

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.21451 of 2015

M.P.No.1 of 2015

Arun Raj. A.

.. Petitioner

Vs.

1. State rep. by Inspector of Police,
Erode Railway Police Station,
Erode.
2. The Assistant Commissioner of Police,
District Crime Record Bureau,
Kakkanad, Ernakulam
3. V.L.Kiran
4. Abin Sabu
5. Justin
6. Akhil Babu
7. Tintu Abraham

.. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in C.C.No.138 of 2013 and to transfer the entire records from the Judicial Magistrate No.II, Erode, to Additional Sessions Court, Moovattupuzha.

For Petitioner : Ms.P.T.Asha
for Mr.Sam Jayaraj Houston

For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor

For 2nd Respondent : Mr.S.Janarthanan

<i>Reserved on</i>	<i>Pronounced on</i>
16-10-2015	30-10-2015

ORDER

For the sake of convenience, the parties will be referred to by their name.

2. A detailed narration of the factual matrix of this case is necessary.

(a) Arun Raj and Plavila Gheevarghese John (hereinafter called 'John') hail from Kerala and were studying in Gnanamani College of Engineering, Namakkal, Tamil Nadu. They were in the second year of their course during January, 2012, when the incident in question took place.

(b) Their college closed for the 2012 Pongal holidays and so they, along with other friends, boarded the Chennai-Trivandrum Mail (Train No.12623) on 14.1.2012 at Salem to return home. Adversity struck them at Erode station around 1.30 a.m. when a gang comprising of V.L.Kiran, Abin Sabu, Justin, Akhil Babu, Tintu Abraham and others

accosted the two students and started ragging them. The gang members also hail from Kerala, but were students of another Engineering College near Salem. It is alleged that the gang demanded money and ATM cards of Arun Raj and John and when they resisted, both of them were beaten blue with an iron rod, and their faces were mutilated by a blade.

(c) When the train was about to move out of Erode Station, Arun Raj and John were pushed out from the train, but somehow Arun Raj managed to board another compartment and continued his journey till Palakkad.

(d) John was found with serious injuries by the Station Master at Erode and was admitted into the Government Hospital, Erode. On the complaint of John, the Inspector of Police, Railway Police Station, Erode, registered a case in Crime No.86 of 2012 on 14.1.2012 under Section 324 IPC against V.L.Kiran, Abin Sabu and Justin.

(e) Arun Raj managed to reach home and informed his people there. Since he suffered serious injuries, he was admitted in Ashwini Hospital, Trissur. On the complaint lodged by Arun Raj with the Inspector of Police, Aroor Police Station, Alappuzha, on 19.1.2012, a case in Cr.No.56 of 2012 under Sections 147, 148, 149, 323, 324, 341 IPC was registered.

(f) John, who was admitted in the Hospital at Erode managed to reach his home, and on a complaint lodged by him with the Inspector of Police, Mulanthuruthy Police Station, a preliminary enquiry was

conducted and a case in Cr.No.26 of 2012 under Sections 143, 147, 148, 323, 324, 307 and 149 of IPC was registered.

(g) Thus, for the same incident, there are three FIRs viz., Erode Police Station Cr.No.86 of 2012; Aroor Police Station Cr.No.56 of 2012 and Mulanthuruthy Police Station Cr.No.26 of 2012. When the Kerala Police came to know about the registration of two FIRs in Kerala itself in respect of the same incident, the case in Aroor Police Station Cr.No.56 of 2012 was closed as action dropped, and the investigation was pursued in Mulanthuruthy Police Station Cr.No.26 of 2012, and the following accused were arrested:

- i) Akhil Babu (A-1) .. arrested on 31.1.2013
- ii) Tintu Abraham (A-2) .. arrested on 12.3.2013
- iii) V.L.Kiran Nair (A-3) .. arrested on 5.3.2013
- iv) Abin Sabu (A-4) .. arrested on 12.3.2013
- v) Justin Tom John (A-5) .. arrested on 31.1.2013

The arrest of the accused was after the dismissal of the anticipatory bail application filed by some of them before the Kerala High Court.

(h) One of the accused by name Tintu Abraham filed CrI.M.C.No.637 of 2012 before the Kerala High Court to quash the FIR in Mulanthuruthy Police Station Crime No.26 of 2012 and to transmit the records to the file of the Erode Railway Police Station for the Tamil Nadu Police to conduct an investigation in Cr.No.86 of 2012. A learned single Judge of the Kerala High Court, by a well considered order held that the

offence had taken place while the victims were on a train journey and referring to section 183 of the Code of Criminal Procedure, rejected the plea of the accused, holding that the FIR in Mulanthuruthy Police Station Cr.No.26 of 2012 cannot be quashed. The learned single Judge relied on the judgment of the Supreme Court in **Naresh Kavarchand Khatri v. State of Gujarat ((2008) 8 SCC 300)** wherein the Supreme Court has held that in a case where a trial can be held in any of the places falling within the provisions of Sections 177, 178 and 181 Cr.P.C., investigation can be conducted by the Officer of the Police Station concerned within the jurisdiction thereto.

(i) Abin Sabu (A-2) filed W.P.No.7031 of 2015 before this Court for a writ of declaration that only the Inspector of Police, Erode Railway Police Station has the jurisdiction to conduct investigation in this case and not the Sub-Inspector of Police, Mulanthuruthy Police Station, Kerala. This writ petition was withdrawn on 27.1.2015.

(j) The Inspector of Police, Erode Railway Police Station completed the investigation in Cr.No.86 of 2012 and filed a final report before the Judicial Magistrate No.II, Erode on 14.6.2013 against V.L.Kiran (A-1), Abin Sabu (A-2), Justin (A-3), Akhil Babu (A-4) and Tintu Abraham (A-5) for offences under Sections 147, 148, 294(b), 341, 323 and 324 IPC. It may be necessary to state here that none of the accused were arrested by the Inspector of Police, Erode Railway Police, and V.L.Kiran (A-1), Abin Sabu (A-2) and Justin (A-3) obtained anticipatory

bail in Tamil Nadu. In the final report, Akhil Babu (A-4) and Tintu Abraham (A-5) have been shown as absconding accused.

(k) Now it may be apposite to refer to certain important dates relating to the filing of the final report before the Judicial Magistrate No.II, Erode, by the Erode Railway Police. The Final Report was presented on 14.6.2013 and it was found to be defective and was returned by the Court on 17.6.2013. The Final Report was re-presented on 13.9.2013, and it was again returned to the Police on the same day for rectifying certain defects. The Final Report was once again re-presented on 27.9.2013, on which date the learned Judicial Magistrate No.II, Erode took cognizance of the final report for the offences under Sections 147, 148, 341, 323 and 324 IPC in C.C.No.138 of 2013 against the five accused and issued process to them.

(l) Mulanthuruthy Police completed the investigation in Cr.No.26 of 2012 and filed the Final Report before the Judicial First Class Magistrate, Kolenchery, Kerala, on 12.7.2013. The learned Judicial First Class Magistrate, Kolenchery, Kerala took cognizance of the offences under Sections 143, 147, 148, 324, 323, 34, 393, 307, 149 IPC in C.P.No.24 of 2013 on 17.7.2013 and issued processes to the accused for their appearance. Since the learned Judicial First Class Magistrate, Kolenchery has taken cognizance for offences that include Section 307 IPC, which is triable exclusively by the Court of Sessions, C.P.No.24 of 2013 was committed to the Court of Sessions and it is now

pending trial on the file of the Additional District and Sessions Judge, Muvattupuzha in S.C.No.555 of 2013.

(m) Arun Raj, the defacto complainant in Mulanthuruthi Police Station Crime No.26 of 2012 is now before this Court praying for transmitting the records in C.C.No.138 of 2013 to the file of the Additional Sessions Court, Muvattupuzha, to be tried along with S.C.No.555 of 2013.

3. Heard Ms.P.T.Asha, learned Counsel appearing for the petitioner; Mr.C.Emalias, learned Additional Public Prosecutor for the State; and Mr.S.Janarthanan, learned Counsel appearing for the Assistant Commissioner of Police, District Crime Record Bureau, Ernakulam.

4. Ms.P.T.Asha, learned Counsel appearing for the petitioner submitted that by virtue of Section 186(b) of the Code, a decision has to be taken by this Court as to which Court should try the offenders in this case for the incident that took place on 14.1.2012 during the train journey of the victims.

5. This Court gave its anxious consideration to the rival submissions made by the learned Counsel on either side.

6. This Court is in total agreement with the order passed by the learned single Judge of the Kerala High Court in Cr.M.C.No.637 of 2012 on 11.6.2012. The learned single Judge has relied upon the judgment of the Supreme Court in **Naresh Kavarchand Khatri v. State of Gujarat ((2008) 8 SCC 300)** and has held that the Kerala Police have the jurisdiction to investigate the case.

7. Coming to the question of trial, Section 183 of the Code reads as under:

"183. Offence committed on journey or voyage.— *When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage."*

From the above provision it is crystal clear that the offence, which had taken place while the victims were on train journey, can be enquired into and tried, either by the Judicial Magistrate No.II, Erode, or by the Additional Sessions Judge, Muvattupuzha.

8. Now the question that falls for consideration is; Whether this Court has the power to decide the issue of jurisdiction under Section 186 of Cr.P.C. Section 186 reads as under:

"186. High Court to decide, in case of doubt, district where inquiry or trial shall take place.— Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided—

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced,

and thereupon all other proceedings in respect of that offence shall be discontinued."

Section 186(a) will not apply to the facts and circumstances of this case. Section 186(b) may apply since two courts in two different states are seized of the case.

9. The next line of enquiry is "in which of these Courts, proceedings were first commenced ?" The expression used in Section 186(b) is not "in which Court the Proceedings were instituted" nor does it contemplate the date of taking of cognizance. In the context of Section 186(b), the expression "proceedings were first commenced" requires to be interpreted by this Court. One can profitably refer to the Constitution Bench Judgment of the Supreme Court in **Sara Mathew v. Institute of Cardio Vascular Diseases ((2014) 2 SCC 62)** for some light on this subject. Of course, the question that arose in that case was the

interpretation of Section 468 of Cr.P.C., and the Constitution Bench held that it is the date of institution of the proceedings, and not the date of taking of cognizance by the Magistrate that will be relevant for finding out whether the case has been filed within the limitation. It may not be out of place to extract paragraph 31 from **Sara Mathew's case (supra)**, which reads as follows:

"31. It is now necessary to see what the words "taking cognizance" mean. Cognizance is an act of the court. The term "cognizance" has not been defined in the Criminal Procedure Code. To understand what this term means we will have to have a look at certain provisions of the Criminal Procedure Code. Chapter XIV of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) a police report of such facts; (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to "Complaints to Magistrates". Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue

of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after *initiation of proceedings* detailed in Chapter XIV, comes the stage of *commencement of proceedings* covered by Chapter XVI."

10. In Section 186(b) neither the expression "institution of the proceeding" is used nor the expression "taking of cognizance" has been used. Of course, the latter cannot be employed because it already finds a place in the substantive part of Section 186. "Cognizance of offence" is taken under Section 190 of the Code, which falls under Chapter XIV, whose title reads "Conditions Requisite for Initiation of Proceedings". After taking of cognizance of the offence, the Court will

next proceed against the offender under Chapter XVI - "Commencement of Proceedings Before Magistrates" by issuing process to the accused under Section 204 of the Code. It is beyond a pale of doubt that the expression "proceedings were first commenced" found in Section 186(b) would mean the date on which process is issued to the accused under Section 204 Cr.P.C. Therefore, under the scheme of the Code, there exists a distinction between "initiation of proceedings" and "commencement of proceedings" under Chapters XIV and XVI.

11. Going by the expression deployed in Section 186(b) in this case, though the final report was presented by the Erode Railway Police before the Judicial Magistrate No.II, Erode, Tamil Nadu, on 14.6.2013, yet cognizance was taken only on 27.9.2013 and, thereafter, process was issued to the accused. Whereas, the final report in Mulanthuruthi Police Station Crime No.26 of 2012 was filed before the Judicial First Class Magistrate, Kolenchery, Kerala, on 12.7.2013 and the case was numbered as C.P.No.24 of 2013. Cognizance was taken on 17.7.2013 and process was issued to all the accused on the same date. Therefore, proceedings first commenced with the issuance of process by the Judicial First Class Magistrate, Kolenchery, Kerala, and not before the Judicial Magistrate No.II, Erode, Tamil Nadu. Ergo, for invoking Section 186(b) Cr.P.C., the petitioner should have approached the High Court of Kerala.

12. However, this Court finds that Section 186 may not even apply because, the Judicial Magistrate No.II, Erode, Tamil Nadu, has taken cognizance of the offences under Sections 147, 148, 341, 323 and 324 IPC, whereas, the Judicial First Class Magistrate, Kolenchery, Kerala, has taken cognizance of the offences under Sections 143, 147, 148, 324, 323, 34, 393, 307 and 149 IPC. Though both the Final Reports are for the same incident, yet the Police investigation by the Mulanthuruthi Police shows that grave offences have been committed and materials have been gathered, based on which the learned Judicial First Class Magistrate, Kolenchery has taken cognizance of those offences. For invoking the provisions of Section 186 of Cr.P.C., both the Courts should have taken cognizance of the same offence, but whereas, the test of sameness is not satisfied in this case as stated above. Therefore, I am afraid the provisions of Section 186 will not apply to the facts of this case.

13. Now the question which begs an answer is, for the same bundle of facts, can the accused be made to face two trials, though for different offences ? Will that not be a travesty of justice ? A similar issue came up for consideration before the Calcutta High Court in **Ram Swarath Yadav v. State of West Bengal (2005 (4) CHN 756)**. It may be necessary to state, in brief, the facts of that case. A lorry loaded with Soya Beans left Madhya Pradesh to Assam. En route, an accident

occurred in Jaunpur District of Uttar Pradesh. In connection with this incident, a case in Niwari Police Station Cr.No.58 was registered on 12.3.2001, and after completing the investigation, a Final Report was filed before the Magistrate in Jaunpur, Uttar Pradesh who took cognizance of an offence under Section 406 of IPC. For the same incident, a private complaint was lodged before the learned Magistrate, Alipore in West Bengal, who referred the complaint under Section 156(3) of the Code to the Budge Police Station for investigation. A case in Budge Police Station Cr.No.31 was registered on 7.4.2001 for an offence under Section 406 IPC in the Court of Sub Divisional Judicial Magistrate, Alipore. The Calcutta High Court held that the proceedings in Jaunpur, Uttar Pradesh commenced first. The High Court however went on to hold that the FIR in Budge Police Station Cr.No.31 deserved to be quashed as it would be an abuse of process of law. In the words of the Calcutta High Court,

"..... An accused cannot be vexed with two cases relating to same incident. Accordingly, it is a fit case where this Court should exercise its inherent jurisdiction under Section 482 of the Code. Continuation of the criminal proceeding being Budge P.S. Case No.31 dated 7.4.01 would be an abuse of the process of Court and accordingly the said criminal proceeding is hereby quashed. The aforesaid Budge P.S. Case No.31 dated 7.4.01 should be discontinued with

being *fait accompli* as in the Niwari Court the proceeding relating to same offence first commenced."

14. In this case all the accused and most of the witnesses are from Kerala. It will be very inconvenient for the accused and the witnesses to come all the way to Erode in Tamil Nadu and take part in the trial, which will perforce be held in Tamil, a language that is not fluently known to them. As held by the Calcutta High Court, *supra*, for the same facts, the accused should not be subjected to two prosecutions. Under such circumstances, this Court is of the view that, it will serve the interest of justice if the proceedings in C.C.No.138 of 2013 on the file of Judicial Magistrate No.II, Erode, Tamil Nadu is quashed on the ground that it will be inconvenient to all the parties as stated above, and also on the score that the accused should not be subjected to two prosecutions at two different Courts, for the same bundle of facts.

15. In the result, the prosecution of the accused in C.C.No.138 of 2013 on the file of the Judicial Magistrate No.II, Erode is hereby quashed. Connected miscellaneous petition is closed.

Index: Yes.

30-10-2015

vr

To

1. The Inspector of Police, Erode Railway Police Station,
Erode.
2. The Assistant Commissioner of Police,
District Crime Record Bureau, Kakkanad, Ernakulam
3. The Judicial Magistrate No.II, Erode.
4. The Additional District & Sessions Judge, Moovattupuzha,
Ernakulam District, Kerala.
5. The Public Prosecutor, High Court, Madras.

P.N. PRAKASH, J.

vr

Pre-Delivery Order in
CrI.O.P.No.21451 of 2015

Delivered on : 30-10-2015