

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P (Cr.) No.1266 of 2007

Reserved on: 26.9.2007

Date of Decision: 10.10.2007

Sonu and othersPetitioners

Through : Mr.Tarun Sharma, Advocate

Vs

Govt. of NCT of Delhi and another Respondents

Through : Ms.Mukta Gupta, Standing Counsel for the State.

CORAM: JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? YES.
2. To be referred to the Reporter or not? YES.
3. Whether the judgment should be reported YES. in the Digest?

JUDGMENT

This petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India r/w section 482 Cr.P.C for issuance of a writ of certiorari for quashing of FIR No.1367/2006 registered at PS Malviya Nagar or in the alternative for issuance of mandamus for the transfer of the said FIR alongwith the consequent investigation to the jurisdiction of the Police Station Ragho Majra Kotwali, District Patiala, Punjab.

2. The petitioners have submitted that the above FIR was filed by the complainant under sections 406/498A at PS Malviya Nagar, while perusal of FIR would show that no offence was committed within the jurisdiction of NCT of Delhi. Respondent-wife alleged that petitioners subjected her to cruelty at matrimonial home in Patiala (Punjab). Marriage in this case was solemnized in U.P. Neither the marriage was solemnized in Delhi nor the offence was committed in Delhi. The registration of FIR in Delhi at PS Malviya Nagar was contrary to the provisions of sections 177 and 181 (4) of the Cr.P.C. The FIR should be quashed or the same be transferred to the State where offence was committed.

3. A perusal of FIR lodged at PS Malviya Nagar shows that complainant alleged that her marriage was solemnized with petitioner No.1 on 22.11.2005 at Shamli, Tehsil Kerana, Muzafarnagar, U.P. according to Muslim rights. After marriage, she went to matrimonial home at Gurudwara Wali Gali No.3, Patiala (Punjab). She stated that behaviour of her husband and in-laws towards her from the very beginning was rude and non-cooperative and they were not happy with the dowry articles given in the marriage and she was taunted for bringing less dowry and Rs.50,000/-, one scooter and 5 tolas of gold was demanded. No where in the FIR she stated that any part of offence was committed in Delhi. Neither entrustment of dowry articles had taken place in Delhi nor the alleged misappropriation of dowry articles had taken place in Delhi. She filed the FIR with PS Malviya Nagar alleging that she was now living at Hauz Rani within the jurisdiction of PS Malviya Nagar.

4. In (1999) 8 SCC 728 Satvinder Kaur vs. State (Govt. of NCT of Delhi) and another, the question of registration and investigation of an FIR lodged at the place of residence was dealt with and considered by the Supreme Court and the Supreme Court made the following observations:-

8. In our view, the submission made by the learned counsel for the appellant requires to be accepted. The limited question is whether the High Court was justified in quashing the FIR on the ground that Delhi Police Station did not have territorial jurisdiction to investigate the

offence. From the discussion made by the learned Judge, it appears that learned Judge has considered the provisions applicable for criminal trial. The High Court arrived at the conclusion by appreciating the allegations made by the parties that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction to entertain and investigate the FIR lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala and that the alleged cause of action for the offence punishable under Section 498-A IPC arose at Patiala. In our view, the findings given by the High Court are, on the face of it, illegal and erroneous because:

(1) The SHO has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an FIR is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the investigating officer has no territorial jurisdiction.

(3) After investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under section 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence.

9. This would be clear from the following discussion. Section 156 of the Criminal Procedure Code empowers the police officer to investigate any cognizable offence. It reads as under :

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 enquire into or try under the provisions of Chapter XIII.

(2) No proceedings 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.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.?

10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceedings of the 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 to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that is, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case, which required investigation, the police officer can refuse to record the FIR and/or investigate it.

5. The law laid down by the Supreme Court is that in the event of the investigating officer arriving at a conclusion that crime was not committed within his jurisdiction, the FIR should be forwarded to the PS having the jurisdiction. However, the police officer cannot refuse to register the FIR in respect of a crime, which requires investigation.

6. In the present case there is no allegation made in the FIR itself that a part of the crime was committed in Delhi. The parties never lived in Delhi. Marriage took place in U.P. Matrimonial home was in Patiala and alleged crime of dowry demand was allegedly committed in Patiala (Punjab). No investigation is needed to come to the conclusion that no part of crime was committed in Delhi and the alleged crime was committed either in U.P. or Patiala. PS Malviya Nagar even if registered the FIR should have transferred it to the Police Station of Patiala where the offence was committed. Normally in all such cases, zero FIR is registered at a Police Station at Delhi and FIR is transferred to the concerned police station where crime is committed. Though there is no illegality in registration of FIR, but retaining of this FIR with PS Malviya Nagar raises doubt about bonafides of SHO.

7. It is to be noted that half of the criminal writ petitions filed in this Court under Article 226 of the Constitution of India and Section 482 Cr.P.C. are in respect of refusal of the Delhi Police to register FIRs. People have to rush to the High Court seeking mandamus that police should be given directions for registration of FIR. In most of these writ petitions cognizable offences are disclosed in the complaints but police refuses to register FIR. Similarly, in most of the complaints filed before Metropolitan Magistrate, the allegation is that police refuses to register FIRs. On the one hand, police refuses to register FIRs of the people living in Delhi about commission of crime which had taken place in Delhi and on the other hand the SHO of PS Malviya Nagar had registered an FIR in Delhi regarding crime committed in Patiala. This attitude of the police is surprising. Such registration of FIR only seems to be result of some pressure or as a result of consideration and needs an enquiry to be conducted as to what was the reason for the SHO for obliging with the registration of FIR at Delhi and not transferring the same to concerned area police station when no offence was committed at Delhi. Police Commissioner also needs to issue guidelines to the SHOs in those cases, where FIR is registered in respect of crime committed outside Delhi and where no part of the offence has been committed within the jurisdiction of Delhi that such FIRs should be transferred to the State concerned and also there should be no refusal of registration of FIR. In all those cases where there is a refusal of registration of FIR, even where cognizable offence is reported, disciplinary action should be taken against such police officers. The Courts are unnecessary being burdened with complaints or writ petitions, where directions are sought for registration of FIRs.

8. I consider that this writ petition should be allowed. Accordingly, the writ petition is allowed. SHO Police Station Malviya Nagar, New Delhi is directed to transfer the FIR in question to the concerned Police Station at Patiala (Punjab) where offence was committed.

October 10, 2007 SHIV NARAYAN DHINGRA,J.