

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 952 OF 2021

With

I.A. NO.: C.R.A.N. 1 OF 2021

SURESH KOTHARI AND ANOTHER

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioners : Mr. Sukumar Pattjoshi, Sr. Adv.,
Mr. Shiv Shankar Banerjee, Adv.,
Ms. Sanchita Barman Roy, Adv.

For the State : Mr. Sudip Ghosh, Adv.,
Mr. Bitasok Banerjee, Adv.,
Mr. A.K. Datta, Adv.

For the opposite party no. 2 : Mr. Sourav Chatterjee, Adv.,
Mr. Krishna Chandra Das, Adv.,
Mr. Satadru Lahiri, Adv.,
Mr. Safdar Azam, Adv.

Hearing concluded on : 15.09.2021

Judgment on : 25.11.2021

Kausik Chanda, J.:-

This is an application for quashing of the proceedings of G.R. No. 14 of 2021 arising out of Burtolla Police Station Case No. 2 of 2021 dated January 2, 2021, under Sections 406, 420, 467, 468, 471, and 120B of the Indian Penal Code, 1860, pending before the Court of the learned Additional Chief Metropolitan Magistrate – I at Calcutta.

2. It is the case of de facto complainant/opposite party no. 2 that he is one of the Directors of a company, namely Rajat Buildcon India Private Limited. Petitioner no. 1 is also one of the Directors of the said company. Petitioner no. 2 is the cousin of petitioner no. 1. He is a chartered accountant and also the auditor of the said company. Petitioner nos. 1 and 2 came to Kolkata in the year 2005 at the office premises of opposite party no. 2 at 167A, Vivekananda Road, Kolkata-700006 and offered him to be the shareholder of the company. Opposite party no. 2, being so approached, purchased 40000 shares of the said company upon payment of the consideration money by cheque.

3. Accordingly, the name of opposite party no. 2 as shareholder appeared in the register of members of the company and in the annual returns filed before the Registrar of Companies for the financial year 2005–2006 to the financial year 2013-2014.

4. Opposite party no. 2, however, noticed that his name disappeared from the audited balance sheets of the company from the financial year 2012-2013 and onwards. The shares held by opposite party no. 2 were fraudulently added and shown against the name of petitioner no. 1, by fabricating the records of the company, by the petitioners.

5. Opposite party no. 2 further alleged that the petitioners had been retaining all original records and documents including the original share certificates of the said company right from its incorporation and despite specific requests, the documents including original share certificates were not returned to opposite party no. 2.

6. Mr. Sukumar Pattjoshi, learned senior advocate appearing in support of this application has argued that the Burtolla Police Station in Kolkata ought not to have investigated the case since no offences were alleged to have been committed within the jurisdiction of the said police station. He submits that the F.I.R itself suggests that apart from the alleged purchase of shares, none of the alleged incidents took place in Kolkata. He suggests that the sale of shares in Kolkata is not a commission of an offence. Mr. Pattjoshi has drawn the attention of this Court to the fact that the registered office of the company is in Durg, Chhattisgarh. By referring to the various paragraphs of the relevant F.I.R, Mr. Pattjoshi submits that the alleged misappropriation of shares, manipulation of records, and other alleged transactions took place in Durg, Chhattisgarh. He, further, submits

that even if the grievance of opposite party no. 2 is to be remedied, the same has to be done by changing the records of the company kept at its registered office and filing the same before the Registrar of Companies. The registered office of the company and the office of the Registrar of Companies are both in Chhattisgarh.

7. He, further, refers to the last paragraph of the F.I.R. where opposite party no. 2 suggested that since he was a heart patient and it was not possible for him to commute to Chhattisgarh repeatedly, the case might be registered before the Burtolla Police Station. Mr. Pattjoshi submits that the said statements make it clear that the Burtolla Police Station has no jurisdiction to investigate the alleged offences. Mr. Pattjoshi submits that the investigation of the case is liable to be transferred before the appropriate investigating agency in Durg, Chhattisgarh.

8. In support of his contention, Mr. Pattjoshi places reliance upon a notification no. 15011/35/2013-SC/ST-W, Government of India, Ministry of Home Affairs, Centre State Division, dated May 10, 2013, wherein it was provided, inter alia, as follows:

“2. Instructions are envisaged on account of the delays occurring when there are issues relating to the area jurisdiction regarding the investigation of the case. The hesitation to take up investigation of cases falling in uncertain territorial areas needs to be dispelled to allay the fears that it may be liable to be quashed u/s 482 of the Cr.P.C. There are two rulings of the Supreme Court in Satvinder Kaur vs Govt. of NCT of Delhi on 5/10/1999 (AIR 1999, Delhi 1031) and in Ramesh Kumari vs Govt. of NCT Delhi on 21/2/2006. In the former case, the

Court held that at the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of particular police station would not have territorial jurisdiction. That apart, section 156(2) of the Cr.P.C contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate the case. In the latter case, the Court held that a police officer is duty bound to register the case on the basis of such information disclosing a cognizable offence u/s 154(1) of the Cr.P.C.

3. The legal position stated above expects that the police shall register an FIR upon receipt of information of the commission of a cognizable offence. Further, if after registration of FIR, upon investigation, it is found that the subject matter relates to the jurisdiction of some other police station, the FIR may be appropriately transferred to the police station in which the case falls. Moreover, if at the time of registration of FIR, it becomes apparent that the crime was committed outside the jurisdiction of the police station, the police should be appropriately instructed to register a 'Zero' FIR, ensure that the FIR is transferred to the concerned police station u/s 170 of the Cr.P.C. It should be clearly stated that the delay over the determination of the jurisdiction leads to avoidable wastage of time which impacts on the victim and also leads to offenders getting an opportunity to slip from the clutches of the law. It should be clearly instructed that failure to comply with the instruction of registering an FIR on receipt of information about the cognizable offence will invite prosecution of the police officer u/s 166A of the IPC for an offence specified u/s 166A or departmental action or both."

9. Mr. Pattjoshi, therefore, argues that in the present case the plain reading of the FIR indicates that Burtolla Police Station has no jurisdiction to investigate the alleged offence and the said police station ought to have registered a "Zero" FIR and transferred the FIR to the police station, which has the jurisdiction to investigate the case.

10. Mr. Sourav Chatterjee, learned advocate appearing for opposite party no. 2 on the other hand, submits that it is within the competence of Burtolla Police Station to investigate the case. Mr. Chatterjee strongly relies upon Sub-section (2) of Section 156 of the Code of Criminal Procedure, 1973, which provides as follows:-

“156. Police officer’s power to investigate cognizable case- (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.”*

11. Strong reliance has been placed by Mr. Chatterjee upon a judgment reported at **(1999) 8 SCC 728 (Satvinder Kaur vs. State (Govt. of NCT of Delhi))** to suggest that appreciation of the evidence is the function of the Courts when seized of the matter. At the stage of the investigation, the material collected by an investigating officer cannot be judicially scrutinised for arriving at a conclusion that a particular police station would not have territorial jurisdiction. When it is uncertain in which of the several local areas an offence was committed or where it consists of several acts done in different local areas, the offence can be inquired into or tried by a Court having jurisdiction over any of such local areas.

12. Mr. Chatterjee, further, relies upon a judgment reported at **(2020) 10 SCC 92 (Kaushik Chatterjee vs. State of Haryana)** and submits that plea of lack of territorial jurisdiction or cause of action requires determination of questions of fact and, therefore, the said issue should be

left to be determined after the recording of evidence. At this stage, when the investigation is going on, this Court should not interfere with the investigation.

13. Mr. Chatterjee has further relied upon a judgment reported at **(2008) 8 SCC 300 (Naresh Kavarchand Khatri vs. State of Gujarat)** to contend that the investigation has to be carried out on the basis of the allegations made. The power of the Court is limited. The Code of Criminal Procedure, 1973, has conferred the power upon the statutory authorities to direct the transfer of an investigation from one police station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage.

14. Mr. Sudip Ghosh learned advocate appearing for the State submits that the allegations in the FIR, make out the commission of the offences, inter alia, under Section 406 of the Indian Penal Code, 1860. He refers to Section 181(4) of the Code of Criminal Procedure, 1973, and submits that criminal breach of trust may be investigated by the police within whose jurisdiction any part of the property, which is subject of the offence, was required to be returned or accounted for by the accused person.

15. Mr. Ghosh submits that opposite party no. 2 purchased the shares sitting in Kolkata and the accused persons are required to return the said share to opposite party no. 2 in Kolkata. Therefore, it cannot be said that the Burtolla Police Station lacks jurisdiction to investigate the case.

16. Mr. Ghosh, further, submits that because of the alleged commission of offences, the consequences have ensued at Kolkata where opposite party no. 2 is presently residing and, therefore, the jurisdiction has been conferred upon the Burtolla Police station by virtue of Section 179 of the Code of Criminal Procedure, 1973.

17. Mr. Ghosh, further, has relied upon a judgment reported at **AIR 1961 SC 1589 (Purushottamdas Dalmia vs. State of West Bengal)** wherein it was held as follows:-

“Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except in the cases mentioned in Sections 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open.”

18. In the present case, we are concerned with the assumption of territorial jurisdiction by police to investigate a cognizable offence. Section 157 of the Code of Criminal Procedure, 1973, makes it clear that jurisdiction of investigation is to be assumed if an officer-in-charge of a police station from information received or otherwise has a reason to suspect that he is empowered under Section 156 to investigate the commission of an offence. Section 156(1) empowers an officer-in-charge to investigate, if (a) the offence is cognizable, and (b) he has territorial jurisdiction under Chapter-VIII of the Code of Criminal Procedure, 1973 to investigate. It has to be noticed that such jurisdiction is to be assumed on the basis of reasonable suspicion. If from the F.I.R or otherwise a

reasonable suspicion crops up in the mind of the officer-in-charge that he has the territorial jurisdiction under Chapter-XIII of the Code to investigate, he must initiate the investigation. On the other hand, circular no. 15011/35/2013-SC/ST-W dated 10th May, 2013, mandates that if it appears under Chapter-XIII the police station has no territorial jurisdiction to investigate, the police should register a “Zero” FIR and ensure that the case is investigated by the appropriate police station. In a case where the police initiate investigation upon suspicion that they may have the territorial jurisdiction to investigate the offence, but in the course of the investigation upon collection of materials it appears that they have no jurisdiction to investigate, the police should ensure the transfer of investigation to the appropriate police station having jurisdiction in terms of Chapter-XIII of the Code.

19. I may hasten to add that Section 156(2) does not confer jurisdiction upon the police to investigate beyond their territorial jurisdiction. It only saves the investigation undertaken by a police officer in purported exercise of power under Section 156 (1) of the Code. It is not open for an officer-in-charge of a police station to investigate a cognizable case taking recourse to Section 156 (2) of the Code where he has no reason to suspect that he has jurisdiction under Chapter-XIII of the Code. Such exercise of power will lead to chaos in running the police administration and may also be frowned upon by the Court.

20. In the case in hand, the F.I.R alleges that the relevant shares were purchased by opposite party no. 2 in Kolkata at his office within the jurisdiction of the Burtolla Police Station. Opposite party no. 2 alleges the commission of offence including offence under Section 406 of the Indian Penal Code. Since the plain reading of the F.I.R gives rise to the suspicion that accused persons are obliged to return the said physical shares to opposite party no. 2 at his office in Kolkata within the jurisdiction of the Burtolla police station, I am of the opinion that the said police station was justified to initiate the investigation in terms of under Section 181 (4) under Chapter-XIII of the Code. Though it has been suggested by the petitioners that there cannot be any question of returning the shares physically to opposite party no. 2 since the same are to be transferred through electronic mode to the dematerialised account (Demat account) of opposite party no. 2, I am of the opinion that the said facts can be ascertained only by way of investigation.

21. In that view of the matter, this application is not entertained and accordingly, the C.R.R. No. 952 of 2021 is dismissed and I.A. No. C.R.A.N. 1 of 2021 is disposed of.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)