

Nishant Mishra and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-06-2011

Judge : Amar Saran; Arvind Kumar Tripathi, JJ.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C.) - Section 156(3); [Constitution of India](#) - Article 226; Indian Penal Code (IPC) - Section 306;

Appeal No. : CRIMINAL MISC. WRIT PETITION No. - 5850 of 2011

Appellant : Nishant Mishra and Others

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Samit Gopal; G.S. Chaturvedi, Advs

Judgement :

1. Heard Sri G.S. Chaturvedi, Senior Advocate for the petitioners and the learned A.G.A.
2. This petition has been filed for quashing of an FIR dated 23.3.2011 registered at case crime No. 106 of 2011, under Section 306/34 I.P.C., P.S. Gurgaon Sadar, district Gurgaon and the consequential proceedings thereto.
3. The FIR lodged by Sri Shahrukh Khan son of the deceased Iqbal Asif Khan alleges that the deceased was working as Taxation Manager in

XeroxCompany. On 23.3.2011 at 3.30 PM, the deceased had telephoned theinformant and told him that he was very disturbed by his officials. Then theinformant himself tried to contact his father but his phone was not picked up.

4. Thereafter, he went to Gurgaon along with his maternal uncle (Mama.)In themeantime there was a phone call to the mobile of his 'Mama' from the mobileof his father that a corpse was lying in an under-construction building nearSouthend Opal in Gurgaon. The FIR named five persons including the fourpetitioners as having troubled his father causing him to commit suicide.

5. The learned AGA raised a preliminary objection that as the FIR of this casewas registered in Gurgaon, where the matter was being investigated, the HighCourt at Allahabad had no jurisdiction to interfere in the matter. Sri G.S.Chaturvedi, learned counsel for the petitioners submitted that after 15th(1963) amendment of the Constitution, the powers to issue directions, order orwrits to any Government authority or person could also be exercised by anyHigh Court exercising jurisdiction in relation to the territories within whichthe cause of action, wholly or in part, arises, even if the seat of suchGovernment or authority was not within the said territories.

6. It was further argued by Sri Chaturvedi that there was also a suicide note(Annexure-7) which mentioned that the deceased was compelled to commitsuicide because of the role played by the four petitioners, Inder Singh Bishtand Ganesh Sati. The background was that the deceased had to file a writpetition in the High Court. He was given a power of attorney by Inder SinghBist and Ganesh Sati. The deceased was apprehensive that the petitioners hadtrapped him into filing the writ petition. The Advocate petitioner fromAllahabad, Sri Nishant Mishra asked him to keep the authorization with him.

7. The deceased felt that he had wrongly signed the writ petition. He furtherstated that his family or sasural members were not responsible for his suicidebut the petitioners and the other accused named above were the only personsresponsible. By his mistake a great loss had been caused to the company forwhich the petitioners were responsible and they had involved him in this case because of his ignorance. It was also submitted that part of the cause of actionrelated to

Allahabad as Nishant Mishra, Advocate Allahabad High Court had assisted in the filing of the writ petition, which the deceased felt he had wrongly filed and because of the guilt of filing which writ petition, he had eventually committed suicide on the fateful day at Gurgaon.

8. Sri G.S. Chaturvedi relied on *Madan Mohan Singh v State of Gujarat and another*, 2010 (70) ACC 907 (Supreme Court) for the proposition that when a person gets depressed and commits suicide because he had been wrongly rebuked and harassed by his superior officer against whom he nurses a grudge, even if he honestly feels he has been wronged, it would not disclose any offence under section 306 IPC.

9. Learned counsel for the petitioners also placed reliance on the decision of *Navinchandra N. Majithia v. State of Maharashtra*, AIR 2000 SC 2966 for the proposition that a writ petition could be entertained in the High Court even where part of the cause of action relating to the matter arises especially after the fifteenth (1963) amendment of Article 226 of the Constitution.

10. Learned A.G.A on the other hand contended that for deciding the territories where any cause or part of the cause of action arises, only the FIR could be looked into and there was no reference to the suicide note in the FIR in the present case.

11. Further more in our view, the case of *Navinchandra N. Majithia v. State of Maharashtra* is distinguishable on facts, because it was a case in which the court recorded a finding that the major part of the cause of action arose in Mumbai and the mere fact that the FIR was registered in a particular State (in that case Shillong), it could not provide the sole criteria for reaching an inference that no part of the cause of action could arise in another State. It was observed in the said case that the major part of the cause of action had arisen in Mumbai as the company was registered in Mumbai, in which the petitioner and his family members were principal share holders of one company M/s Indian Farmers Pvt. Ltd (IFPL for short), and they were entitled to enter into a contract to receive rupees 58 crores from Chinara Exports for sale of shares.

12. Chinara Exports did not complete its contract by paying the balance amount within the time allowed, hence the petitioner had terminated the agreement. Another company M/s J.D. Holding, Shillong was carved out of Chinara Exports Ltd. Thereafter in a mala fide manner the complaint was lodged in Shillong in the State of Meghalaya to exert pressure on the Company. All the transactions had taken place at Mumbai and not at any other place outside Mumbai, much less at Shillong or in any other place in the State of Meghalaya. The investigation by the Police of Shillong was said to be oppressive and malicious.

13. As the High Court had refused to interfere, the Apex Court had set aside the judgement of the High Court observing that the main cause of action arose at Mumbai and the FIR had been lodged in a mala fide manner in Shillong, hence the High Court in Mumbai clearly had jurisdiction to entertain the matter. In the present case, we find that the main cause of action has taken place in Gurgaon (Haryana) where the deceased committed suicide because he felt harassed because the petitioners and other accused persons had forced him to file the petition which in his view he had wrongly signed. This in our opinion would not give jurisdiction to the Allahabad High Court to quash the impugned FIR which was registered at P.S. Gurgaon.

14. We may add that if the investigation is being carried out at a particular place in another State and if the High Court in another State can interfere with the investigation because part of the cause of action is connected with that State, it could give rise to an anomalous position because different High Courts may exercise jurisdiction over the same subject matter in different ways. Also as the investigation had commenced in Haryana where the report etc. were registered, obtaining of police remand and bail etc. would ordinarily be considered by the High Court in Haryana and therefore, the said High Court would have jurisdiction because it was the superior Court before which the said subordinate courts would submit the reports of investigation or remand etc. The High Court at Allahabad could ordinarily have no jurisdiction in such a case.

15. In *Asit Bhattacharje v Hanuman Prasad and Ors.*, 2007 Cri.L.J. 3181 (SC) the Allahabad High Court which had entertained a writ petition because part of the

cause of action which arose in a matter related to U.P., where the application under section 156(3) Cr.P.C was filed in West Bengal, has come in for criticism by the Apex Court.

16. In AIR 2006 SUPREME COURT 1288 "Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd." it has been held that simply because the cheques were issued or the company had its registered office in Kerala, it would not confer jurisdiction on the Kerala High Court to entertain a writ from an order taking cognizance passed in West Bengal for which the Calcutta High Court would have jurisdiction, as the Calcutta High Court exercises superintendence under Article 227 over Courts falling in its jurisdiction.

17. Therefore, without commenting on the merits of the matter, only on the point of jurisdiction, we are not inclined to interfere with the investigation or to quash the impugned FIR which was registered at P.S. Gurgaon (Haryana).

18. At this stage, learned counsel for the petitioners pleaded that this Court may grant two months time to the petitioners to approach the concerned High Court. As held by the Full Bench of this Court in paragraphs 76 to 83 in Ajeet Singh v State of Uttar Pradesh, 2007 Cri.L.J. 170, which has in turn relied on the Constitutional Bench decision of the Apex Court in State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12 and other decisions that when the High Court refuses to entertain the petition and to grant the main relief, but relegates him to seek another remedy, it would be outside the scope of Article 226 to grant the ancillary relief in the interregnum. In this case as we have chosen not to entertain this writ petition it would be an abuse of the process of law to stay the arrest for any period to enable the petitioners to approach another High Court which may have jurisdiction in the matter. For all these reasons we find the writ petition devoid of force and it is dismissed.