

*Before Paramjeet Singh, J.*

**DR. RAJINDER SINGH** — *Petitioner*

*versus*

**STATE OF BIHAR AND OTHERS** *Respondents*

**CRMM. No. M-36703 of 2009**

March 15, 2013

Constitution of India, 1950 - Art. 226(2) - Code of Criminal Procedure, 1973 - Ss. 156(3), 177, 178, 482 - Complainant injured in an accident at Ludhiana - Admitted to a hospital at Ludhiana and thereafter sought discharge against medical advice - Complainant filed a complaint at Bihar against the doctor in Ludhiana on account of negligence in treatment - Judicial Magistrate Baksar exercising powers u/s 156(3) Cr.P.C. sent the complaint to police at Baksar (Bihar) and FIR lodged - Doctor filed petition u/s 482 Cr.P.C. for transfer of investigation under the FIR to Ludhiana - Having regard to provisions of S. 177 & S. 178 Cr.P.C. and the fact that almost the entire cause of action had arisen at Ludhiana, transferred investigation to Ludhiana - Further, held that High Court could issue a direction to an authority outside its jurisdiction, drawing an analogy with Art. 226(2) of the Constitution - Petition allowed.

*Held, that* the Hon'ble Apex Court held that under Section 177 of the Code, every offence shall ordinarily be enquired into and tried in a Court within whose jurisdiction it was committed.

(Para 22)

*Further held, that* in the present case, the injury has been caused at Ludhiana and Pardeep Kumar got treatment at Ludhiana w.c. f05.03.2009 to 14.03.2009. The alleged medical negligence on the part of the petitioner is at Ludhiana, as such ordinarily this case should have been enquired into and tried in the court at Ludhiana. It would be appropriate to make reference to Section 178 of the Code. If there is uncertainty as to whether, among different localities, the offence would have been committed the trial can be held in a court having jurisdiction over any of those localities. This provision has further widened the scope by stating that in a case where the offence was committed partly in one local area and partly in other local area, the Court in either of the localities can exercise jurisdiction to try the case and Section 179 of the Code further widens the horizon.

(Para 23)

*Further held*, that from the perusal of above provisions, it is well settled position of law that if an offence is disclosed the Court will not normally interfere with the investigation into the case and will permit investigation to be completed. If the FIR, prima facie, discloses the commission of an offence, the Court does not normally stop the investigation or further to do so would be to trench upon the lawful power of the police to investigate into cognizable offence. However when deciding regarding the jurisdiction, the High Court would have to proceed entirely on the basis of allegations made in the FIR and thereafter examine with regard to the issue of transfer.

(Para 24)

*Further held*, that tested in the light of above said judgment as well as the provisions of the Code read with Article 226 of the Constitution of India, the present petition is maintainable, as the part of cause of action rather the major part of cause of action has arisen at Ludhiana. From the averments made in FIR, petition as well as reply submitted by respondents no.1 and 2, it is clear that major part of the cause of action has arisen at Ludhiana. As such, this Court has territorial jurisdiction in this case and has power to transfer the investigation from Baksar (Bihar) to Ludhiana (Punjab) in view of Navinchandra N. Majithia (supra).

(Para 25)

*Further held*, that considering the peculiar facts of the case, I am of the view that there should not be any further delay in investigation of the matter and further proceedings in the case by the police within jurisdiction in the State of Bihar may create other complications, it would be appropriate to direct that further investigation of this case should be carried out by police of Ludhiana. Accordingly, respondent no.2 is directed to transfer the above said FIR and investigation of the case to Ludhiana police for further investigation.

(Para 26)

Kanwaljit Singh, Senior Advocate with Tarun Jaitley, Advocate, *for the petitioner.*

Sanjiv Walia, Advocate, for respondents no.1 and 2.

Randip Singh, Advocate, for respondent no.3.

Gurinderjit Singh, DAG, Punjab.

**PARAMJEET SINGH, J.**

(1) Instant petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Code." in short) read with Article 226(2) of the Constitution of India for transfer of investigation in case FIR No.104 dated 19.07.2009, registered at Police Station Sadar Baksar, District Baksar, under Sections 307/120-B/34 of the Indian Penal Code (hereinafter referred to as "IPC" in short).

(2) For the purpose of deciding the present petition, the relevant facts are to the effect that Pardeep Kumar, labourer was working in an industrial concern known as 'Radha Plywood' at Ludhiana. Unfortunately, the said labourer was buried under the huge load of plywood and suffered severe bodily injuries including spinal injuries. He was admitted on 05.03.2009 at about 11.00 A.M in the clinic of petitioner known as 'Kalyan Hospital' where he was given treatment. His X-ray showed fracture of D-11-12 with subluxation. The injury was on the spinal vertebrae as a result of which he became paraplegic. As a result of fall of heavy load on his body, the vertebral system of his body was affected. Complainant-Pardeep Kumar remained in the hospital till 14.03.2009 without any complaint from his relatives, friends and the employer and his condition continued to improve. He was conscious and even his vital organs were stable throughout. Pardeep Kumar left the hospital on 14.03.2009 against the medical advice. The brother of Pardeep Kumar and other relatives were explained the condition of Pardeep Kumar. Pardeep Kumar was taken by his brother as well as other relatives after settling of his accounts with the employer and must have thought to get the treatment at his native place. Pardeep Kumar was admitted in some hospital in Bihar, but on 4.4.2009, a private complaint was filed by Raju Kumar Ram, nephew of Pardeep Kumar against the petitioner alleging that there was a medical negligence on his part. The learned Judicial Magistrate, Baksar (Bihar) exercising powers under Section 156(3) of the Code sent the complaint to the concerned police station resulting into registration of FIR in question with Police Station Baksar which has been annexed as Annexure P-5. Hence, this petition confining the prayer for transfer of investigation of the said FIR to Ludhiana where the cause of action as per the bare reading of FIR has arisen. The other contents of the petition are not relevant.

(3) Pertinent to mention that the petition is full of mistakes. At most of places, reference to the petitioner has been made instead of patient.

(4) Notice of motion was issued. Separate replies have been filed by respondents no.1 and 2 i.e. State of Bihar and Station House Officer, Police Station Baksar, District Baksar (Bihar) and respondent no.4 i.e. State of Punjab.

(5) In reply, respondents no.1 and 2 admitted the facts mentioned in the petition. Para 7 of the reply on merits is most material and relevant extract from that para is being reproduced as under:

*"....Since according to the FIR (Annexure P-5) the allegations made are solely alleging wrong medical treatment given at Ludhiana to the deceased, therefore, the same can be investigated properly at Ludhiana, itself. As such the answering respondents have no objection if the investigation of the case is transferred to Ludhiana, as they had made the this very prayer before the Court of C.J.M Baksar also earlier."*

(6) This factual position has also been mentioned by respondent no.4-State of Punjab.

(7) No reply has been filed on behalf of respondent no.3-complainant.

(8) I have heard learned counsel for the parties and perused the record carefully.

(9) Learned senior counsel for the petitioner vehemently argued that this Court has jurisdiction to transfer the investigation of the abovesaid FIR registered at a police station in the State of Bihar and made reference to Article 226 of the Constitution of India as well as Section 482 of the Code. The learned senior counsel further argued that there was an allegation of medical negligence against the petitioner, as the petitioner treated Pardeep Kumar at Ludhiana. To substantiate his contention, the learned senior counsel relied upon case law *Navinchandra N. Majithia versus State of Maharashtra (1)* and the judgment rendered by this Court on 29.05.2002 in Criminal Misc. No.823 of 2002, titled as *Parveen Bhatia and others versus State of Punjab and others*'.

(10) I have considered the rival contentions of learned counsel for the parties.

(11) From the averments in the petition and the reply submitted by the respective respondents, the following point emerges for consideration:

*1. Whether a High Court within whose jurisdiction a part of offence is alleged to have been committed, can transfer the investigation to that State under Article 226 of the Constitution read with Section 482 of the Code from some other State where the FIR has been lodged claiming that a part of cause of action had occurred in that State.*

(12) The admitted facts of the case are that Pardeep Kumar was working as a labourer with the 'Radha Plywood' at Ludhiana. Unfortunately, he was buried under the huge load of plywood and suffered severe bodily injuries including spinal injuries at Ludhiana and initial treatment was given to him in Kalyan Hospital of the petitioner w.e.f 05.03.2009 to 14.03.2009. It is also not in dispute that against the medical advice, Pardeep Kumar left the hospital of petitioner alongwith his brother and relatives and got admitted in some hospital in Bihar. Thereafter, the abovesaid FIR came to be registered at Baksar on the ground of medical negligence.

(13) In the light of the facts mentioned in the FIR and specifically in view of averments in the respective replies of respondents no. 1 as well as 2 and 4, the factum of taking place of the said incident at Ludhiana within the State of Punjab has been specifically admitted. However, the complaint has been lodged at Baksar within the State of Bihar on the ground of medical negligence. It is also stated in the reply of respondents no. 1 and 2 that they have no objection, if the investigation of the abovesaid FIR is transferred to Ludhiana.

(14) The Hon'ble Apex Court in *Navinchandra N. Majithia (supra)* had occasion to consider the similar controversy. In the said case M/s.J.B.Holdings Limited filed a complaint at Shillong in the State of Meghalaya against the petitioner, who was the Managing Director of M/s. India Farmers Private Limited. A petition for quashing the FIR or in the alternative to transfer the investigation was filed in the High Court at Bombay alleging that the complaint at Shillong had been filed with mala fide

intention to exert pressure, although the complainant was stationed at Mumbai, not at Shillong. The registration of FIR at Shillong at the instance of complainant and thereafter conducting investigation was in excess of jurisdiction provided under the provisions of the Code of Criminal Procedure and in that case, Shillong police, itself, had requested Mumbai police to carry out the investigation which clearly indicates that Shillong police was aware of the fact that the cause of action had arisen in the jurisdiction of Mumbai. The Hon'ble High Court of Bombay dismissed the writ petition holding that the petitioner had sought quashing of the complaint lodged at Shillong. However, in appeal filed against the order of the Bombay High Court, the Hon'ble Apex Court in Navinchandra N. Majithia (supra) held as under:

*"34. Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurize the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of Bombay High Court.*

*35. The next question for consideration is regarding proper order to be passed in the case.*

36. Considering the peculiar fact situation of the case we are of the view that setting aside the impugned judgment and remitting the case to the High Court for fresh disposal will cause further delay in investigation of the matter and may create other complications. Instead, it will be apt and proper to direct that further investigation relating to complaint filed by M/s. J.B. Holding Ltd should be made by the Mumbai Police.

37. Accordingly, we allow the appeal, set aside the judgment under challenge and dispose of the writ petition with the direction that the complaint lodged by M/s. J.B Holding Ltd. at Shillong which is presently being investigated by the Special Superintendent of Police. CID. Shillong shall be transferred to the Mumbai Police for further investigation through its Economic Offence Wing, General Branch. CID, or any other branch as the competent authority of the Mumbai Police may decide in accordance, with law."

(15) Identical view was also taken by this Court in the decision rendered on 29.05.2012 in Criminal Misc. No.823 of 2002, titled as '**Parveen Bhatia and others versus State of Punjab and others**'.

(16) Article 226 of the Constitution of India which provides power to the High Courts to issue certain writs read as follows:

"226. Power of High Courts to issue certain writs.--(1) withstanding anything in Article 32 every High Court shall have power, throughout the territory in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement, or any of the rights conferred by Part III and for any other purpose. (2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seal of such

*Government or authority or the residence of such person is not within those territories.*

(3) xxx xxx xxx

(4) xxx xxx xxx”

(17) From the perusal of provisions of Article 226 (2) of the Constitution of India, it is clear that maintainability or otherwise of the writ petition in the High Court depends upon the fact whether the cause of action for filing a complaint arose wholly or in part within the territorial jurisdiction of that High Court.

(18) In 'Words and Phrases' (fourth edition) the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

(19) The Hon'ble Apex Court in ***Oil and Natural Gas Commission versus Utpal Kumar Basu and another (2)***, considered at length the question of territorial jurisdiction under Article 226 (2) of the Constitution of India. The relevant observations made in the said judgment are being reproduced as under:

*“Clause (1) of Article 226 begins with a non obstante clause - notwithstanding anything in Article 32 and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under Clause (2) of Article 226 the High Court may exercise its power conferred by Clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions,*



(Paramjeet Singh, J.)

*orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding 'that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.'*

(20) In the light of this, so far the question of territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered is the place where the alleged offence was committed.

(21) The Hon'ble Apex Court in the case of *K. Bhaskaran* versus *Sankaran Vaidhyan Balan and Anr.* (3) considered the question of territorial jurisdiction of the Courts relating to the offence under Section 138 of the Negotiable Instruments Act. The Hon'ble Apex Court also considered the effect of Section 177 of the Code of Criminal Procedure. Section 177 of the Code reads as under:

*"Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed".*

(22) The Hon'ble Apex Court held that under Section 177 of the Code, every offence shall ordinarily be enquired into and tried in a Court within whose jurisdiction it was committed.

(23) In the present case, the injury has been caused at Ludhiana and Pardeep Kumar got treatment at Ludhiana w.e.f 05.03.2009 to 14.03.2009. The alleged medical negligence on the part of the petitioner is at Ludhiana, as such ordinarily this case should have been enquired into and tried in the court at Ludhiana. It would be appropriate to make reference to Section 178 of the Code. If there is uncertainty as to whether, among different localities, the offence would have been committed the trial

can be held in a court having jurisdiction over any of those localities. This provision has further widened the scope by stating that in a case where the offence was committed partly in one local area and partly in other local area, the Court in either of the localities can exercise jurisdiction to try the case and Section 179 of the Code further widens the horizon.

(24) From the perusal of above provisions, it is well settled position of law that if an offence is disclosed the Court will not normally interfere with the investigation into the case and will permit investigation to be completed. If the FIR, prima facie, discloses the commission of an offence, the Court does not normally stop the investigation or further to do so would be to trench upon the lawful power of the police to investigate into cognizable offence. However when deciding regarding the jurisdiction, the High Court would have to proceed entirely on the basis of allegations made in the FIR and thereafter examine with regard to the issue of transfer.

(25) Tested in the light of above said judgment as well as the provisions of the Code read with Article 226 of the Constitution of India, the present petition is maintainable, as the part of cause of action rather the major part of cause of action has arisen at Ludhiana. From the averments made in FIR, petition as well as reply submitted by respondents no. 1 and 2, it is clear that major part of the cause of action has arisen at Ludhiana. As such, this Court has territorial jurisdiction in this case and has power to transfer the investigation from Baksar (Bihar) to Ludhiana (Punjab) in view of *Navinchandra N. Majithia (supra)*.

(26) Considering the peculiar facts of the case, I am of the view that there should not be any further delay in investigation of the matter and further proceedings in the case by the police within jurisdiction in the State of Bihar may create other complications, it would be appropriate to direct that further investigation of this case should be carried out by police of Ludhiana. Accordingly, respondent no.2 is directed to transfer the above said FIR and investigation of the case to Ludhiana police for further investigation.

(27) The present petition is allowed in the above terms.