

(2011) 11 PAT CK 0112

Patna High Court

Case No: Cr.WJC No. 275 of 2010

Ashok Kumar Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 3, 2011

Judgement

@JUDGMENTTAG-ORDER

Aditya Kumar Trivedi, J.

Heard learned counsel for the petitioner as well as learned counsel for the informant. State is not present. Petitioner, who happens to be an accused of Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236/2010, has prayed for quashing of criminal prosecution having been originated on the basis of above referred case on the ground of jurisdiction. To support his plea, learned counsel for the petitioner submitted that place of occurrence whatever happens to be fallen within the periphery of Ziradeyee, Siwan and so it was the police of Ziradeyee P.S. who was competent to register a case and took up investigation thereupon. So, submission is that registration of Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236/2010 followed with its investigation appears to be nothing but mala fide action of the police officials having in collusion with the prosecution and accordingly is fit to be quashed.

2. On the other hand the learned lawyer for the informant submitted that to appreciate the facts in its right prospective, the order of Cr.W.J.C. No. 720 of 2010 dated 27.8.2010 has to be gone through. The aforesaid Cr.W.J.C. No. 720 of 2010 was in a form of habeas corpus filed by Monika Kumari (being impersonated), the informant of Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236 of 2010, and after taking into account the conduct of accused of instant case, it was directed thereunder to the Superintendent of Police, Muzaffarpur, to record the statement of Monika Kumari, register a case and proceed with the investigation. So, by a judicial order there happens to be inception of Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236 of 2010 Unless and until the above referred order is set aside by the

superior court, there cannot be quashing of Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236 of 2010.

3. Because of the fact that State is not represented, nothing has been taken note of on behalf of the State.

4. Before dealing with the submission made on behalf of the petitioner, it looks better to perceive the salient feature so coming out. Earlier Cr.W.J.C. No. 720 of 2010 was filed by way of habeas corpus wherein S.P., Muzaffarpur, was directed to procure physical attendance of one Monika Kumari on whose behalf the Cr.W.J.C. was filed and after her appearance in presence of others her statement was taken wherefrom it was gathered that the petition was filed after impersonating her. She had also alleged that she was physically ravished by the person including petitioner of instant petition which compelled the Court to pass detailed order including following direction:--

The Superintendent of Police, Muzaffarpur, is also directed to record the statement of Monika Kumari and as per statement institute a case against the accused person", so certainly there happens to be a specific direction of the bench in compliance of which, the instant case that means to say Kazi Mohammadpur (Muzaffarpur) P.S. Case No. 236 of 2010 has been registered on the statement of Monika Kumari.

5. Now coming to the aspect of jurisdiction, from the fardbeyan itself it is evident that the informant had gone to the office of "Youth Federation" lying within Kazi Mohammadpur P.S. where she met with Ashok Kumar Mishra, its director and that is the place where she was handed over appointment letter to join at Kasturba Gandhi Aawasiya Balika Vidyalaya in Ziradeyee, Siwan where she joined as a teacher where she was ravished time without number. After her escape from there, while she was at her house alongwith her parents, she was taken into custody by the police and brought before the High Court as directed, so from the disclosure of the fardbeyan it is evident that first part of occurrence began from the place lying under Kazi Mohammadpur P.S. Case of Muzaffarpur town, where interview was conducted, appointment letter was given and consequent thereupon she had given her joining at Kasturba Gandhi Aawasiya Balika Vidyalaya at Ziradeyee where she was subject to exploitation.

6. Part XIII deals with jurisdiction of the Criminal Court, in inquiry and trial and as per Sections 177 and 178, the ordinary place of inquiry/trial happens to be where the occurrence/cause has arisen. Now from Section 179, special proviso visualize allowing conduction of trial/inquiry either at the place whereunder the offence begin, continued and its consequence found. It has purposely been introduced to remove any sort of controversy going to arise on the point at place of trial/inquiry.

7. Now coming to case in hand, having first step at the place lying within original jurisdiction of Kazi Mohammadpur P.S. Case, resulting its consequence at Ziradeyee

where the informant was subjected to rape alongwith other kind of physical assault certainly gives jurisdiction to Muzaffarpur Court as well as Siwan Court to proceed with the trial. Therefore, proceeding with investigation by Kazi Mohammadpur P.S. in the aforesaid background cannot be treated as without jurisdiction.

8. The other relevant provision can also be looked into and that happens to be Section 156 of the Cr.P.C. which runs as follows:--

156. Police officer's power to investigate cognizable case.--(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.

9. Section 156(2) of Cr.P.C. having sub-clause (2) at its armory, it gives a legal seal and recognizes the conclusion of investigation which has not been conducted in normal pursuit.

10. Another turf is also visible by having the presence of Section 462 of the Cr.P.C. under Chapter XXXV which runs as follows:--

462. Proceedings in wrong place.--No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

It again put safeguard upon the finding given by the competent court even having trial concluded at the wrong place than the place where the cause had arisen.

As such, after having conjoint reading of the aforesaid provisions in consonance with order dated 27.8.2010 passed in Cr.W.J.C. No. 720 of 2010, I do not see any legal force in the submission of the learned counsel for the petitioner and so. I am not persuaded therewith. Consequent thereupon, petition is found to be devoid of merit and is accordingly dismissed.