

2023 LiveLaw (SC) 284

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

V. RAMASUBRAMANIAN; J., PANKAJ MITHAL; J.

TRANSFER PETITION (CRIMINAL) NO.89 OF 2023; APRIL 10, 2023

KA RAUF SHERIF *versus* DIRECTORATE OF ENFORCEMENT & ORS.

Code of Criminal Procedure, 1973; Section 406 - The lack of jurisdiction of a Court to entertain a complaint can be no ground to order its transfer. A congenital defect of lack of jurisdiction, assuming that it exists, inures to the benefit of the accused and hence it need not be cured at the instance of the accused to his detriment. (Para 11)

Code of Criminal Procedure, 1973; Section 406 - That most of the accused and witnesses are from A state is not a ground to transfer case from B state to A state. (Para 12)

For Petitioner(s) Ms. Devina Sehgal, AOR Mr. Abdul Shukoor Mondambra, Adv. Mr. Shaikh S.Dastgir, Adv. Mr. Shaikh Nikali Barsha, Adv. Mr. A.K. Kaul, Adv.

For Respondent(s) Mr. K.M. Nataraj, ASG Mr. V. Joshi, Adv. Mr. Sharath Nambiar, Adv. Mr. Vinayak Sharma, Adv. Mr. Indira Bhakar, Adv. Mr. Anuj, Adv. Mr. Nakul Chengappa K.K. Adv. Mr. Chitransh Sharma, Adv. Mr. Mukesh Kumar Maroria, AOR

J U D G M E N T

V. RAMASUBRAMANIAN, J.

1. This is a petition filed by a person arrayed as Accused No.1 in a complaint filed by the Enforcement Directorate, under Section 406 of the Code of Criminal Procedure, 1973¹ read with Section 65 of the Prevention of Money-laundering Act, 2002², seeking transfer of Sessions Case No.1004/2021 arising out of ECIR/02/HIU/2018, from the Court of the Special Judge, PMLA, Lucknow to the Court of the Special Judge, PMLA at Ernakulam, Kerala.

2. We have heard Shri S. Nagamuthu, learned senior counsel appearing for the petitioner and Shri K.M. Nataraj, learned Additional Solicitor General appearing for the respondents.

3. The petitioner claims that he was the General Secretary of Campus Front of India, which is now banned as an unlawful association, vide Notification issued by the Union of India, Ministry of Home Affairs dated 27.09.2021 under Section 3 of the Unlawful Activities (Prevention) Act, 1967³. The circumstances under which the petitioner has come up with the above transfer petition are as follows:

(i) A complaint in FIR No.276/2013 was registered on 23.04.2013 by the Sub-Inspector of Police, Mayyil Police Station, Kannur District, against 22 persons for alleged offences under Sections 143, 147, 153B and 149 IPC read with Section 5(1)(a) and Section 25(1)(a) of the Arms Act and Section 18 of UAPA. The said complaint was later re-registered by the National Investigation Agency⁴ on 07.08.2013.

¹ For short, "the Code"

² For short, "PMLA"

³ For short, "UAPA"

⁴ For short, "NIA"

- (ii) After investigation, NIA filed a chargesheet on 19.10.2013 in the said case against those 22 accused.
- (iii) After trial, the Special Court, NIA, Ernakulam, convicted 21 persons by a judgment dated 20.01.2016. The High Court of Kerala confirmed the conviction in relation to the offences under the IPC, but acquitted them for the offences under Section 18 of UAPA. The special leave petition filed against the judgment of the High Court of Kerala was dismissed by this Court.
- (iv) The petitioner herein was not an accused in the aforesaid case.
- (v) After the conviction of all those in the aforesaid proceedings, the Enforcement Directorate registered an information report in ECIR/02/HIU/2018 on 02.05.2018, in connection with the aforesaid scheduled/predicate offence for which those 22 persons were prosecuted and convicted. In column No.4 of the said ECIR, the place of occurrence was indicated as *"8 Km West from Mayyil Police Station at Pamburuthi Road, Narath, Kannur District, Kerala"*. This ECIR was registered by the Enforcement Directorate, HIU, Headquarters at Delhi.
- (vi) Thereafter, a fresh complaint in FIR No.199/2020 was registered by Maunt Police Station, Mathura District, on 07.10.2020 for alleged offences under Sections 153A, 295A and 124A IPC and Sections 14 and 17 of UAPA read with Sections 65, 72 and 76 of the Information Technology Act. This FIR was against 4 persons and the petitioner was not named therein.
- (vii) However, in connection with the complaint filed by the Enforcement Directorate on 02.05.2018, the petitioner was arrested on 12.12.2020. Subsequently, a prosecution complaint under Sections 44 and 45 of PMLA was filed by the Assistant Director, Enforcement, New Delhi on the file of the Special Judge, PMLA, Lucknow against 5 persons, including the petitioner herein who was arrayed as Accused No.1. This complaint arose out of ECIR/02/HIU/2018.
- (viii) Thereafter, a chargesheet came to be filed on 02.04.2021, before the Additional District Judge-1, Mathura, Uttar Pradesh, in connection with FIR No.199/2020 which was registered on 07.10.2020. This chargesheet was against 7 named accused and the petitioner herein was shown as Accused No.5.
- (ix) Thereafter, a supplementary complaint was filed by the Enforcement Directorate on 06.05.2022 against 2 individuals and 2 corporate entities on the file of the Special Judge, PMLA, Lucknow.
- (x) It was followed by the registration of a supplementary/ combined prosecution complaint against 8 individuals and 2 corporate entities on 18.11.2022 on the file of the Special Judge, PMLA, Lucknow.
- (xi) By an order dated 06.12.2022, the learned Special Judge, PMLA, Lucknow, framed charges against the petitioner and other accused persons, for the alleged commission of the offence of money-laundering under Section 3, punishable under Section 4 of PMLA.
- (xii) On 17.12.2022, the examination-in-chief of PW1 was recorded. Further examination of PW1 was deferred to 09.01.2023, on account of certain objections raised by the counsel for the accused.
- (xiii) It appears that thereafter a discharge application was filed on behalf of one of the accused, but the same was dismissed by the Special Court on 01.03.2023. After

dismissing the discharge application, the Special Court has now posted the matter to 12.04.2023 for the examination of the listed witnesses.

(xiv) In the meantime, the petitioner, who is Accused No.1, has come up with the above petition seeking transfer of the case from the Court of the Special Judge, PMLA, Lucknow to the Court of the Special Judge, PMLA at Ernakulam, Kerala.

4. The main grounds on which the petitioner seeks transfer, as articulated by Shri S. Nagamuthu, learned senior counsel for the petitioner are:

(i) that the proceedings pending before the Special Court, Lucknow are without jurisdiction, as all criminal activities alleged by the prosecution have admittedly taken place in Kerala;

(ii) that 7 out of 10 accused are residents of Kerala, even as per the Enforcement Directorate's prosecution complaint;

(iii) that 12 out of 17 cited witnesses in the prosecution complaint dated 06.02.2021, 9 out of 14 witnesses cited in the supplementary complaint dated 06.05.2022 and 5 out of 9 witnesses cited in the combined prosecution complaint dated 18.11.2022 are from Kerala/South India; and

(iv) that the petitioner was lawfully remanded to custody by learned Special Judge, Ernakulam under Section 167(2) of the Code and hence the filing of the prosecution complaint at Lucknow is impermissible.

5. However, it is contended by Sh. K.M. Nataraj, learned Additional Solicitor General:

(i) that the question of territorial jurisdiction is already settled by this Court in *Rana Ayyub vs. Directorate of Enforcement through its Assistant Director*⁵ and that if tested on the anvil of the principles laid down therein, the above transfer petition is misconceived; and

(ii) that the petition for transfer, filed after the commencement of examination-in-chief of PW-1 and after the dismissal of the discharge application of one of the co-accused, is an abuse of the process of law.

6. We have carefully considered the above submissions.

7. In *Rana Ayyub* (supra), two questions arose for consideration and they were as follows:

"16. ...*(i)* whether the trial of the offence of moneylaundering should follow the trial of the scheduled/predicate offence or *vice versa*; and *(ii)* whether the Court of the Special Judge, AntiCorruption, CBI Court No. 1, Ghaziabad, can be said to have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court."

8. While dealing with the question No.1, in *Rana Ayyub*, this Court considered the interplay between Sections 43 and 44 of PMLA on the one hand and the provisions of Sections 177 to 184 of the Code on the other hand and held in paragraph 36 as follows:

"36. Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of subsection (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled

⁵ 2023 SCC OnLine SC 109

offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us.”

9. Adverting to the second question, this Court held in paragraphs 37 to 39 as follows:

“37. Coming to the second question arising for our consideration, clause (a) of sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA.

38. As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money-laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property.

39. In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of moneylaundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.”

10. Therefore, irrespective of where the FIR relating to the scheduled offence was filed and irrespective of which Court took cognizance of the scheduled offence, the question of territorial jurisdiction of a Special Court to take cognizance of a compliant under PMLA should be decided with reference to the place/places where anyone of the activities/processes which constitute the offence under Section 3 took place. In this case it is alleged in paragraph 3.6 of the combined prosecution complaint filed on 18.11.2022 as follows:

“3. Brief Summary of cause of action under Prevention of Money Laundering Act, 2002

3.6 Moreover, in UP Police Anti Terrorism Squad (ATS) FIR No. 04/2021 dated 16.02.2021 [u/s 120B and 121A of IPC; 13, 16, 18 and 20 of UAPA; 3, 4 and 5 of the Explosives Act and 3 and 25 of the Arms Act], two PFI members - (i) Anshad Badharudeen and (ii) Firoz Khan were arrested by UP Police and improvised explosive devices, one 32 bore pistol and 7 live cartridges were seized from them. Preliminary enquiry in this regard revealed that Rs. 3,50,000 were transferred from various bank accounts of PFI to Anshad Badharudeen's bank account during August 2018 to January 2021. The last receipt of Rs. 10,000 in his account from PFI was on 27.01.2021 i.e. only around 20 days prior to his arrest by the UP ATS.”

11. Therefore, the Special Court, PMLA, Lucknow cannot be said to be lacking in territorial jurisdiction to entertain the complaint. In any case, the lack of jurisdiction of a Court to entertain a complaint can be no ground to order its transfer. A congenital defect of lack of jurisdiction, assuming that it exists, inures to the benefit of the accused and hence it need not be cured at the instance of the accused to his detriment. Therefore, the first ground on which transfer is sought, is liable to be rejected.

12. The second ground on which transfer is sought is that 7 out of 10 accused persons are residents of Kerala. But this can hardly be a ground for ordering the transfer of investigation. Similarly, the third ground that a majority of witnesses are also from Kerala/ South India is also no ground to order the transfer of the complaint.

13. The fact that the petitioner was remanded to custody by the learned Special Judge at Ernakulam under Section 167(2) of the Code and that, therefore, the filing of the

complaint at Lucknow is impermissible, is not legally well-founded. The petitioner was arrested on 12.12.2020 in Kerala and, hence, he was produced before the Magistrate on 13.12.2020, who remanded him to judicial custody till 24.12.2020. Therefore, the NIA moved an application under Section 167 of the Code before the Principal Sessions Judge, Ernakulam for the grant of Enforcement Directorate custody for a period of 14 days.

14. An order under Section 167(2) of the Code had to be passed necessarily by the Magistrate “*to whom an accused person is forwarded*”. In fact, Section 167(2) contains the words “*whether he has or has not jurisdiction to try the case*”. Therefore, the argument revolving around Section 167(2) of the Code also fails.

15. In view of the above, we find no legally valid and justifiable grounds to order this transfer. Therefore, this transfer petition is dismissed.

Pending application(s), if any, stands disposed of accordingly.

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