

Swapna Nandy Vs State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: Dec. 24, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 156(3), 177, 178, 482
Penal Code, 1860 (IPC) â€” Section 120B, 34, 341, 342, 343

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: U.S. Chatterjee, for the Appellant; Kasem Ali Ahmed, for the Respondent

Judgement

Arunabha Basu, J.

The Judgment of the Court was delivered by:

1. The revisional application u/s 482 of the Code of Criminal Procedure is directed to quash the proceeding in connection with G.R. Case No. 19

of 2008 (T.R. Case No. 223 of 2008), arising out of Uluberia Police Station Case No. 05 of 2008 dated 4.1.2008 under sections

341/342/343/384/386/504/506/511/34 IPC.

2. Opposite party stated to be the husband of the petitioner herein instituted a petition of complaint against the petitioner along with others for

alleged commission of offence under the various provisions of Indian Penal Code as mentioned above.

3. The learned Magistrate directed registration of the case and initiation of investigation in terms of provision u/s 156(3) of the Code of Criminal

Procedure. Subsequently, police registered a case under various provisions of the Indian Penal Code as mentioned above and initiated

investigation. On conclusion of investigation, charge sheet was submitted against all the accused persons including the petitioner herein for

commission of aforementioned offence.

4. The main contention of the petitioner that the entire allegation in the FIR is nothing but a counter blast to harass the petitioner as she has

instituted a case against her husband for commission of offence punishable under sections 498A/506/120B of the Indian Penal Code. The said

case was registered at Noapara Police Station within the jurisdiction of Barrack pore and on conclusion of investigation charge sheet was

submitted against the opposite party along with others.

5. It is further contended by petitioner that she has instituted another case praying for maintenance against her husband in terms of provision u/s

125 of the Code of Criminal Procedure and the said application is pending before the learned Judicial Magistrate, 3rd Court, Barrack pore.

6. It is further contended that the allegation in the FIR does not disclose commission of offence within the jurisdiction of Uluberia and as such the

entire prosecution which has been initiated against the petitioner herein is required to be quashed.

7. It appears that in spite of service of notice, no appearance was made on behalf of the private opposite party and as such the matter was heard

and decided after hearing the submission made by the learned Advocate for the petitioner and learned Advocate for the State.

8. It appears from the certified copy of the order passed by the learned Court below that by order dated 20.1.2008, learned Court below decided

that cause of action arose within the jurisdiction of the Court. It will be appropriate to reproduce the order dated 21.1.2008, as the same appears

to be conflicting and contradictory.

Order dtd. 21.1.08 Seen the prayer of IO who prays for transfer the case to O/C Noapara PS, Barrackpur Dist. 24-Parganas North for

investigation on point of jurisdiction. Perused the case record and C.D. It appears that the P.O. is falls under the jurisdiction of Noapara PS,

Barrackpur, Dist. 24-Parganas North. Considered and refused as the cause of action of this case arose within the jurisdiction of this Court. Sdl-

T.K. Monday ACJM, Uluberia"".

9. In terms of provision u/s 177 of the Code of Criminal Procedure it is provided that every offence shall ordinarily be inquired into and tried by a

Court within whose local jurisdiction it was committed.

10. On perusal of the petition of complaint instituted by the opposite party herein before the learned Court below, it is evident that entire cause of

action, wherein the allegation of criminal intimidation and forcing the complainant to sign on certain documents, which was letter, as alleged,

converted into marriage documents took place in the house of the petitioner herein. Admittedly, from the petition of complaint it is evident that

petitioner is residing under Police Station Noapara within the district of 24-Parganas (North), whereas the complaint was instituted before the

learned Court below at Uluberia within the district of Howrah. From the order passed by the learned Court below dated 21.1.2008, it is evident

that objection as to territorial jurisdiction was raised at the inception by the police officer conducting investigation but the same was not at all

entertained by the learned Court below without assigning any reason.

11. It is correct that in case of offence falling under the jurisdiction of different Courts, any such Courts having jurisdiction over any of such local

area shall have jurisdiction to try the offence. But in order to attract the provision u/s 178 of the Code of Criminal Procedure, it must be shown that

at least a part of offence falls within the jurisdiction of the Court where the prosecution is initiated. So far as the present case is concerned, the

petition of complaint clearly shows that all the allegations constituting the alleged offence took place at Noapara in the house of the petitioner herein

and as such it is not clear to me as to how the learned Court below came to a finding that part of the cause of action falls within the jurisdiction of

the learned Court below.

12. It may be pointed out in this context that lack of territorial jurisdiction of a particular Court cannot by itself be a ground to quash the

proceeding. The contention of the petitioner that the present case is nothing but a counter blast as because she has instituted criminal case u/s 498A

against her husband or that she has filed application u/s 125 of the Code of Criminal Procedure, cannot be decided by this Court in the absence of

any materials. While exercising power u/s 482 of the Code of Criminal Procedure, High Court shall refrain from entering into decision as to

disputed question of facts. If the FIR prima facie discloses commission of offence on which investigation was conducted by police and chargesheet

submitted, then in the absence of any material to show that no case lies against the petitioner, the High Court shall not enter into a detail inquiry to

find out the truth or falsehood about the case on which charge sheet is already submitted by police. Such action falls within the realm of trial and

can only be decided on consideration of evidence that may be laid by respective parties.

13. In view of my finding as discussed above, I am of the view that this is not a fit case to quash the entire proceeding in which the petitioner herein

is impleaded as accused, as it cannot be stated that the FIR lodged against her does not disclose any commission of offence as alleged. But at the

same time this Court cannot be unmindful of the fact that entire occurrence took place beyond the territorial jurisdiction of the Court where the trial

is now pending.

14. Under these circumstances, I am of the view that this is a fit case to transfer the aforesaid proceeding from the Court of learned Judicial

Magistrate, 2nd Court, Uluberia to the Court of Judicial Magistrate at Barrack pore within whose territorial jurisdiction the entire occurrence as

alleged took place.

15. It may also be pointed out that petitioner herein may face acute inconvenience to defend her case at Uluberia because admittedly she is residing

at Barrack pore.

16. The revisional application is disposed of with the direction that learned Sessions Judge, Howrah shall withdraw the case being G.R. Case No.

19 of 2008 from the file of learned Judicial Magistrate, 2nd Court, Uluberia and transmit the same to learned Sessions Judge, 24-Parganas

(North). Learned Sessions Judge, 24-Parganas (North) shall transfer the aforementioned case to the file of learned Additional Chief Judicial

Magistrate, Barrack pore with further direction to proceed with the trial in accordance with law.

17. There shall be no order as to costs.

18. Criminal Section is directed to forward a copy of the order to learned Sessions Judge, Howrah as well as to learned Sessions Judge, 24-

Parganas (North) for necessary compliance.

19. Criminal Section is further directed to supply urgent photostat copy of the order to the petitioner as and when applied for.

20. Case diary be returned.