

Sanjeev Sharma and ors. Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/900446

Court : Jammu and Kashmir

Decided On : Jun-06-2005

Reported in : 2005(3)JKJ459

Judge : Y.P. Nargotra, J.

Acts : Code of Criminal Procedure (CrPC) , 1989 - Sections 153 to 173, 173(2), 173(8) and 561A; ;Ranbir Penal Code (IPC), 1989 - Sections 4, 120B, 302 and 498A

Appeal No. : 561-A/35/2004

Appellant : Sanjeev Sharma and ors.

Respondent : State and ors.

Advocate for Def. : B.S. Salathia, AAG. and; Nittin Bhasin, Adv.

Advocate for Pet/Ap. : M.L. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

Y.P. Nargotra, J.

1. The petitioner Sanjeev Sharma was married to the deceased Romika Sharma D/O Mohinder Kumar Sharma R/O Mohalla Malhotrian Jammu on 10.2.2003. He

was working as Engineer with Rainbow Camera E. Pvt. Ltd. Satungal Kathmandu(Nepal). The petitioner and the deceased were staying at Kathmandu. On 14.7.2003 he lodged a report with District Police Office Lalitpur alleging therein that his wife Smt. Romika Sharma has fallen from the roof of the house located in Kathmandu, District Satungal village Development Committee, Ward No. 8 at about 5.30 AM. Due to the fall she sustained severe injuries so he took her to B&B; Hospital in the vehicle of Rainbow E. Pvt. Ltd and while undergoing the medical checkup the doctor declared that she was dead. The police of Kathmandu started investigations into the death of the deceased. In the meanwhile it appears that mother of the deceased reached Kathmandu and suspecting the death of the deceased to be a murder, she also lodged an FIR with District Police Officer Kathmandu on 16.7.2003 alleging therein that her daughter had been thrown from the rooftop after having been murdered by the petitioners Nos. 2&3. FIR was registered and investigation was commenced. Postmortem report of the deceased indicated the cause of death to be due to head injury.

2. It appears that before the court of learned Chief Judicial Magistrate Jammu, Sh. Devinder Kumar Sharma, who happens to be the uncle of the deceased, filed a complaint against the accused-petitioners for murder of the deceased at their hands. Learned Chief Judicial Magistrate by his order dated 17.7.2003 forwarded the complaint to Police Station Nowabad Jammu for investigation in terms of Section 156(3) Cr.P.C. whereupon said police station has registered the FIR for commission of offences Under Sections 302/498A, 120B RPC against the accused petitioners on 18.7.2003 at 13.00 hours. The petitioners have filed this petition Under Section 561-A Cr.P.C. seeking quashing of the said FIR.

3. The case of the petitioners is that the offence has allegedly been committed outside the territorial jurisdiction of the Court of learned C.J.M. Jammu or Police Station Nowabad. Therefore neither the complaint could be sent for investigation by the learned C.J.M. to said police station nor Police Station Nowabad could legally register the FIR for investigation into the offence. Learned counsel for the petitioner submits that registration of FIR being without jurisdiction deserves to be quashed. He further submits that against the same offence two FIRs cannot be registered and investigated simultaneously argued that the matter is pending

investigation with Kathmandu police He argued that the matter is pending.

He has argued that the matter is pending investigation before Kathmandu police, therefore, police of Nowabad can also not investigate the case. In support of his contention he relies upon : 2001 CriLJ3329 .

4. On the other hand the contention of Mr. Salathia, learned AAG appearing on behalf of the State and Mr. Bhasin, appearing on behalf of the private respondents is that there is no bar for registration of the case and investigation into the offence.

I have heard the learned Counsel for the parties.

In : 2001 CriLJ3329 , titled T.T. Antony v. State of Kerala, their lordships of the Supreme Court have held as follows:

'Apart from a vague information by a phone call or cryptic telegram the information first entered in the Station House diary,, kept for this purpose, by a police officer Incharge of a police station is the First Information Report-FIR postulated by Section 154 of Cr.P.C. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facets mention in the First Information Report and entered in the Station House Diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 Cr.P.C. No such information/statement can properly be treated as an FIR and entered in the Station House diary again as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Cr.P.C. The scheme of Cr.PC is that an officer Incharge of a police station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C. as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material he need not register a fresh FIR, he is empowered to make further investigation normally with the leave of the court, and where during further investigation he

collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of Sub-section (8) of Section 173 Cr.P.C. Under the scheme of the provision of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earlier or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequently information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offence. On receipt of information about a cognizable offence or incident giving rise to a cognizable offence or offences and on entering the FIR in the Station House diary the officer Incharge of a Police station has to investigate nor merely the cognizable offence report in the FIR but also other connected offences shown to have been committed in the course of the same transaction or the same occurrence and file one more reports as provided in Section 173 of Cr.P.C.'

5. The preposition of law enunciated in the above said authority by the Hon'ble Supreme court is not applicable to the facts of the present case. Their lordships have held that second FIR in respect of the same cognizable offence cannot be registered by taking note of the provisions of Section 153 to 173 Cr.P.C. Here in the present case two FIRs have been registered regarding the same occurrence, one in Kathmandu Nepal and another at Jammu, J&K; State. The FIR registered in Kathmandu cannot be said to be an FIR registered Under Section 154 J&K; Cr.P.C. as the provisions of J&K; Cr.P.C. do not extend and has no application at Kathmandu. Therefore, the bar with regard to registering second FIR as per rule of law enunciated by the afore quoted authority docs not apply to the FIR registered at Jammu.

6. Therefore, the question arising for consideration in this case is whether an FIR can be registered at Jammu i.e. within the State J&K; in regard to an offence committed beyond the territory of J&K;? Section 4 of J&K; Ranbir Penal Code is relevant for the purpose of answering this question. This section reads as follows:

'4-Extension of Code to extra-territorial offences -- The provisions of this Code apply also to any offence committed by any permanent resident of the State in any place without and beyond the Jammu and Kashmir State.

Explanation -- In this section the word 'offence' includes every act committed outside the State which if committed in the State would be punishable under this Code.'

An illustration has also been appended to this section in the following terms:

'A, who is a permanent resident of the State. Commits a murder outside the State. He can be tried and convicted of murder in any place in the State in which he may be found.'

7. From the bare reading of Section 4 and illustration it is manifest that if a permanent resident of the State commits a cognizable offence in any place without and beyond the Jammu and Kashmir State, his offence is covered by the provisions of Ranbir Penal Code, he can be tried and convicted for such offence in any place in the State in which he may be found. As the accused can be tried for commission of offence in the State also, though he allegedly committed the same beyond the State of J&K; ie. Kathmandu Nepal, the FIR against him for the commission of such offence can be registered within the State at any place where he may be found. The accused is resident of Jammu ie. Mohalla Malhotrian which falls within the jurisdiction of Police Station Nowabad, therefore, said police station was legally competent to register the FIR for commission of offences committed by him at Kathmandu.

Therefore, there is no merit in this petition, which is accordingly dismissed, alongwith connected CMPs.