

(2000) 12 AHC CK 0129**Allahabad High Court****Case No:** Criminal Miscellaneous Bail Application No. 17911 of 2000

Ashwani Dhingra

APPELLANT

Vs

C.B.I. and another

RESPONDENT

Date of Decision: Dec. 12, 2000**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 439
- Uttar Pradesh Reorganisation Act, 2000 - Section 28

Citation: (2001) 1 UC 433**Hon'ble Judges:** Krishna Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Krishna Kumar, J.

The applicant is challaned in case crime No. R.C. (E)/98/BS and FC/DLI u/s 120-B read with Sections 4 U/467/468/420 I.P.C.

2. At the" earliest, it may be stated that the investigation of this case is being done by the Central Bureau of Investigation. There is no dispute that the cause of action arose at Ghaziabad. It may also be noted that a special court has been established at Dehradun for deciding the cases investigated by the C.B.I, for some of the districts of Western Uttar Pradesh. This case is also being investigated by C.B.I, and the bail application of the applicant was rejected by the special court situated at Dehradun.

3. The applicant moved the bail application, after rejection of his bail application by the special court C.B.I, at Dehradun, in this Court. The question arises whether this^ Court has now got jurisdiction to decide"the bail application. Admittedly, the bail application was moved in this Court on 13.1.2000 while the Uttar Pradesh Reorganisation Act, 2000 came into force on 9.11.2000 creating State of Uttranchal. Section 28 of the Uttar Pradesh Reorganisation Act, 2000 is reproduced as below.

The High Court of Uttranchal shall have, in respect of any part of the territories included in the State of Uttranchal, all such jurisdiction, powers and authority as under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territories by the High Court at Allahabad.

4. Dehradun was earlier a part of the State territory, the jurisdiction of which was exercised by the High Court at Allahabad before the appointed day. Now the district Dehradun has become the territory of State of Uttranchal, the jurisdiction of the High Court of Allahabad has ceased to be exercised. On the report of Registrar General, in respect of jurisdiction for deciding this bail application, Hon"ble the Chief Justice passed an order as noted below

place before appropriate Bench.

5. On the basis of the above order, the case is put up before the Bench.

6. It may be noted again that in the bail application, district Dehradun was mentioned which was later on amended with the permission of the Court as District Ghaziabad. From the side of C.B.I, a counter affidavit has been filed. There was, however, no dispute raised in respect of the jurisdiction but at the time of hearing of the case in respect of jurisdiction, the Learned Counsel of the C.B.I, has opposed the jurisdiction of this Court.

7. Learned Counsel for the applicant contended that the provisions of Code of Criminal Procedure shall be relied upon in respect of jurisdiction of this Court and the provisions of the Uttar Pradesh Reorganisation Act, 2000 shall have no effect. I am, however, not convicted with this contention. The provisions of Section 177 and sub-sequent sections of the Code of Criminal Procedure are in respect of jurisdiction of the criminal court for inquiry and trial in ordinary matters because the initial word in Section 177 Code of Criminal Procedure is "ordinary" and Section 177 Code of Criminal Procedure says that "every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was-committed."

8. As earlier stated this case was investigated by C.B.I, and jurisdiction of the local court has been taken away and has been vested in the Special Court of C.B.I, situated at Dehradun. Under the circumstances the provisions of Chapter XIII of Code of Criminal Procedure shall have no relevance.

9. Learned Counsel for the applicant admitted that charge-sheet has"been submitted at Dehradun. It is thus clear that when the Uttar Pradesh Reorganisation Act, 2000 came into force, prior to that the special court of C.B.I, was having jurisdiction over the case and in view of Section 28 of the Uttar Pradesh Reorganisation Act, 2000, the High Court of Uttranchal shall have the jurisdiction in respect of the Special Court C.B.I, situated at Dehradun. It is admitted to the Learned Counsel for the applicant that Special Court C.B.I, was created u/s 11 of Code of Criminal Procedure.

10. The proviso to Section 11 Code of Criminal Procedure provides as below.

Provided that the State Government may after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such special court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case of class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

11. The above proviso makes it clear that when the Special Court of C.B.I, has been established at Dehradun for the district Ghaziabad where originally cause of action arose the local court at Ghaziabad shall have no jurisdiction. Thus, even if, the cause of action arose at Ghaziabad, the Special Court of C.B.I, only shall have jurisdiction over such cases investigated by the C.B.I. Thus, the jurisdiction of this High Court cannot be invoked on the ground that cause of action arose at Ghaziabad.

12. Learned Counsel for the applicant contended that the bail application was rejected by the Special Court of C.B.I, prior to the coming into force of Uttar Pradesh Reorganisation Act, 2000. However, when the bail application was moved on 13.11.2000, the above Act had come into force, High Court of Uttranchal on or after 9.11.2000 has jurisdiction on the cases pending before the Special Court C.B.I.

13. Learned Counsel for the applicant further contended that Hon"ble the Chief Justice has nominated this Court and, therefore, the case, cannot be transferred to the State of Uttranchal. The Hon"ble the Chief Justice has only ordered for placing the case before the appropriate Bench. Hon"ble the chief Justice not nominated this Bench for deciding this bail application in specific words nor the Hon"ble the Chief Justice has given any finding in respect of jurisdiction of the High Court of Allahabad or High Court of Uttranchal.

14. Learned Counsel for the applicant was also arguing about the provisions of Section 35 of the Uttar Pradesh Reorganisation Act, 2000, Sub Clause (1) of Section 35 of the said Act is reproduced as below:

Except as hereinafter provided, the High Court at Alahabad shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.

15. As stated earlier, Dehradun is a transferred territory and therefore, except as provided specifically, this Court shall have no jurisdiction in respect of cases decided by the courts situated at Dehradun. Learned Counsel for the applicant was also arguing in respect of Sub-clause (2) of Section 35 of the Act. However, this provision is not applicable because it is in respect of proceedings pending in the High Court at Allahabad immediately before the appointed day. As earlier stated, when the bail application was filed after the appointed day, this application was not pending in this Court on appointed day and therefore, Sub-clause (2) of Section 35 of the Uttar Pradesh Reorganisation Act, 2000 is not applicable.

16. Learned Counsel for the applicant also argued about-sub-clause (4) of Section 35. However the provisions of Sub-clause (4) of Section 35 are again not applicable because this bail application was not pending in this Court on appointed day.

17. Learned Counsel for the applicant further placed reliance upon Section 91 of the Uttar Pradesh Reorganisation Act, 2000. However, again the provision is not applicable because this section is in respect of cases which were pending before a court (other than High Court), Tribunal, authority or officer in any area which on that day falls within the State of Uttar Pradesh. It is provided that if that area had become the territory of Uttranchal State, the cases pending immediately before that court, tribunal or authority, shall stand transferred to the corresponding court, tribunal, authority or officer. This provision is for transfer of cases from the State of Uttar Pradesh to the court, tribunal, authority or officer of State of Uttranchal. Vice versa provision has not been made and further there is no court of C.B.I, designated for the area of the western Uttar Pradesh which was earlier under the jurisdiction of the Special Court of C.B.I, at Dehradun. Therefore, the cases if territory of Uttar Pradesh which were pending in the court of C.B.I, at Dehradun shall not stand transferred from that court. Thus, the provisions of Section 91 of the Uttar Pradesh Reorganisation Act, 2000 are also not applicable.

18. Section 93 of the Uttar Pradesh Reorganisation Act, 2000 makes it Clear that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Again, the provisions of this Act cannot be ignored in deciding the jurisdiction of this Court.

19. Learned Counsel for the applicant placed reliance, upon Navinchandra N. Majithia Vs. State of Maharashtra and Others, and argued that in view of the above case law, this Court shall have jurisdiction. It may be stated that the said case law was in respect of ordinary jurisdiction as mentioned in chapter XIII of the Code of Criminal Procedure as Well as territorial jurisdiction of the High Court when cause of action arose in two different High Court. The nature of this case is totally different as is clear from the above noted discussion and no help can be taken from the said case law. In the present case, the problem is due to the fact that although the cause of action arose in the district Ghaziabad, which is within the territory of Uttar Pradesh within the jurisdiction of Allahabad High Court, but the case was pending in the Special Court of C.B.I, at Dehradun which is now within the jurisdiction of High Court of Uttranchal. In view of Section 11 of the Code of Criminal Procedure the place of cause of action has no relevance and the case is totally within the jurisdiction of Special Court of C.B.I, at Dehradun. When the cause of action has no relevance in this case, the above noted case law of the Hon'ble Supreme Court is, in no way, helpful in deciding the dispute about jurisdiction.

21. It is not informed to this Court by any counsel of the parties that the Special Court of C.B.I, at Dehradun is still functioning as such or stopped functioning in respect of cases arising within the territory beyond the State of Uttranchal. It is for

the State Government which may take steps in consultation with the High Court at Allahabad in this regard as provided in the proviso to Section 11 of the Code of Criminal Procedure.

22. Learned Counsel for the opposite parties contended that some matters are pending before a Division Bench of this Court and hearing is going on. It was also informed that the provision of Section 35 of the Uttar Pradesh Reorganisation Act, 2000 is under the consideration of the Division Bench. I have noted above that Section 35 of the Act is in respect of pending cases while this case was not pending on appointed day.

23. Therefore, there is no reason for this Court to wait for the decision of the Division Bench and further if the judgment of" the Division Bench, in any way, affects the matter inconsistent of this case, the finding of the Division Bench shall override the finding of this Court. Therefore, there is no reason in not passing any order on the question of jurisdiction.

24. In view of the above discussion, it is very clear that the jurisdiction of this Court cannot be invoked in deciding the bail application.

25. It may also be kept in mind that u/s 439 of the Code of Criminal Procedure, the High Court while granting bail, may impose certain condition to be complied with by the lower court. In this case, if certain conditions are given, how the said directions can be complied with by a court who is not within the territorial jurisdiction of this Court. It may also be noted that the trial of the case shall be held before a court which is not within the jurisdiction of this Court and now in the jurisdiction of the High Court of Uttranchal. In such condition it shall not be possible to impose conditions to be complied with by a subordinate court. It may be stated that the provision of Section 94 provides that in case any difficulty arises in giving effect to the provisions of this Act, the President may, by order, do anything not inconsistent with such provision which appears to him to be necessary or expedient for the purpose of removing the difficulty. Thus, the difficulty, so arisen, can only be decided u/s 94 of the Uttar Pradesh Reorganisation Act, 2000.

26. Therefore, till such decision is taken by the appropriate authority, in my opinion, there is no way out for deciding this bail application.

27. In view of the provisions and facts discussed above, this Court has no jurisdiction to decide this bail application. The applicant shall be at liberty to move application before the appropriate court.