

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 769 of 2019

Tanmoy Som

-vs-

The State of West Bengal & anr.

For the Petitioners : Mr. Tapas Kr. Ghosh
: Mr. Shyamal Kr. Pandey
: Mr. Tanmoy Chowdhury
: Mr. Somnath Gangopadhyay

For the State : Mr. Swapan Banerjee
: Mr. Suman De

Heard on : 16.6.2022

Judgment on : 22.06.2022

Ajoy Kumar Mukherjee, J.

1. This revisional application has been directed for quashing of the proceeding being Bidhannagar Women Police Station case no. 50/2018 dated 22nd November, 2018 under Section 407/376/506 of the Indian Penal Code pending before the learned additional Judicial Magistrate at Bidhannagar Women Police Station, North 24 Parganas.

2. Learned counsel for the petitioner Mr. Tapas Kr. Ghosh submits that the allegation leveled against the present petitioner is that opposite party no. 2 who

is a divorcee lady, joined as a Front Desk Manager at a hotel at Gangtok. As no separate room was available, she had to share a room with another employee at the hotel namely, Tanmoy Som, the present petitioner. It is the allegation of defacto-complainant/opposite party no. 2 that the present petitioner assured her that there will be no issue in sharing the same room but despite the same, on the first night, the petitioner forcibly committed rape upon the defacto-complainant. The petitioner also assured to marry her but subsequently some disputes and differences arose between the defacto-complainant/opposite party No. 2 and the petitioner and for which opposite party no. 2 lodged first information report at the Bidhannagar Police Station and on the basis of first information report, the investigation started. The present revisional application has been preferred for quashing the above mentioned proceeding mainly on two grounds. Firstly, the materials available so far during investigation does not constitute any offence at all and secondly on the ground of want of jurisdiction to proceed with the investigation.

3. It is submitted on behalf of the petitioner that according to the allegation leveled in the first information report itself, the alleged incident took place at Gangtok in sikkim and the complainant herself disclosed that all subsequent events happened or took place at Siliguri, under the district of Darjeeling. Moreover, her permanent residence is also at Siliguri. It is not clear why she has lodged the complaint at Bidhannagar Police Station, Calcutta which is far away from Gangtok and Siliguri and which place has got no territorial jurisdiction at all for investigation or trial and police should not have accepted

the written complaint because first information report makes it clear that nothing happened within the jurisdiction of Bidhannagar Police Station. Accordingly, continuation of the instant proceeding/investigation by an authority who has got no jurisdiction to proceed, is required to be quashed by the court.

4. Learned counsel for the State submits that the materials in the case diary constitutes offence against the petitioner and the investigation is still in progress and at this stage, the question of quashing the proceeding does not arise.

5. I have perused the materials in the case diary. It appears from the entry made in the diary dated 9.6.2022 that the case is still pending for investigation. Materials collected during investigation including statements recorded under Section 164/161 of the Code prima facie discloses offence as alleged against petitioner. Furthermore investigation is still continuing. It is too early to say that the continuation of the instant investigation against the present petitioner will be an abuse of process of the court and as such the petitioner's prayer for quashing the proceeding on the ground that materials collected so far does not disclose any cognizable offence against petitioner, cannot be allowed.

6. As regards the second limb of argument, Mr. Ghosh on behalf of the petitioner submits that according to defacto-complainant, the incident took place in Sikkim, Gangtok and some incidents may have taken place in Siliguri and as such the said proceeding should be quashed on the ground that it is

continuing before a wrong forum, alternatively proceeding should be transferred before the appropriate authority who has got the jurisdiction to make investigation of this case.

7. Needless to mention that power of transfer cases and appeals by High Court has been dealt under section 407 of the Code of Criminal Procedure. The term “case” has not been defined under Code of Criminal Procedure but the same has been judicially defined as judicial proceeding pending before a court of law for determination of an issue. A “Case” can never include any pending investigation so that Section 407 of the Code of Criminal Procedure can be triggered to transfer any investigation from one police station to the other. Apex Court in **Dr Ram Chander Singh Sagar & anr. Vs. State of Tamil Nadu & anr.**, reported in **(AIR 1978 SC 475)** adjudicating an application under Section 407 of Code of Criminal procedure was pleased to observe as follows:

“But it does not clothe this court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is forwarded to a court”.

8. It is trite of law that taking cognizance is the starting point of judicial proceeding and until cognizance is taken on the charge-sheet, no judicial proceeding has set to have been commenced, so that High Court can exercise it's power under Section 406 of the Code.

9. As per Code of Criminal Procedure, First information report is the starting point of investigation and according to Section 154 of the Code of

Criminal Procedure every information of a cognizable offence has to be reduced into writing by the officer-in-charge of a police station where information has been given. It is therefore evident that no territorial jurisdiction can be an issue for registration of a first information report under Section 154 of the Code of Criminal Procedure.

10. In ***Lalita Kumari Vs. State of U.P.***, reported in **(2014) 2 SCC 01**, It was held that the registration of FIR is mandatory under section 154, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and this general rule must be strictly complied with.

11. Moreover, registration of first information report irrespective of the territorial jurisdiction through zero first information report has now been recognized and when it becomes apparent that even if offence has been committed outside the jurisdiction of the police station, zero first information report would be registered and the first information report will then be transferred to the appropriate police station as per Section 170 of the Code of Criminal Procedure. The phrase as used in Section 173 (2) “to a Magistrate empowered to take cognizance of the offence on a police report” is to be understood that the court requires to have requisite territorial jurisdiction for taking cognizance of an offence on police report. Even for taking cognizance under Section 190 of the Code of Criminal Procedure, a Magistrate need not necessarily have territorial jurisdiction and when a court taking cognizance, subsequently finds that it lacks territorial jurisdiction to the court, may pass

an order under Section 201 of the Code of Criminal Procedure thereby returning the case to the complainant with an endorsement for presentation before the appropriate forum.

12. These provisions, in no uncertain term, entail that the phrase “to a Magistrate empowered to take cognizance of such offence upon a police report” has very little to do with territorial jurisdiction. Moreover, under Section 460(e) of the Code of Criminal Procedure if cognizance is taken by a court, not being empowered by law to take cognizance, proceeding shall not be set aside only on the ground of lack of territorial jurisdiction unless it appears that such error has in fact occasioned a failure of justice.

13. In view of the above, it is clear applicability of Section 190 comes into play, once an investigation is completed and a final report is taken on board. For registration of a first information report under Section 154 and forwarding of the same to the Magistrate under Section 157, it is not imperative that the offence must take place therein. However, once the investigation is over, if the investigating officer comes to the conclusion that the cause of action has not arisen within his territorial jurisdiction then he will forward the final report/case to the Magistrate concerned empowered to take cognizance. The petitioner’s contention is that an investigation cannot be conducted by an officer having no territorial jurisdiction, has been turned down by Supreme Court in ***Rasiklal Dalpatram Thakkar vs. State of Gujarat***.

14. Having regard to the facts and circumstances of the case and the position of law as discussed above, I do not find any substance to quash the present proceeding.

15. CRR 769 of 2019 is accordingly dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE)