

Case Comment

RHEA CHAKRABORTY V. STATE OF BIHAR- AN UNEVEN JUDGMENT[§]

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Abstract—Rhea Chakraborty v. State of Bihar, (Transfer Petition (Crl.) No.225 of 2020; Date of Decision- 19th Aug, 2020; Single Bench), this judgment lays down the law that in cases where a person commits suicide or is murdered and there are allegations of misappropriation of property or breach of trust then the legal heirs of deceased can validly lodge a FIR at any police Station in India wherever they reside and thereafter the officer in-charge of that police station shall commence with the investigation even though no part of offence has ever been committed or has taken place within its territorial jurisdiction. This interpretation does not only blur the police jurisdictions but also gives a very vast scope for manipulations by the complainant side. The authors in detail discuss how the said judgement is uneven and has serious effect on the criminal justice system in the country. This judgement will only result in confusion and is bound to rise to complicated and myriad issues in the near future.

Keywords: FIR, Breach of Trust, Misappropriation of Property, Police Jurisdiction.

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I. INTRODUCTION

In the last few months, the issue which engaged most of the space in media especially the electronic media last year was the suicide or death case of actor Sushant Singh Rajput. The actor was found dead in his house in Bandra, Mumbai on 14th June, 2020. Mumbai Police recorded the statements of as many as 56 persons including the blood relations of deceased actor and none of those persons alleged any foul play nor was commission of any cognizable offence made out from those statements. Consequently, the Mumbai Police registered the case as Accidental Death Report and proceeded with the matter in terms of section 174 of Cr.P.C. However, after about 40 days down the line on 25.7.2020 a FIR came to be registered at Rajiv Nagar Police Station, in Patna, Bihar at the instance of father of the deceased Sushant Singh leveling allegations of misappropriation of property, breach of trust of deceased actor and abetment to suicide against his live-in partner Ms. Rhea Chakraborty and her family members. Thereupon, a police team from Patna went to Mumbai to investigate the case however the local Mumbai police did not cooperate. Thereafter, on recommendation of the Government of Bihar, the Central Government directed the CBI to carry out the investigation in the said matter.¹ Rhea Chakraborty, in the meantime, approached the Supreme Court u/s 406 of Cr.P.C. for transfer of the FIR registered at Patna from the jurisdiction of the Additional CJM III, Patna Sadar, to the Additional Chief Metropolitan Magistrate, Bandra Mumbai. The petitioner in her petition contended that the incidents alleged in the complaint lodged by the father of deceased have entirely taken within the territorial jurisdiction of State of Maharashtra and thus, the FIR registered at Patna on the Complaint filed by the father of the deceased, should have been forwarded to the jurisdictional police station at Bandra, Mumbai for investigation.

II. THE ANALYSIS OF THE JUDGMENT

The settled law is that a crime has to be ordinarily investigated by the police having jurisdiction over the area where crime is alleged to have been committed. Chapter XIII of Cr.P.C. deals with the jurisdiction of criminal Courts in India. According to Section 177 of Cr.P.C., every offence shall be ordinarily enquired into and tried by a Court is within whose local jurisdiction the crime has been committed. The settled law is that the FIR has to be registered in the police station having jurisdiction over the area where alleged crime have been committed. Prima facie the Rajiv Nagar Police Station, Patna, Bihar had no jurisdiction to register an FIR in the matter as no part of the alleged offences were committed in any manner in the jurisdiction of Patna, Bihar. Even if the complaint given to the Patna police did mention about the commission of some cognizable offence still the established procedure is to register a

¹ Devesh K. Pandey, "Centre Approves Transfer of Sushant's Case to CBI", *The Hindu*, New Delhi, August 6, 2020.

zero FIR and transfer it to the police having jurisdiction over the area where the alleged offence had taken place. The only way of upholding the FIR is to uphold the jurisdiction of the Patna police to register one and the Supreme Court, in the said judgment dated 19th Aug, 2020, has upheld the validity of registration of FIR in Patna. The section which happens to be relevant in this matter is Section 181(4) of Cr.P.C. which reads thus: -

“Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person”.

The Supreme Court heavily counted upon the words ‘accounted for’ as referred to in the said section to uphold the validity of registration of FIR in Patna. The Supreme Court does cite few judgments in order to substantiate its reasoning. It may be useful to have a brief look at the judgments relied upon by the Supreme Court in order to interpret Section 181(4) of Cr.P.C.

A. For substantiating its reasoning the Court relied upon four judgments the gist of which has been discussed under the following case-

*i. Asit Bhattacharjee v. Hanuman Prasad Ojha*²

In this case an FIR came to be registered against Hanuman Prasad Ojha his accomplice at Police Station Shakespeare Sarani, Kolkata on the direction issued by Chief Metropolitan Magistrate, Kolkata u/s 156(3) of Cr.P.C. in the complaint filed by Asit Bhattacharjee. Accused approached Allahabad High Court for quashing of FIR/transfer of FIR among many other reliefs. Allahabad High Court ordered the transfer of F.I.R. from P.S. Shakespeare Sarani, Kolkata to the appropriate Police Station of Uttar Pradesh on the ground that a major part of offence had taken place in Uttar Pradesh. The Complainant then approached the Supreme Court. The Supreme Court found the Order passed by the High Court to be unsustainable. The Supreme Court observed that in this case the complainant had Head Office in Calcutta where meetings etc. were stated to have taken place between the representative of the complainant and the accused. The Supreme Court also found that “fraudulent misrepresentation by some of the respondents at Calcutta and a conspiracy was hatched to commit offences of cheating or misappropriation, indisputably a part of cause of action arose within the jurisdiction of the learned Metropolitan Magistrate, Calcutta”-(para 24). Thus parts of offences were found have been

² (2007) 5 SCC 786.

committed within Calcutta and therefore the Supreme Court held that the CMM, Calcutta had the jurisdiction to take entertain the complaint u/s 156(3) of Cr.P.C. and therefore the order of transfer of FIR by Allahabad High Court was held to be not good in law.

*ii. Naresh Kavarchand Khatri v. State of Gujrat*³

In this case Naresh Kavarchand Khatri registered a FIR before the Detective-Crime Branch, Police Station, City Vadodara under Sections 406, 420 and 120B of the IPC, 1860, against the accused persons. According to the said complainant, the accused had assured that the child of the complainant would be given admission in their institution and on that pretext, obtained a huge amount from them but then the money was retained by the accused and the admission of the child of the complainant was cancelled. Accused person approached the High Court questioning the jurisdiction of the Detective Crime Branch, Police Station, Vadodara City to register and investigate the FIR and the petition was allowed by the High Court by ordering the transfer of FIR to the place of appropriate jurisdiction and pursuant to the order of High Court FIR was transferred to Waghodia Police Station where the ‘institution’ in question was situated and which was within the jurisdiction of Vadodara (District). However on appeal Supreme Court did find that ‘*The FIR prima facie details that a part of cause of action had arisen within the territorial jurisdiction of Vadodara Police Station*’ and, therefore, set aside the order passed by the High Court. It may be also noted that the case did not involve interstate ramifications rather both the police stations i.e. Detective Crime Branch, Police Station, Vadodara City and Waghodia Police Station were within the same very district i.e. Vadodara.

*iii. Rasiklal Dalpatram Thakkar v. State of Gujarat*⁴

It is case where a person namely Rasika Dalpatram Thakkar has taken a loan from a Bank whose head office was at Ahmedabad and the loan disbursing branch was at Mumbai. Certain irregularities came to light and the complaint u/s 156(3) was filed by the Bank before the court of Chief Metropolitan Magistrate, Ahmedabad, which directed the Economic Offences Wing, State C.I.D. (Crime), Ahmedabad to proceed with the investigation in the said matter. The Investigating Agency submitted its report mentioning that the allegations complained in the complaint had taken place within the territorial limits of Mumbai, Maharashtra, and thus, Mumbai, Maharashtra has jurisdiction over the alleged offence. Hence, the investigation should, therefore, be transferred to the Investigation Agency in Mumbai, Maharashtra. However the Chief Metropolitan Magistrate rejected the report on the account that it was

³ (2008) 8 SCC 300.

⁴ (2010) 1 SCC 1.

not for the Investigating Agency to decide not to investigate on a complaint forwarded to it under Section 156(3) of the Cr. P.C. on the ground that the offence reported of was allegedly carried out outside the territorial jurisdiction of the Investigating Agency. This order was unsuccessfully challenged by the accused before Sessions Court, Ahmedabad then before High Court. Finally the accused knocked the door of Supreme Court which upheld the decisions of Lower Courts. The gist is of the judgment of the Supreme court is as under:-

“A glance at the material before the Magistrate would indicate that the major part of the loan transaction had, in fact, taken place in the State of Gujarat and that having regard to the provisions of Sub-section (2) of Section 156 Criminal Procedure Code, the proceedings of the investigation could not be questioned on the ground of jurisdiction of the officer to conduct such investigation. It was open to the learned Magistrate to direct an investigation under Section 156(3) Criminal Procedure Code without taking cognizance on the complaint and where an investigation is undertaken at the instance of the Magistrate a Police Officer empowered under Sub-section (1) of Section 156 is bound, except in specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter.”

Thus, it is clear that the Supreme Court found that a major portion of the loan transaction had taken place in city Ahmedabad and that when a Magistrate directs investigation u/s 156(3) of Cr.P.C. then the police have to carry out investigation and submit its report except in exceptional circumstances.

*iv. Lee Kun Hee v. State of U.P.*⁵

The matter concerns supply of material by the complainant to Samsung Corporation at Dubai through an intermediary i.e Sky Impex Ltd. A bill of exchange was issued by Samsung Corporation issued in favour of Sky Impex for the payment of material received and the Sky Impex Ltd. further endorsed the said BOE (Bill of Exchange) in favour of the JCE consultancy (complainant) who was the original supplier of the material. However, on demand for payment by JCE consultancy, Samsung denied its liability to honour the bill of exchange. Resultantly JCE Consultancy filed a criminal complaint before concerned Judicial Magistrate, Ghaziabad and after recording preliminary evidence the Magistrate summoned the arrayed accused persons under Sections 403, 405, 420 and 423 read with Sections 120B and 34 of the IPC. The accused

⁵ (2012) 3 SCC 132.

persons challenged the territorial jurisdiction of an Indian Court to take cognizance of the alleged offences on the ground that neither the Sky Impex Ltd. nor the Samsung Dubai nor any of the accused persons ever visited India and that the actions attributed by the complainant to the accused have no relevancy to the territorial jurisdiction in India. Thus the accused contended that the Court at Ghaziabad (India) has no territorial jurisdiction to take cognizance of the offences. However the Supreme Court rejected their contention. The primary reasons for rejection of the contention is that it was very much asserted by the complainant in the said case was that the goods/product contracted for were/was supplied by JCE Consultancy from Ghaziabad in India (refer para 12 of the said judgement) and also the Complainant received and held a Bill of Exchange issued by accused Samsung Corporation, Dubai in Ghaziabad and the same was supposed to be honoured at Ghaziabad. Besides, a number of communications also emanated from India from the complainant side and responses thereto was received within India. Therefore, the Supreme Court held that Courts in India have the territorial jurisdiction to take cognizance of offences alleged in the Complaint.

B. Some other judgments cited by the Supreme Court though not related to section 181(4) of Cr.P.C.

*i. Y. Abraham Ajith v. Inspector of Police*⁶

This case relates to Section 177 and 178 of Cr.P.C. In this case wife left the matrimonial home due to the harassment and demand of dowry by the husband and started living in Chennai. The wife filed a complaint against the husband before the Magistrate concerned at Chennai u/s 406 & 498A IPC and Magistrate directed the police to investigate the matter. There was not a whisper that harassment or illegal demand was made at Chennai. The accused-husband approached the High Court for quashing on the questioning the jurisdiction of the Magistrate as no part of offence had taken place at Chennai. The High Court dismissed the petition and the husband approached the Supreme Court. The Supreme Court agreed with the contention of the accused-husband that infact no part of offences, as alleged by the wife, had taken place at Chennai and quashed the proceedings.

*ii. Satvinder Kaur v. State (NCT of Delhi)*⁷

In this case an FIR was lodged u/s 406, 498-A IPC at Police Station, Paschim Vihar, New Delhi by the wife-Satvinder Kaur against her husband. Before marriage the girl was a resident of Delhi and the marriage had taken place in Delhi. Matrimonial of the complainant was at Patiala which she left

⁶ (2004) 8 SCC 100.

⁷ (1999) 8 SCC 728

after constant harassment by her husband for dowry. She came back to her parents in Delhi with one month old daughter. The complaint showed that threats by her husband continued even after that. The husband approached the High Court for quashing of FIR which was quashed by the Hon'ble HC on the ground of lack of territorial jurisdiction. Satvinder Kaur approached the Supreme Court and the Supreme Court set aside the Judgment passed by the High Court after discussing the effect Section 177 & 178 of Cr.P.C. . From the reading of the judgment it transpires that in this case the parental home of the girl was in Delhi, marriage was performed at Delhi, thus it can safely be presumed that streedhan and other articles were also handed over in Delhi. The FIR showed that threats continued even when she had come to her parents home at Delhi. Thus in this case cause of action had occurred within Delhi in more ways than one.

III. THE IMPLICATION OF THE SAID JUDGEMENT

On the perusal of all the above cases it is clear that in all the cases some part or portion of the transaction/offence definitely had taken place within the jurisdiction of the police station or Court concerned. But in the present case the judgment of the Supreme Court gives no indication as to which part of the alleged offence has taken place within the territorial jurisdiction of Rajiv Nagar police station in Patna Bihar. The validity of the First Information Report seems to have been adjudged only on the touch stone of words 'accounted for' as used in Section 181(4) of Cr.P.C. It may be noted that in none of the above cited judgments the words 'accounted for' has been used or applied by the Hon'ble Apex Court in the sense that only because the accused would eventually be accountable to the legal heirs of the deceased, therefore, the FIR can be lodged or registered wherever the legal heirs of the deceased reside even though no part of offence has ever been taken place or committed within the territorial jurisdiction of that police station. For example if a businessman commits suicide in Mumbai City due to alleged financial wrongdoing on the part of his business associate or agent or even a creditor and legal heir of the deceased businessman resides in Jaipur (Rajasthan) and another in Indore (Madhya Pradesh). Now by virtue of the judgment in hand, the Police of these two places will also have the jurisdiction to register FIR and investigate the matter only because the money is eventually to be accounted for to the legal heirs in these places. Thus the legal heirs will also now have the option to choose the place/State which best suit their interests and convenience. A First Information Report sets criminal law into motion and, therefore, the investigation by the police follows. The Police party from Jaipur or Indore, as the case may be, will have to travel all the way to Mumbai for investigation, for recording of the statement of witnesses and for collection of evidences. We would like to deliberate on that will any meaningful or momentous investigation be possible in this manner? Will it not create an inter-State wrangling with regard to investigation by the police of one State into the crime committed

within jurisdiction of another State? This in turn will create unsavoury situations and political slugfest between the States. Will every such case then be assigned to Central Bureau of Investigation (CBI) or some other central agency by the Supreme Court for investigation?

On the issue of possibility of Mumbai police finally registering an FIR in the matter the Supreme Court, in paragraph No. 20 of the judgment, finds the contention to be pre-emptive and premature and further observed that no opinion needs to be expressed and issue is left open to be decided as and when the situation arises. Again in para No.31, the Court accepts that Mumbai police has territorial jurisdiction to register an First Information Report in the matter and further observed that in that event Maharashtra Government is competent to give consent to investigation by CBI. Up till this part the Court gave an impression that it did want to get into future possibilities and contingencies and wanted to stay with the question in hand. But surprisingly while parting with the judgment the Court not only took into consideration the future possibility of registration of FIR by Mumbai police rather contemplating that eventually it invoked its powers under Article 142 of the Constitution and issued pre-emptive directions as well in this regard to the effect that in that event of registration of FIR by Mumbai Police the CBI will investigate that FIR too. The parting directions do not at all mesh with observations made by the Court in the earlier part of its judgment.

Still further the Supreme Court refers to consideration and suitable determination in the matter by Mumbai police in terms of Section 175(2) of Cr.P.C. in para-No.18 and 20 of its judgment. The Section 175 (2) reads as under:-

“175. Power to summon persons:

(1) X XXX

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate’ s Court.”

A bare reading of the section gives no indication with regard to any such consideration or determination by the police.

Another aspect which needs to be noticed is that as per the Supreme Court Rules that were duly notified on 11th May, 2020 clearly stated that a Single Judge is competent to hear certain Bail matters and Transfer Applications. The relevant SC Rules reads as under-

“Provided that the following categories of matters may be heard and disposed of finally by a Judge sitting singly nominated by the Chief Justice:

- (i) Special leave petitions arising out of grant, dismissal or rejection of Bail Application or Anticipatory Bail Application in the matters filed against the order passed under section 437, section 438 or section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) involving the offences punishable with sentence up to seven years imprisonment;
- (ii) Applications for transfer of cases under section 406 of the Code of Criminal Procedure, 1973 (2 of 1974);
- (iii) Application of an urgent nature for transfer of cases under section 25 of the Code of Civil Procedure, 1908 (5 of 1908);”

The Single Judge dismissed the petition for transfer of investigation on the ground that Section 406, Cr.P.C does not vest the Supreme Court with any power to transfer the investigation. Once the petition for transfer itself had been declined by the SC then there was no reason or occasion for a Single judge to go further and decide the competence and jurisdiction of Rajiv Nagar Police Station, Patna, Bihar Police to register a FIR. The question of jurisdiction of Bihar police to register the FIR and legal validity of that FIR was neither a consequential matter nor was the decision of transfer petition in any way connected or dependent on the adjudication of validity of FIR. On the perusal of the Rules reproduced above, the Single Judge does not actually seem to be competent to adjudicate on these issues.

IV. CONCLUSION

To sum up, the said judgment lays down the law that in cases where a person commits suicide or is murdered and there are allegations of criminal breach of trust or criminal misappropriation of property then a FIR can validly be got registered or lodged by the legal heirs of deceased person at any Police Station in India wherever they reside and investigation will have to be carried out by the officer incharge of that police station though no part of offence has ever taken place or committed within its territorial jurisdiction. This interpretation does not only blur the police jurisdictions but also gives a very vast scope for manipulations by the complainant side. The judgment has given an open ended interpretation to the words ‘accounted for’ in section 181(4) of Cr.P.C. which is bound to give rise to myriad and complex issues in near future.

Thus, in this case it so seems that what the Hon’ble Supreme Court has rendered an uneven and a mish mash of a judgment and also handed down a Pandora’s Box in form of its interpretation of Section 181(4) of Cr.P.C. and the judgment may have to be revisited by a larger bench of Supreme Court sooner than later.