

Police Can't Transfer FIR Citing Territorial Jurisdiction After Magistrate's Order Under Section 156(3) CrPC: Delhi High Court

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IN THE HIGH COURT OF DELHI AT NEW DELHI

JASMEET SINGH; J.

W.P.(CRL) 137/2021; 07.12.2022

JOLLY SINGH versus THE STATE

Petitioner through: Mr. Ashwani Kumar, Mr. Kishan Kumar, Mr. HR Dhamija, Advs.

Respondent through: Mr. Sachin Mittal, ASC, Mr. Alok Sharma, Adv. SI Amit, PS Crime Branch

J U D G M E N T

JASMEET SINGH, J

1. This is a petition filed seeking cancellation of the order passed by the Addl. Commissioner of Police (Crime) dated 11.11.2020, whereby the investigation in the FIR No. 105/2019 was transferred to PS Surajpur, Greater Noida, U.P.
2. Brief facts of the present case are that the petitioner made a complaint to PS Model Town against the accused persons vide Complaint No. LC-1844 dated 05.12.2018. As per the complaint, it is stated that the accused persons abducted the petitioner and took him to Noida for finalizing an import deal where there was extortion and he was also robbed of Rs. 50,00,000. It is further stated that he was illegally detained at Surajpur and was also coerced to issue cheques worth Rs. 5.75 crores. When no action was taken on his complaint, the petitioner moved an application under section 153 Cr.PC before the concerned court at Rohini.
3. The Court of the learned Metropolitan Magistrate (MM), Delhi on 11.03.2019 passed an order stating “5. *From the allegations and material available on record, clearly cognizable offence is made out and matter requires investigation. Accordingly, SHO concerned is directed to register an FIR in the present matter against the wrong doers in appropriate sections of law, without being influenced by the section mentioned in the complaint.*” Pursuant to the said order, the FIR was registered at PS Model Town, Delhi.
4. The learned MM further directed the Addl. Commissioner of Police to ensure fair, proper and expeditious investigation. During the investigation, the Addl. Commissioner of Police had transferred the investigation to Police Station Surajpur, Noida, U.P. This transfer of investigation from Delhi to Noida, U.P, has resulted into filing of the present petition.
5. It is stated by the learned counsel for the petitioner that the order of the Addl. Commissioner of Police (Crime) in transferring the investigation to Noida (UP) is contrary to law. Additionally, it is stated that the Addl. Commissioner of Police (Crime) had no authority to transfer the investigation out of its jurisdiction, i.e, Delhi, especially when the directions for registration of the FIR was issued by the learned MM, Delhi and more so when the Ld. MM is monitoring the investigation.
6. The learned counsel for the petitioner also states that the investigation of the present case was transferred from P.S. Model Town to Crime Branch, Prashant Vihar without any intimation to the Ld. MM as well as the petitioner and without affording any opportunity of being heard.

7. My attention has been drawn to the Status Report filed by the respondent which indicates that there were already two criminal cases and seven cases under Negotiable Instruments Act pending between the parties. The seven cases under NI Act are pending in Gautam Budh Nagar, Noida and the other two FIRs which were also pending in Noida have already been cancelled. It further states that the alleged incident had taken place in PS Surajpur, Noida and that the investigation which was carried out did not establish any abduction of the petitioner from Delhi to Noida because the petitioner himself drove down to Noida. As a result, the case file was transferred vide order No. 517/ So/ Addl. CP/ Crime(HQ) dated 02.12.2020 of Addl. Commissioner of Police, Crime to the DGP, UP Police, Lucknow.

8. The learned counsel for the respondent has stated that because no cause of action or incident was related to any place in Delhi, therefore, the case was transferred to UP Police for further investigation where the jurisdiction lies.

9. I have heard learned counsel for both the parties.

10. Section 156 of Code of Criminal Procedure reads as-

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(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.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned”

11. A reading of section 156 (3) shows that the Magistrate enjoys all the power to order the investigation and ensure that the same is conducted in a fair manner and may also direct the police to perform its duties.

12. Section 190 of Cr.PC reads as-

“190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

13. In the present case, the metropolitan magistrate while exercising his powers under section 156(3) directed investigation into the complaint. It was open to the respondent to raise objections with regard to territorial jurisdiction at the time when directions were issued by the learned MM directing investigation. Once the order has been passed by the magistrate directing investigation, it is not open to the police to raise objection regarding territorial jurisdiction. In fact, in the present case, the Addl. Commissioner of Police has transferred investigation from Delhi to Greater Noida,

U.P. This is tantamount to reviewing the order of MM which only a superior court has the authority to do. In the present case, the Addl. Commissioner of Police has not challenged the order of MM in accordance with law, but has rather circumvented the order passed by a court of competent jurisdiction by transferring the investigation to Surajpur, Greater Noida, UP. The Addl. Commissioner of Police, by issuing the impugned order has acted as an appellate court.

14. The Supreme Court in “**Rasiklal Dalpatram Thakkar v. State of Gujarat**” [(2010) 1 SCC 1], has opined that-

“27. In our view, both the trial Court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 Cr.P.C. to hold that it was not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction.

28. 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 Cr.P.C., 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) Cr.P.C. 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.

33. .. we are only required to consider whether the investigating officer in respect of an investigation undertaken under Section 156(3) CrPC can file a report stating that he had no jurisdiction to investigate into the complaint as the entire cause of action had arisen outside his jurisdiction despite there being material available to the contrary. The answer, in our view, is in the negative and we are of the firm view that the powers vested in the investigating authorities, under Section 156(1) CrPC, did not restrict the jurisdiction of the investigating agency to investigate into a complaint even if it did not have territorial jurisdiction to do so. Unlike as in other cases, it was for the court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it.”

15. The Supreme Court in “**Kaushik Chatterjee v. State of Haryana and Others**” [(2020) 10 SCC 92] has laid down the following guidelines:-

“20. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal courts in inquiries and trials can be summarised in simple terms as follows:

20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression “local jurisdiction” found in Section 177 is defined in Section 2(j) to mean “in relation to a court or Magistrate, means the local area within which the court or Magistrate may exercise all or any of its or his powers under the Code”.

20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.4. *In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.*

20.5. *Where an offence 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. (Numbers 2 to 5 are traceable to Section 178)*

20.6. *Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)*

20.7. *In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either of the acts was done. (Section 180)*

20.8. *In certain cases such as dacoity, dacoity with murder, escaping from custody, etc., the offence may be inquired into and tried by a court within whose local jurisdiction either the offence was committed or the accused person was found.*

20.9. *In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.*

20.10. *The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.”*

16. A bare perusal of the complaint clearly shows that the complainant is a resident of Model town, Delhi. He carried Rs. 50,00,000 in cash and his chequebook to Noida from Delhi. Subsequently, the complainant reached Greater Noida wherein the said cash and cheques were forcibly taken away from him. The petitioner has made a complaint dated 05.12.2018 to PS Model Town and also on 01.01.2019 to ACP, DCP and Commissioner of Police. Hence, a part of cause of action has arisen in Delhi. The court of the learned MM, Delhi will have jurisdiction to take cognizance of the offence and direct investigation to PS Model Town. When the learned MM directed the registration of FIR, no such objection was taken by the respondent.

17. From the observations made hereinabove and relying on the judgements, I am of the view that the order of Addl. Commissioner of Police (Crime) of transferring the investigation from PS Model Town, Delhi to PS Surajpur, Noida is bad in law and is liable to be set aside.

18. Hence, the petition is allowed and the order of Addl. Commissioner of Police (Crime) dated 11.11.2020 is hereby quashed.