

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.62 OF 2020

Abhijit Dilip Sarwate, Age 42 years,
Occ.Lawyer, Office At Abhinandan Apartment,
Prabhat Road, Lane No.2, Pune-411 004.

Petitioner

versus

1. The State of Maharashtra
2. Ms.Amrita Vikram Bokey,
Age 33 years, Occ.Business,
R/o.Flat No.402, Madanmohan CHS,
Baner-Pashan Link Road, Pune-411 021.
3. Rajiv Dilip Kher,
Age 42 years, Occ.Business,
R/o.Unknown, Last Known
at 90, Rakshak Society, Aundh Camp,
Pune-411 027.

Respondents

Mr.Ajinkya Udane, Advocate for petitioner.
Mr.Deepak Patel i/by Mr.Swapnil Ambure, Advocate for respondent
no.2.
Mr.Subhash Jha i/by Mr.Viraj Kadam Advocate for respondent no.3.
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th July 2022

PC :

1. The petitioner has challenged the order dated 19th October 2019 passed by learned Judicial Magistrate, First Class (A.C), Pune below Exhibit-1 in S.C.C.No.53375 of 2019 and order dated 26th November 2019 passed by Additional Sessions Judge, Pune in Criminal Revision Application No.459 of 2019.

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2. The petitioner instituted a complaint for the offences under Sections 211 r/w 109 and 120B of Indian Penal Code against respondent nos.2 and 3 alleging that false charges were made against petitioner by lodging CR No.726 of 2019 with Sangvi Police Station u/s.354C, 120B of Indian Penal Code and Sections 66 and 67 of Information Technology Act. It is alleged that Mrs.Mansi Kher is married to accused no.2. She had approached the complainant (petitioner) for professional services to file petition for divorce. The complainant is practicing lawyer. After taking instructions and information, during which Mrs.Kher informed that she had clips of her husband i.e. accused no.2 having physical relationship with another lady. On 6th December 2018 Mrs.Mansi Kher filed divorce petition before Family Court, at Pune, on the ground of cruelty and adultery. It was mentioned about adulterous relationship of accused and of accused no.2 with another lady. There were talks of settlement inter se between parties. Meeting took place on 29th January 2019, which was attended by complainant, his junior, Mrs.Kher, accused no.2 and advocate representing accused no.2 in her office at Bhandarkar Road, Pune. During negotiations a small snippet of video recording of physical relationship of accused no.2 with other lady was shown to the advocate for accused no.2, who had then showed it to the accused no.2. The meeting was conducted in dignified manner. Accused no.2 and Mrs.Kher belong to affluent background which is pleaded in petition. Considering the financial position of accused no.2, Mrs.Kher has asked for damages/ compensation of Rs.4 crores from accused nos.1 and 2 jointly and severally and Rs.4 crores from accused no.2 and another lady jointly and severally. The meeting ended with talks that parties would await response from opposite party. On 30th January 2019 accused no.2

confessed and suggested to Mrs.Kher not to take the issue to Court. Accused no.1 and other person had not been served with the summons from the Family Court. Thereafter accused no.2 started getting verbal and abusive to Mrs.Kher. Owing to such harassment, she sought eviction of accused no.2 from the premises where they stayed. She filed application under Protection of Women from Domestic Violence Act (‘D.V.Act’). In the said application reference was made to confession, snippet etc. The accused nos.1 and 2 filed reply to the same. The Family Court passed order on 30th July 2019 calling upon accused no.2 to evict the house. Other order was passed directing accused no.2 to pay EMI of Rs.92,000/- per month. Writ Petition was filed by accused no.2 challenging order of eviction. No stay was granted on 20th September 2019. This seems to have made accused no.2 furious and in order to come even with said orders, the accused no.1 conspired to file false charges of offences with intent to injure the complainant. FIR was registered on 23rd September 2019 against petitioner/complainant , Mrs.Kher and unknown person for offences u/s.354C, 120B of Indian Penal Code and under Sections 66 and 67 of I.T. Act with Sangvi Police Station. Police machinery was put into motion. The FIR was registered vide CR No.726 of 2019. It was filed by accused no.1 who was not present for meeting. It was filed at the behest of accused no.2. In the FIR it was alleged that petitioner demanded crores of rupees, else clip would be made viral. During meeting of 29th January 2019, no such unlawful demand, threats or pressure was put upon either accused no.2 or his lawyer. Accused no.1 was not present for meeting. Allegations made in the FIR are false and fabricated. It was also alleged that camere was installed by Mrs.Kher in conspiracy with complainant/petitioner with intent to cause harm to Mrs.Kher

and complainant by making false charges, FIR was registered by accused no.2 by abetting, instigating and engaging into conspiracy with accused no.1. The lodging of FIR was covered in newspapers. Prompt action of police was initiated. False averments were made in FIR, that camera was installed by Mrs.Kher in her own bungalow in conspiracy with complainant/petitioner. False charges of offence made with intent to injure the complainant by accused, to damage name, reputation of complainant and hoping that he shall not appear for Mrs.Kher. When and where accused no.2 had conspired with accused no.1 is uncertain. It may have been at several places. Offence committed at various places. Complaint was filed in JMFC (AC), Pune.

3. Learned JMFC (AC), Pune vide order dated 19th October 2019 observed that as per case of complainant, accused no.2 instituted false charges of offences by filing a false crime bearing bearing Crime No.726 of 2019 with Sangvi Police Station u/s.354(c), 120(B) of IPC and Sections 66 and 67 of I.T.Act on 23rd September 2019. Since the said FIR was lodged with Sangvi Police Station, which comes under the jurisdiction of Pimpri Court, Pune, therefore, entire cause of action occurred within the jurisdiction of Pimpri. Therefore, there is no uncertainty about the jurisdiction of Court. Therefore, said Court has no territorial jurisdiction to try and entertain the complaint. Hence the complaint be returned to the complainant for presentation to proper Court as per Section 201 of Cr.P.C.

4. The order dated 19th October 2019 was challenged by petitioner by preferring Criminal Revision Application before Sessions Court. Learned Sessions Judge vide order dated 26th

November 2019 rejected the revision application. Learned Sessions Judge has observed that in the complaint it is specifically mentioned that crime relates to installation of camera by Mrs.Kher in conspiracy with complainant. It is also alleged that false averments in the FIR were that Mrs.Kher had installed the camera in conspiracy with complainant without proof. The said statement was made with an intention to rope the complainant. The bungalow where the camera was installed and Sangvi Police Station where the report was lodged, are situated within territorial jurisdiction of Pimpri Court, which would have the jurisdiction to try and entertain the complaint. The Sessions Court confirmed the order dated 19th October 2019 passed by JMFC (AC) Court, Pune.

5. The petitioner appearing in person submitted that both the impugned orders are contrary to law. The Court of JMFC (AC), Pune has jurisdiction to entertain the complaint. Both the Courts below have misread the provisions relating to jurisdiction of Court. The Courts have committed an error in concluding that since the FIR is registered with Sangvi Police Station, the Court situated within the jurisdiction of Sangvi Police Station will have jurisdiction to try and entertain the complaint and the Court of JMFC (AC), Pune has no jurisdiction. The Courts below ought to have appreciated the scope of Sections 177 to 189 of Code of Criminal Procedure. One of the ingredients of Section 211 of IPC is intention to injure. The conspiracy to cause harm to the petitioner was conspired while at office of Advocate Deepa Marin Kurve and hence one of the ingredient had taken place within local limits of Deccan Police Station and hence JMFC (AC) Court has jurisdiction. The learned Sessions Judge has proceeded on the basis that FIR has been

registered at Sangvi Police Station. For the first time intention to injure arose when respondent no.3 gave false information to respondent no.2 which finally culminated in lodging the FIR. The intention to falsely charge the petitioner arose at the office of advocate representing accused no.2 and hence the Court where the petitioner presented the complaint has jurisdiction to entertain the complaint.

6. The petitioner has relied upon following decisions :

- (a) Subhash Sahemrao Deshmukh Vs. Satish Atmaram Talekar¹;
- (b) The State of M.P. Vs. Suresh Kaushal and another².

7. Learned advocate for respondent nos.2 and 3 submitted that there is no legality in the orders passed by both the Courts below. The Court of JMFC (AC), Pune has no jurisdiction to try and entertain the complaint filed by petitioner. The complaint relates to offences u/s.211 r/w 108, 120B of IPC. It relates to registration of false FIR. The FIR was registered with Sangvi Police Station. Hence cause of action to file complaint by petitioner is jurisdiction of FIR with Sangvi Police Station. Hence, the complaint has to be filed in the Court within jurisdiction of Sangvi Police Station. Hence the Court of JMFC (AC), Pune and Sessions Court, Pune has rightly held that the complaint is required to be returned to the complainant for presenting it to appropriate Court. Learned advocate Mr.Jha submitted that once the complaint is directed to be presented to the appropriate Court, the complainant had exercised the said right by presenting the complaint to appropriate Court. The complaint has

1 (2020)4-SCC-641

2 2002-Cri.L.J.-217

indeed been presented to the Court of JMFC, Pimpri pursuant to the orders passed by Courts below. Having presented the said complaint in compliance with the said order, the petitioner is estopped from contending that complaint shall lie before JMFC (AC), Pune. The complaint relates to the charge u/s.211 and therefore fact that place where the alleged false charge was made bears importance. Section 177 of Cr.PC is required to be taken note of. The learned advocate for respondent has relied upon the decision in the case of Subhash Ramchandra Durge Vs. Deepak Annasaheb Gat and another³.

8. The provisions relating to jurisdiction of Trial Court are provided in Chapter-XIII of Cr.PC under Sections 177 to 189. Section 177 relates to ordinary place of inquiry of trial. Section 178 relates to place of inquiry or trail. Section 179 relates of offences triable where act is done or consequence ensues. Section 180 relates to place of trial where act is offence by reason of relation to other offence. Section 181 relates to place of trial in case of certain offences.

9. It is true that the FIR was registered with Sangvi Police Station on 23rd September 2019. The petitioner has lodged the complaint alleging offence u/s.211 r/w 108, 120B of IPC. The offence under Section 311 of Cr.PC relates to false charge of offence made with intent to injure. The cause of action relating to FIR registered by respondent no.2 starts with alleged meeting which took place in the office of advocate for respondents. Thus, it cannot be said that merely on account that FIR was registered with Sangvi Police Station, the complaint filed by petitioner is required to be presented before JMFC, Pimpri. Section 177 of Cr.PC provide that every

3 2001(1)-Mh.L.J.-225

offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. According to complainant the intention to commit offence was gathered at the office of advocate for respondents. In the FIR the first informant has alleged that information about video clip, demand of money was received by her from respondent no.3 on phone call from his mobile phone, while he was in office of advocate for respondent no.3. Thus, the complainant contends that intent to falsely charge firstly arose at office of advocate, which is situated at Bhandarkar Road. Section 178 relates to the situation when it is uncertain in which of several local areas an offence was committed. Where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more local areas than one, or 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. Section 179 provides that 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. As per Section 180, when an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

10. Thus, applying any of these provisions, the Court of JMFC (AC), Pune had jurisdiction to entertain the complaint presented by petitioner. There was no reason to return the complaint to the

petitioner to present it to any other Court having jurisdiction. Thus, the impugned orders deserves to be set aside. Hence, I pass following order ;

ORDER

- (i) Writ Petition No.62 of 2020 is allowed and disposed off;
- (ii) Order dated 19th October 2019 passed by J.M.F.C.(A.C.), Pune below Exhibit-1 in SCC No.53375 of 2019 is set aside;
- (iii) Order dated 26th November 2019 passed by Additional Sessions Judge, Pune in Criminal Revision Application No.459 of 2019 is quashed and set aside;
- (iv) The complaint filed by petitioner pending in the Court of J.M.F.C. Pimpri be transferred to J.M.F.C. (A.C.) Court, Pune, and dealt with in accordance with law.

(PRAKASH D. NAIK, J.)

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