for
R-2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

Two petitions i.e. Crl. M.C. 4199/2019 and Crl. M.C. 5622/2019 are being decided together as the same are interconnected and arising out of the same impugned order dated 14.01.2019 passed by the Ld. A.S.J. setting aside the order dated 02.07.2018 passed by the Ld. ACMM directing registration of the FIR while exercising power U/s 156(3) Cr.P.C.

CRL.M.C. 4199/2019

1. The present petition has been filed by the petitioner with the following prayers :

- a) Set aside the order dated 14.01.2019 in Crl. Revision No. 169/2018 the Ld. ASJ-3 (North West) Rohini Courts Shri Manu Rai Sethi.
- b) Further the order dated 14.01.2019 may be modified in the light of the Judgment of Hon'ble Delhi High Court in the matter of Sonu And Ors. Vs. Govt. of NCT of Delhi and Anr. on 10 October, 2007. Transfer the Complaint of the petitioner to the concerned Metropolitan Magistrate of Mumbai.
- c) and the FIR No. 361/2018 registered in Begumpur Police station has been transferred to the Mumbai vide letter dated 12.03.2019. The FIR should not be transferred to Delhi again.

2. I have heard the Ld. counsel for the petitioner, Ld. counsel for respondent Nos. 3 and 4 and Ld. APP for the State.

3. At the outset, the counsel for the petitioner submitted that he was not pressing his prayer 'b' and 'c' and he only pressed his prayer 'a' in the petition

i.e for setting aside of the impugned order dated 14.01.2019 passed by the Ld. A.S.J.

4. The Ld. ACMM vide order dated 02.07.2018 allowed the application filed by the petitioner U/s 156(3) Cr.P.C and directed SHO of PS Begumpur to register FIR for the offences U/s 376/328/313/417/506 IPC against the respondent Nos. 3 & 4. The Ld. A.S.J. had vide impugned order dated 14.01.2019 set aside the order passed by the Ld. ACMM on 02.07.2018 directing registration of FIR.

5. In brief, the facts of the case are that the petitioner lodged a complaint with PS Begumpur alleging therein that respondent No. 3 had raped her in Mumbai on the pretext of marriage and was now marrying someone else and his mother respondent No. 4 has threatened her. The local police did not initiate any action on the issue of jurisdiction because all the allegations made in the complaint pertained to Mumbai. Therefore, the petitioner moved the Court of ACMM and filed her complaint U/s 200 Cr.P.C alongwith application U/s 156(3) Cr.P.C for registration of FIR against respondent Nos. 3 and 4.

6. The state was called upon to file the status report and in the status report filed by the state, it has been stated that the statement of the petitioner was recorded U/s 164 Cr.P.C and she corroborated the contents of her complaint. As per the status report, the IO of the case conducted investigation in Mumbai and interrogated respondent Nos. 3 and 4 who were on anticipatory bail. As per the status report, the complainant provided some medical documents to the IO stating she became pregnant and

respondent No. 3 gave her pills and that a month or so after taking abortive pills, given by respondent No. 3 she consulted gynecologist in this regard as she was having some abdominal pain. As per the status report, the IO verified the same from the concerned doctor and as nothing substantial was found in this allegation so section 313 IPC was dropped.

7. Further as per the status report, during the course of investigation CDR of both the respondents No. 3 and 4 and complainant were analyzed and it was found that accused/respondent No. 3 and the petitioner were in touch with each other till 06.06.2018. As per the certified copies of CDR it was found that petitioner was in Delhi from 28.05.2018 till 02.06.2018 and during this period the petitioner and respondents did not exchange any phone calls or whatsapp messages. According to the status report, filed by the State no phone calls and messages were received by the complainant in Delhi after their last telephonic conversation on 06.06.2018 which was also in Mumbai. It is further stated in the status report, that petitioner had alleged in her complaint that respondent No. 4 had threatened her through mobile phone of respondent No. 3, but the CDR of both the respondents i.e. respondent Nos. 3 and 4 and the complainant were examined and it was found that on 06.06.2018 two phone calls were exchanged between the petitioner and respondent No. 3 and at that time the petitioner and both the respondent Nos. 3 and 4 were in Mumbai. It is further stated in the status report that on analyzing the CDR of respondent No. 4 it was found that no phone call was made from her phone to the petitioner's phone.

8. So from the status report filed by the respondent State, it is clear that no calls were either made or received from Delhi between the petitioner and respondent Nos. 3 and 4. As far as the allegations of rape are concerned, these pertain to Mumbai and are against respondent No. 3. As far as respondent No. 4 is concerned only allegation against her is that she threatened the petitioner from mobile number of respondent No. 3. But these allegations have been found to be false because no calls were exchanged between them as per the status report. Therefore, what appears is that, no part of cause of action at any time has arisen in Delhi, which is evident from the status report filed by the State.

9. It is submitted by the Ld. counsel for the respondent Nos. 3 and 4 that a magistrate exercising jurisdiction U/s 156(3) Cr.P.C cannot direct registration of FIR and investigation into the cases which does not fall within its local territorial jurisdiction. It is further submitted that no part of cause of action as per the complainant arose within the territorial jurisdiction of the Ld. ACMM, so the Ld. ACMM had no jurisdiction to pass such order U/s 156(3) Cr.P.C. and direct registration of the FIR and subsequent investigation. He further argued that there is no infirmity in the impugned order dated 14.01.2019 passed by the Ld. A.S.J.

10. On the other hand, the counsel for the petitioner submits that Section 156(3) Cr.P.C does not bar a magistrate to issue direction to the SHO to register FIR, investigate the matter beyond its territorial jurisdiction and comply with its statutory duties. The issue of jurisdiction is relevant only at the stage of inquiry and trial. Since while deciding the application u/s 156(3)

Cr.P.C the complaint is at a pre-cognizance stage, therefore, there is no bar to the exercise of jurisdiction by the magistrate.

11. Now the issue which arises for consideration is whether a magistrate can direct registration of FIR in the offences which may have been committed beyond its territorial jurisdiction and investigation thereon U/s 156(3) Cr.P.C.

12. A Magistrate exercises its jurisdiction under Section 156(3) Cr.P.C. Section 156 Cr.P.C provides as under :

156. Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

13. Therefore, Section 156 (1) Cr.P.C. requires that any officer in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Further sub-section (3) of Section 156 Cr.P.C. is qualified by sub-section (1) of Section 156 Cr.P.C. Thus though Section 154

Cr.P.C. does not qualify the territorial jurisdiction of the officer in-charge who receives the information to register the same, however, Sections 155 and 156 Cr.P.C. qualify the territorial jurisdiction of the officer in-charge to investigate offences within the limits of such station. Therefore, a Magistrate can direct the officer in-charge of a police station to investigate a cognizable offence which is within the jurisdiction of its local area. Thus a Magistrate is required to adhere to the territorial jurisdiction and in case it is not empowered to try the said offence, it has no jurisdiction to pass order under Section 156 (3) Cr.P.C.

14. Therefore, Section 156 (3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction.

15. Sections 177 to 184 Cr.P.C. provides for territorial jurisdiction to try the offence which qualification is not prescribed under Section 154 Cr.P.C. but under Sections 155 and 156 Cr.P.C. Hence the Magistrate cannot pass directions under Sections 155 and 156(3) Cr.P.C. to an officer in-charge of a police station beyond the territorial jurisdiction of the area which he has the power to inquire into or try under the provisions of Chapter XIII.

16. Section 177 of the Code deals with the ordinary place of inquiry and trial, and reads as follows:

"Section 177 : *Ordinarily Place of Inquiry and Trial* :

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

17. Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common law rule referred to in Halsbury's Laws of England (Vol. IX para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which alleged to constitute the crime. There are several exceptions to this general rule and some of them are indicated in Section 178 of the Code which read as follows:

"Section 178. *Place of Inquiry or Trial*

- (a) When it is uncertain in which of several local areas an offence was committed, or
- (b) where an offence is committed partly in one local area and partly in another, or
- (c) where an offence is continuing one, and continues to be committed in more local areas than one, or
- (d) 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."

"All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in

Purushottamdas Dalmia v. State of West Bengal (AIR 1961 SC 1589), L.N.Mukherjee V. State of Madras (AIR 1961 SC 1601), Banwarilal Jhunjhunwalla and Ors. v. Union of India and Anr. (AIR 1963 SC 1620) and Mohan Baitha and Ors. v. State of Bihar and Anr., III (2001) SLT 112=II (2001) CCR 73 (SC)=2001(4) SCC 350, exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand.

18. Now in terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused. While in civil cases, normally the expression "cause of action" is used but in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed.

19. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from

every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

20. In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

21. The Ld. A.S.J. vide impugned order dated 14.01.2019 has set aside the order dated 02.07.2018 passed by the Ld. ACMM directing SHO PS Begumpur for registration of the FIR. The Ld. A.S.J. while coming to this conclusion has observed as follows :

"It is not that a Magistrate cannot pass any order U/s 156(3) Cr.P.C in matters where the incident took place outside territorial jurisdiction of the MM concerned. However, in such like cases MM can only order registration of a "Zero FIR" which then stands transferred to the concerned Police Station. However, in facts and circumstances of the present case, this court is of considered opinion that order regarding registration of FIR ought not to have been passed and rather the complainant ought to have been called upon to lead evidence in court in support of her allegations.

While passing it may be mentioned that after the complainant had made a complaint at PS Begumpur on 21.6.18 and when the

police officials there did not take any action like registration of FIR, the complainant did not approach any senior police official as was required U/s 154 (3) Cr.P.C and chose to approach courts of law by way of filing a complaint.

In view of all the aforesaid, this court is of considered opinion that the impugned order vide which FIR was ordered to be registered, suffers from irregularity and impropriety and deserves to be set aside. The same is accordingly set aside."

22. In the instant case, as per the status report filed by the state, no part of cause of action arose within the territorial jurisdiction of the Ld. ACMM who passed the order dated 02.07.2018 which was set aside by the Ld. A.S.J. vide impugned order dated 14.01.2019. Similar issue was dealt with by this Court in "**Ramesh Awasthi Vs. State of NCT of Delhi and Anr**", **Crl. M.C. 666/2017**.

23. The issue before this Court was "whether the Ld. ACMM having limited jurisdiction over the area has the power to direct the area SHO to register a zero FIR in respect of an offence committed outside his jurisdiction and the transfer of the same to the concerned police station having jurisdiction. It was held that the magistrate U/s 156(3) Cr.PC cannot direct an officer in-charge of a police station to register FIR beyond its territorial jurisdiction.

24. The Hon'ble Supreme Court in **Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, III (2004) CCR 130 (SC)** held that no part of cause of action arose within the jurisdiction of concerned Magistrate, the Magistrate had no jurisdiction to deal with the

matter and the proceedings were quashed by the Supreme Court U/s 498A/406 IPC and Section 4 of the Dowry Prohibition Act.

25. Having analyzed the law pertaining to the issue, this Court holds that the Magistrate is required to adhere to its territorial jurisdiction and in case he is not empowered to try the said offence, he has no jurisdiction to pass order U/s 156(3) Cr.PC.

26. In the instant case, as per the status report filed by the state, no part of cause of action arose within the territorial jurisdiction of the Ld. ACMM, so the Ld. ACMM had no jurisdiction to pass an order U/s 156(3) Cr.P.C. directing registration of FIR and subsequent investigation. This Court is of the view that the Ld. A.S.J. has rightly set aside the order dated 02.07.2018 passed by the Ld. ACMM directing registration of the FIR while exercising power U/s 156(3) Cr.P.C., however, on the wrong premise. The initial action of the Magistrate in this case was not in itself in consonance with law in view of the above discussions.

27. Therefore, I find no infirmity in the impugned order dated 14.01.2019 passed by the Ld. A.S.J. by virtue of which the order dated 02.07.2018 passed by the Ld. ACMM was set aside. Consequently, the present petition is dismissed.

CRL. M.C. 5622/2019

1. The present petition has been filed by the petitioners with the following prayers :

a) Quash the FIR No. 361/2018 U/s 376/328/313/417/506 IPC, dated 03.07.2018, P.S.Begumpur, Delhi and the proceedings emanating there from and

b) The complaint case filed by the respondent No. 2/prosecutrix under section 200 Cr.P.C pending before the Ld. ACMM, Rohini Courts, Delhi may kindly be returned to Respondent No. 2/prosecutrix who, if she so chooses may file the same in the appropriate Court.

2. While deciding Crl. M.C.4199/2019, I have already held hereinabove that there is no infirmity in the impugned order dated 14.01.2019 passed by the Ld. A.S.J. setting aside the order dated 02.07.2018 passed by the Ld. ACMM directing registration of FIR and subsequent investigation. Having held that the Magistrate has no power to direct registration of the FIR U/s 156 (3) Cr.P.C in the offences in respect of which no part of cause of action has arisen within the territorial jurisdiction of the concerned Magistrate, so the order dated 02.07.2018 passed by the Ld. ACMM was not in consonance with law and was bad at the initial stage itself. Therefore, all the further proceedings consequent there to are non est and have to be set aside. The Hon'ble Supreme Court in **State of Punjab Vs. Davinder Pal Singh Bhullar, (2011) 14 SCC 770** held that if the initial action is not in consonance with law, all subsequent and consequential proceedings would fall through. It has been held as under :

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit opus* meaning thereby that

foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In **Badrinath V. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243]** and **State of Kerala V. Puthenkavu N.S.S Karayogam [(2001) 10 SCC 191]** it has been observed by the Apex Court that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in **Mangal Prasad Tamoh V. Narvadeshwar Mishra [(2005) 3 SCC 422]** the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside."

3. Since, the concerned ACMM had no jurisdiction to deal with the matter as no part of cause of action arose within its local jurisdiction, the FIR bearing No. 361/2018 U/s 376/328/313/417/506 IPC, dated 03.07.2018, P.S. Begumpur, Delhi is, therefore, quashed. The complaint case filed by the respondent No. 2/prosecutrix under section 200 Cr.P.C pending before the Ld. ACMM, Rohini Courts, Delhi be returned to the respondent No. 2/prosecutrix who, if she chooses may file the same in the appropriate Court to be dealt with in accordance with law. The petition is allowed and disposed of accordingly. However, nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

CRL.M.A.34296/2019

1. This is an application U/s 439 (2) of Cr.P.C. (hereinafter referred to as

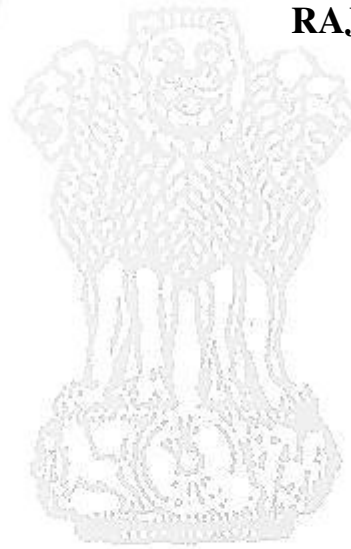
code) read with section 482 of Cr.P.C. for cancellation of anticipatory bail granted to the respondent Nos. 3 and 4.

2. Since I have already held that the impugned order dated 14.01.2019 passed by the Ld. A.S.J. does not suffer from any infirmity and have also quashed the FIR in question for the reasons stated hereinabove, therefore, in these circumstances, the present application for cancellation of bail has become infructuous and the same is accordingly dismissed.

RAJNISH BHATNAGAR, J

MARCH 19, 2020

Sumant



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