



**108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-53852-2024
Date of decision: 29.10.2024

Virender SinghPetitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Anmol Rattan Sidhu, Senior Advocate and
Mr. G.S. Dhillon, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 for issuance of directions to respondent No.2
to submit the application for sending the criminal case stemming from FIR
bearing No. 388 dated 18.09.2003 registered under Sections 323, 307, 342, 406,
498-A, 506, 120-B of IPC at Police Station Jind, District Jind to the Chief
Judicial Magistrate, Vadodara, Gujarat.

2. The facts in brief are that the petitioner was the Investigating
Officer (hereinafter called IO) in the FIR (*supra*) which was registered on the
basis of a complaint moved by one Shalu Jain against her in-laws. The
investigation was duly conducted by the petitioner and after completion of the
same the Final Report under Section 173 of Cr.P.C. was prepared. The learned
trial Court, rejected the opinion of the District Attorney as well as the discharge
application dated 20.04.2004 and on finding sufficient grounds to justify
prosecution, proceeded to frame the charges against the accused vide order
dated 05.02.2005. This order was challenged before this Court. This Court



observed that since no cause of action had arisen within the jurisdiction of Jind, the accused deserve to be discharged, vide order dated 23.11.2006.

3. Subsequently, upon discharge, respondent No.3 filed a criminal complaint bearing No. 32 dated 30.03.2010 under Sections 304, 177, 167, 195, 203, 211, 220, 409, 499, 500, 452, 344, 204, 120-B read with Section 34 of IPC in the Court of learned Judicial Magistrate 1st Class, Vadodara against the petitioner and other police officials mainly on the ground that the FIR (*supra*) was totally false and registered with an ulterior motive. Hence, the present petition for issuance of directions to respondent No.2 to submit the application for sending the criminal case stemming from FIR (*supra*) to the Chief Judicial Magistrate, Vadodara, Gujarat, to repudiate the allegations of respondent No.3 as made out in the criminal complaint.

4. Learned senior counsel for the petitioner, *inter alia*, contends that respondent No.3 was discharged only on the grounds of want of jurisdiction as well as medical illness. Respondent No.3 was not discharged on merits. In fact, the learned trial Court had found sufficient evidence on record to frame charges against the accused, including respondent No.3. Therefore, the criminal complaint instituted by respondent No.3, alleging that the FIR (*supra*) was registered with the false intent and an ulterior motive is baseless and without substance. Learned senior counsel further avers that since respondent No.3 was neither discharged on merits nor was the FIR quashed by this Court, the FIR (*supra*) still survives and is liable to be revived in the state of Gujarat in terms of Section 207 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS), which corresponds with Section 187 of Cr.P.C. Moreover, the petitioner had previously approached this Court for seeking similar directions to be issued to respondent No.2. This Court was pleased to dispose of



the same vide order dated 09.03.2022 by issuing directions to respondent No.2 to look into the representation dated 01.10.2019 and decide the same within one month. However, no substantial steps were taken by respondent No.2 thereafter.

5. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court is of the opinion that for just adjudication of the matter at hand, a study of Section 207 of BNSS, which corresponds with Section 187 of Cr.P.C is warranted. The same is reproduced below:

Section 207. Power to issue summons or warrant for offence committed beyond local jurisdiction.

1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 197 to 205 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under any law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond or bail bond for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Section 207 BNSS addresses situations where a Magistrate, within their jurisdiction, finds sufficient reason to believe that an individual has committed an offense outside those limits. In such cases, the Magistrate may transfer the individual to a Magistrate who has jurisdiction over the area where the offense occurred and can conduct the necessary inquiry. If a Magistrate who



does not have the authority to try the offense learns of it, they can refer the case to a Magistrate who is legally competent to handle it.

6. The Orissa High Court in the case of ***Sadasiva Rajguru vs. State of Orissa 1994(7) Orissa Cri R 671***, speaking through Justice Arijit Pasayat, discussed the scope and ambit of Section 187 of Cr.P.C., which is identical to Section 207 of BNSS and made the following the observations:

“5. Section 187 deals with the case of a Magistrate seeing reason to believe that any person within the local limits of his jurisdiction has committed an offence without such limits, and in that case he can send the person to the Magistrate having jurisdiction to inquire into the offence. Where a Court, which has Jurisdiction, has not taken cognizance of the matter, and the offence is brought to the notice of a Magistrate who is not competent to try it, the latter may send it to a Magistrate who is competent. Section 187 does not override the provisions of sections 70 to 81, Cr.P.C., 1973 which deal with the execution of warrants to arrest. Section 4(1), I.P.C. and section [188](#), Cr.P.C., 1973 cannot be viewed as wholly extra-territorial in their application. Section 188 deals with offence committed outside India. It is not extra-territorial in the Sense that it would be the law applicable to the courts in the acceding States; but in a restricted sense the operation of section 4(1), I.P.C. and section 188, Cr.P.C., 1973 are extra-territorial in that they provide for punishment for offences committed by the persons of Indian domicile resident in a province for offences committed by him outside the province.

Section 187, Cr.P.C., 1973 is an enabling power of the Magistrate to issue summons or warrant for offence committed beyond his local jurisdiction. This section corresponds to section [186](#) of the Code of Criminal Procedure, 1973 1898 (in short, the 'old Cr.P.C.'). Undoubtedly, section 187, Cr.P.C., 1973 deals with a case in which the Court which has jurisdiction has not taken cognizance of the offence, and the offence is brought to the notice of a Magistrate who is not competent to try it. In such a case on an accused being produced before the Magistrate, the Magistrate may institute an enquiry as contemplated in suction 187, Cr.P.C. Where a Magistrate takes cognizance of an offence committed within the local limits of his jurisdiction, and has issued a warrant under section 80 of the Cr.P.C., 1973 for the arrest of a person living outside the limits of his jurisdiction, the Magistrate before whom



such person is produced under the section cannot hold an enquiry under section 187. The Magistrate is empowered to act under section 187 and direct appearance of a person before the Magistrate having jurisdiction, only in cases of offences not punishable with death or imprisonment for life...”

7. Reverting to the facts of the present case, it appears that the trial Court in Jind proceeded against the in-laws of the complainant Shalu Jain with the belief that the offence was committed within the local limits of its jurisdiction. Hence, no reason existed for the trial Court to take recourse to Section 187 of Cr.P.C. at the time. Subsequently, the accused were discharged by this Court vide order dated 23.11.2006 with the observation that no cause of action arose within the jurisdiction of Jind. However, taking recourse to Section 207 of BNSS at this stage is not justified in view of the efflux of time. Moreover, the Court in Jind had already taken cognisance of the alleged offence as emanating from the FIR (*supra*) and framed charges against the accused. Therefore, since the accused were already subjected to prosecution by one Court, it would now be excessive and unjust to subject them to prosecution on the same set of facts before a different Court.

8. Additionally, the petitioner, being the Investigating Officer in the FIR (*supra*), has no *locus standi* to seek transfer of the case. Curiously, neither the complainant nor the prosecution sought transfer of the case to Gujarat after the accused were discharged by this Court due to want of jurisdiction vide order dated 23.11.2006. Furthermore, there is nothing on record to suggest that the discharge order dated 23.11.2006 passed by this Court was ever challenged by the State. The petitioner, who is presently posted as a Sub-Inspector and was the Investigating Officer in FIR (*supra*) i.e. an instrument of the State, has filed the present petition in his private capacity, a practice which must be strictly



condemned. The petitioner has chosen to act as a mouth piece and proxy of the complainant, an approach that cannot be pardoned by this Court. A free and fair investigation is the first step to criminal prosecution. The quality of the investigation is not only crucial for the determination of the final outcome of the trial, but also in providing succour to the victim(s). Thus, the actions of Investigating Officers must not only be but also appear unbiased and beyond reproach. The onerous duty to maintain a middle ground to secure fair investigation and trial of the accused, without sacrificing the interest of the victim and the society, is cast upon the Courts. Resultantly, the Director General of Police for the State of Haryana is directed to look into the conduct of the petitioner and take the necessary disciplinary action in accordance with law.

9. In view of the discussion above, the present petition is dismissed. Pending miscellaneous application(s) if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.10.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No