

**IN THE HON'BLE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION  
TRANSFER PETITION (CRL.) NO.225 OF 2020**

**IN THE MATTER OF:**

Ms Rhea Chakraborty

...Petitioner

**Vs.**

The State of Bihar

..Respondent

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT  
NO.2**

**ADVOCATE ON RECORD FOR THE RESPONDENT NO.2:  
NITIN SALUJA**

| <b>S.No</b> | <b>PARTICULARS</b>  | <b>PAGE NO</b> |
|-------------|---|----------------|
| <b>1.</b>   | Counter Affidavit on behalf of the Respondent No.2  |                |
| <b>2.</b>   | <b><u>Annexure-R/1:</u></b><br>A true copy of the guidelines on quarantine issued by the State of Maharashtra on 25.05.2020 |                |

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NO.2**

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner by way of the present Transfer Petition seeks transfer of the case registered by the Respondent no 1 against the Petitioner in FIR No. 241 of 2020 dated 25.07.2020 under Sections 341, 342, 380, 406, 420, 306, 506, & 120(B) of the Indian Penal Code (hereinafter referred to as "**FIR**") registered at Rajeev Nagar Police Station Patna and all consequent proceedings, from the jurisdiction of the Additional Chief Judicial Magistrate 3, Patna Sadar at Patna, to the Addl. Chief Metropolitan Magistrate, Bandra, Mumbai having jurisdiction over Bandra Police Station.

**PRELIMINARY OBJECTIONS:-**

2. At the outset, we deny each averment set out in the present transfer petition and nothing in the transfer petition stands admitted unless specifically admitted hereinafter by the Answering Respondent.

3. The Answering Respondent submits that the present Petition filed by the Petitioner is not maintainable and deserves to be rejected at the very outset due to the grounds set out hereinbelow: -

**A. Infructuous Petition**

4. At the outset, it is submitted that the present Transfer Petition has become infructuous, because of the recent developments which have transpired.
5. On the first date of hearing, this Hon'ble Court vide order dated 05.08.2020 recorded the following submission of the Respondent No.1 and the learned Solicitor General of India, which reads as under:

*"Mr. Mukul Rohatgi, learned senior counsel for the State of Bihar submits that the Bihar Police has already decided to entrust the investigation of the case registered in the Rajeev Nagar Police Station, Patna to the Central Bureau of Investigation(CBI). Appearing on behalf of Union of India, Mr. Tushar Mehta, learned Solicitor General submits that, in principle, the Authorities have decided to accept the request of the Bihar Police Authorities."*

6. Therefore, the grievance of the Petitioner that the Patna Police would investigate the present case in an unfair and discriminatory manner does not subsist. □
7. Moreover, as stated in the Petition that the Petitioner through her social media platform had requested the Union Home Minister for a CBI inquiry and now since the Respondent No.1 has entrusted the aforesaid FIR to the CBI and Union of India has accepted the said request of the Respondent No.1, the Petitioner should not have any grievance in this regard.
8. The Petitioner is bound by her own words in paragraph 7 of the present transfer petition. However, now it seems that

the Petitioner has taken a complete U-turn against the investigation being conducted by the CBI. It is pertinent to mention that the challenge to the entrustment of the present case to CBI could only be entertained through a fresh petition and the same cannot be argued in terms of the pleadings set out in the present transfer petition.

**B. The scope of Section 406 of the Code of Criminal Procedure, 1973** □

9. Without prejudice to the submissions made above, it is submitted that the Petitioner has failed to understand the scope of a transfer petition under Section 406 of the Code of Criminal Procedure, 1973 (CrPC).
10. It is a well-settled proposition of law that the transfer of a petition could only be at post cognizance stage, that is when the matter is before a criminal Court and not at the stage of investigation i.e. when the matter is being investigated by the Police officers. Numerous judgements of this Hon'ble Court have categorically held that no transfer petition could be entertained until the police officer has concluded the investigation. □
11. Section 406 (1) Cr.P.C. is reproduced hereinunder for the sake of convenience:  
*S. 406 (1) of CrPC:*  
*"(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court..."*
12. It is clear from the language of S. 406 CrPC, that a transfer could only be sought of a '*particular case*' before the High Court or any Criminal Court subordinate to it to another high

court or another subordinate court. However, the said provision does not allow a transfer of investigation. At the present stage, no particular case is pending before any High Court or any criminal court, as evident from the following:

- i. The basis of the Petitioner to seek a transfer in the present case is that the FIR was "sent" by the Respondent No.1 to the Additional Chief Judicial Magistrate, Patna, instead of the Additional Chief Metropolitan Magistrate, Bandra, Mumbai. □
- ii. It is submitted that the aforesaid interpretation of the Petitioner of '*any particular case*' prescribed under S. 406 CrPC is erroneous. It is submitted there is neither any case in Patna, nor any case in Mumbai. Pursuant to the registration of the FIR, an investigation was being conducted by the Patna Police, whereas, the matter in Mumbai is being carried out under Section 174 of CrPC, and admittedly there has been no FIR registered till date in Mumbai.
- iii. In *Dr. Ram Chander Singh Sagar vs. State of Tamil Nadu* (1978) 2 SCC 35, this Hon'ble Court examined a similar question as to whether an FIR forwarded to a magistrate would be considered as a '*case*' under S. 406 CrPC and pursuant to examining the aforesaid issue, this Hon'ble Court held :  
*"The Code of Criminal Procedure clothes this Court with power under Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or a Court subordinate thereto. But, **it does not clothe this Court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is "forwarded" to a Court.** The application before us stems from a misconception about the scope of Section 406. There is as yet no case pending before any Court*

*as has been made clear in the counter affidavit of the State of Tamil Nadu. In the light of this counter-affidavit, nothing can be done except to dismiss this petition."*□

- iv. Therefore, merely because the Respondent No.1 has "sent" the FIR to the Additional Chief Judicial Magistrate, Patna, as prescribed under the CrPC, it cannot be said that a case is pending in Patna.

**C. Investigation of police cannot be questioned for want of jurisdiction in terms of section 156 (2) of CrPC.**

13. The Petitioner in the present petition has relied upon section 156 (1) of the CrPC without examining the scope of police investigation under Section 156 (2) of the CrPC. The Respondent No.1 has initiated an effective investigation as prescribed under the CrPC and therefore no objection could be raised by the Petitioner or anyone else, as to the jurisdiction of Respondent No.1 to investigate the cognizable offence. For the sake of convenience, the relevant provision is reproduced herein below:-

*S.156 (2) CrPC reads as under:*

*"(2) No proceeding 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".*

14. In *Satvinder Kaur vs. State* (1999) 8 SCC 728 this Hon'ble Court highlighted the bar to the question of territorial jurisdiction in terms of S. 156 (2) CrPC. The said judgement further highlights that the issue of jurisdiction only arises when the Police forward the report under Section 170 of the CrPC after concluding its investigation:

***"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 the power to enquire into or try under the provisions of Chapter XIII.*

**However, sub-section (2) makes the position clear by providing that no proceeding 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 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 if, 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 requires investigation, the police officer can refuse to record the FIR and/or investigate it.□**

**14.** *Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. ...."□*

15. As explained above, the issue of jurisdiction can be determined once the Police officer examines all facts and evidence pertaining to the investigation of the crime. In the present case, there are several facets which require examination and in fact most of the witnesses which may be relevant for the present investigation are all over the entire country. For example, the staff who worked closely with Respondent No. 2's deceased son, are now residing in different cities all over the country. Therefore, it is futile for



the Petitioner and Respondent No.3 to assume at the present juncture, that the State of Maharashtra will have all relevant material and witnesses, to conduct the trial in the present case.

16. In *Rasiklal Dalpatram Thakkar vs. State of Gujarat* (2010) 1 SCC 1 this Hon'ble Court held that the Jurisdiction aspect could be considered only after the investigation is completed:

**30.** *It is the settled law that the complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The investigating agency was required to place the facts elicited during the investigation before the court in order to enable the court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the investigating agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the police station concerned in Mumbai.*

**D. Jurisdiction of Criminal Court can be questioned only post cognizance stage.**

17. The Petitioner has placed reliance on the wordings of section 177 of CrPC to state that the offence in the present case can only "inquired" by the Court which has jurisdiction. Reliance of Petitioner on section 177 of the CrPC is misplaced and contrary to other provisions of Chapter XIII of the Act.
18. However, the Petitioner has failed to appreciate that the general provision of Section 177 of the CrPC is not exclusive and Sections 178, 179 and 181 of the CrPC which deals with offences wherein a part cause of action is in another jurisdiction would be invoked depending on facts of the case.

19. However, before dealing with the part cause of action proposition, it is important to refer to Chapter XIII of CrPC, which deals with "*Jurisdiction of the Criminal Courts In Inquiries and Trials*".
20. An inquiry is defined under S. 2 (g) CrPC as under:□  
*(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"*
21. The term 'trial' is not defined under the CrPC. However, in *Hardeep Singh VS. State of Punjab (2014) 3 SCC 92* this Hon'ble Court held that the "*trial commences only on charge being framed*".
22. Therefore, any objection qua jurisdiction based on chapter XIII at an investigation stage is completely unfounded. In *Trisuns Chemical Industry Vs. Rajesh Aggarwal (1999) 8 SCC 686*, this Hon'ble Court held that the objection qua territorial jurisdiction can be raised only at the post-cognizance stage:□  
*"14. The jurisdictional aspect becomes relevant only when the question of inquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. **After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.**"*
24. Therefore, it is clear from the above, that the aspect of jurisdiction can only be questioned once the court has taken cognizance of the offence.
- E. Part of a cause of action in Patna in terms of Section 178, 179 and 181 of CrPC.**
25. Without prejudice to the abovementioned preliminary objections, the Petitioner and the Respondent No.3 have

been arguing in tandem that in the present case death took place in Mumbai and everything with the occurrence of death happened in Mumbai and therefore, there cannot be any question regarding the cause of action in Mumbai and no other state can investigate the case in terms of Section 156 (1) of the CrPC.

26. Further, the Respondent No.3 has attacked the motive of the Respondent No.2 by claiming that the present case is nothing but a political attempt to thwart their powers and undermine the federal structure of the constitution.
27. It is rather unfortunate that the Respondent No.3 has undermined the feelings of a father who lives in Patna and who has sufficient proof and belief that it is due to the Petitioners continued criminal actions for over a period of 1 year that has caused the death of his only son.
28. The Petitioner and the Respondent No.3 have also failed to appreciate the fundamental concept of part cause of action which has been defined under Sections 178, 179 and 181 of CrPC which are reproduced herein below: -

**Section 178 of CRPC "Place of inquiry or trial"**

*"(a) When it is uncertain in which of several local areas an offence was committed, or*

*(b) where an offence is committed partly in one local area and partly in another, or*

*(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or*

*(d) where it consists of several acts done in different local areas. it may be inquired into or tried by a Court having jurisdiction over any of such local areas."*

**Section 179 of CRPC "Offence triable where act is done or consequence ensues"**

*"When an act is an offence by reason of anything which has been done and of a consequence which has*

*ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."*

**Section 181(4) of CRPC**

*"(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, **or was required to be returned or accounted for, by the accused person.**"*

29. Since the present case is at its nascent stage of the investigation, the Respondent No.2 does not wish to comment on merits. However, as seen from the above, Section 178 of CrPC allows any of the areas to look into the crime where the part cause of action has occurred and the same stands substantiated from the FIR. Further, as per Section 179 of the CrPC, the place wherein the consequences of the crime have ensued will also have jurisdiction. Lastly, as per section 181 (4) of CRPC, the court will have jurisdiction wherein the victim has suffered due to criminal breach of trust and criminal misappropriation. In other words, the Respondent No.2 has suffered the consequence of a criminal breach of trust and criminal misappropriation, being the Class I legal heir of deceased Sushant Singh Rajput (deceased was unmarried) and the money *was required to be returned or accounted for* to the Respondent No.2.
30. From the above, it is clear that the section 177 of the CrPC is not exclusive or preemptory provision, rather it is a general provision which must be read subject to the special provisions of Section 179, Section 178 and Section 181 of the CrPC and therefore, there is no question of doubting the power of the Patna police to register the present FIR.

31. Without prejudice to the above, the scope of Section 406 of the CrPC also does not allow to question the legality of FIR that has been registered by the Respondent No.1 in the present case.

**F. Scope of "inquest" under Section 174 of CrPC.**

32. At the outset, the attempt of Respondent No.3 on the first date of hearing to tarnish the image of the Respondent No.2 by calling it a political issue is the most unfortunate incident. It highlights the mindset and the attempt of Respondent No. 3 to scuttle the entire case. It is noteworthy that no case has been registered by Respondent No.3 and they did not allow the Patna Police to investigate the present case by quarantining their senior officers. It is pertinent to mention that as per the Guidelines of Quarantine in Mumbai dated 25.05.2020, a person who arrives in Mumbai for a contribution of work to the office can be exempted from undergoing Quarantine by the municipal body. However, Respondent No. 3 has put Senior officer of Patna Police under institutional quarantine, contrary to the guidelines of Quarantine in Mumbai.

A true copy of the guidelines on quarantine issued by the State of Maharashtra on 25.05.2020 is annexed herewith and marked as **Annexure R-1**. (Pg\_\_to\_\_)

33. It is submitted that under S. 174 CrPC, the object to hold an inquest is extremely limited. The object to hold an inquest proceeding is merely to ascertain whether a person had died under suspicious circumstances, or whether an unnatural death has taken place, if so what is the apparent cause of the same. There is no other purpose except this. The Inquiry under S 174 read with S. 175 CrPC may continue till the outcome of the cause of the death is discovered and which as per Maharashtra Police Rules is required to completed

immediately and thereafter the report is to be forwarded to the District Magistrate or the Sub-divisional Magistrate as per Section 174 of CrPC. Depending upon the cause of death, the police has to either close the matter or register the FIR immediately.

35. Moreover, the inquiry to find out the cause of death under Section 174 CrPC is distinct from the investigation as contemplated under Section 154 CrPC, which is relating to the commission of a cognizable offence. There is a possibility that there may not be any FIR after the Inquest proceeding and the matter may be closed. It has been held that Section 174 CrPC inquiry does not bar the investigation under Section 154 of CrPC. In *Manoj Kumar Sharma v. State of Chhattisgarh* (2016) 9 SCC 1 it was held that:

**19.** *The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174. This section is intended to apply to cases in which an inquest is necessary. The proceedings under this section should be kept more distinct from the proceedings taken on the complaint. Whereas the starting point of the powers of the police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding the commission of a cognizable offence, whether received orally or in writing, into writing. As such, the objective of such placement of*

*provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. The purpose of registering FIR is to set the machinery of a criminal investigation into motion, which culminates with the filing of the police report and only after registration of FIR, beginning of the investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in the filing of a report under Section 173 of the Code.....□*

**"20.** *In this view of the matter, Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of "inquiries" in cases of accidental or suspicious deaths and are entirely distinct from the "investigation" under Section 157 of the Code wherein if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case.....*

**21.** *On a careful scrutiny of materials on record, the inquiry which was conducted for the purpose of ascertaining whether the death is natural or unnatural cannot be categorised under information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code. On information received by Police Station Mulana, the police made an inquiry as contemplated under Section 174 of the Code. After holding an inquiry, the police submitted its report before the Sub-Divisional Magistrate, Ambala stating therein that it was a case of hanging and no cognizable offence is found to have been committed. In the report, it was also mentioned that the father of the deceased, R.P. Sharma (PW 1) does not want to take any further action in the matter. In view of the above discussion, it clearly goes to show that what was undertaken by the police was an inquiry under Section 174 of the Code which was limited to the extent of natural or unnatural death and the case was closed. Whereas, the condition precedent for recording of FIR is that there must be an information and that information must disclose a cognizable offence and in the case on hand, it leaves no matter of doubt that the intimation was an information of the nature contemplated under Section 174 of the Code and it could not be categorised as information disclosing a cognizable offence. Also, there is no material to show that the police after conducting investigation submitted a report under Section 173 of*

*the Code as contemplated, before the competent authority, which accepted the said report and closed the case.*

**22.** *In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with Police Station Mulana neither any investigation nor any report under Section 173 of the Code was submitted. Therefore, challenge to the impugned FIR under Crime No. 194 of 2005 registered by Police Station Bhilai Nagar could not be assailed on the ground that it was the second FIR in the garb of which investigation or fresh investigation of the same incident was initiated."*

34. Thus to state that because first an 'Unnatural Death Report' was lodged before the Additional Chief Metropolitan Magistrate, Bandra, Mumbai, it would constitute a 'case' is an erroneous interpretation of law in view of the law laid down in *Dr. Ram Chander Singh Sagar vs. State of Tamil Nadu (Supra)*.

#### **G. INACTION ON THE PART OF MUMBAI POLICE**

35. The deceased was an Indian Actor, who worked in super-hit movies such as Kai Po Che, M.S Dhoni: Untold Story(2016), Kedarnath (2018) and many other movies. The Respondent No.2 on 19.02.2020 and 25.02.2020, informed the Mumbai police about his apprehension regarding the threat to the life of his son, however, no action was taken by the Police, which resulted in the death of his son. □
36. Unfortunately, on 14.06.2020, the deceased died under mysterious circumstances and thereafter the Respondent No.3 showed no urgency in finding the culprit(s) responsible for the death of the Deceased. The Inquest proceeding under S. 174 CrPC refers to term such as '*immediately*' and '*forthwith*', which reflect the nature of urgency expressed by



the legislature in preparing an inquest report by the police officer. S. 175 CrPC gives power to the police officer to summon two or more persons and any other person who may be acquainted with the facts, who could help the police officer to ascertain the cause of death. The witness examined under S. 175 CrPC needs to be examined immediately to find out the cause of death. The Respondent No.3 conducted an eye-wash in the name of the enquiry, which is clear from the following:

- i. The Petitioner, with whom the deceased had a live-in relationship till 08.06.2020 (6 days before his death), was examined four days after the death of the deceased.
- ii. Thereafter the Respondent No.3 in the name of inquiry examined many witnesses, which do not lie within ambit and scope of investigation of a criminal offence.
- iii. It is also unknown under what provision of CrPC, the Respondent No.3 is examining these witnesses. The Petitioner has stated in her transfer petition that she was examined under S. 175 CrPC. However, the investigation under S.174-175 CrPC is limited only to ascertain the cause of death and the same cannot continue for an indefinite period.
- iv. Similarly, if the Respondent No.3 is examining these witnesses under preliminary inquiry, then that also is limited to 7 days as prescribed in *Lalita Kumari vs. State of U.P* (2014) 2 SCC 1.
- v. The possibility of destruction/ tampering of evidence and influencing of the witnesses cannot be ruled out.

- vi. From 14.06.2020 to till date, though allegedly the Respondent No.3 examined many witnesses but no FIR has been registered.
37. In *Pankaj Kumar vs. State of Maharashtra* (2008) 16 SCC 117, this Hon'ble Court held that the right to speedy trial in all criminal prosecution is an inalienable right under Article 21 of the Constitution and the said right is applicable not only to the actual proceedings in court but also includes the police investigations as well.
38. In *State of West Bengal vs. The Committee for Protection of Democratic Rights, West Bengal and Ors.* (2010) 3 SCC 571, this Hon'ble Court held that Article 21 of the Constitution extends to not only the accused but the victim as well and further also held that only the Constitutional Courts has the power to examine whether CBI inquiry is necessary even when there is no consent from the state government.
39. In this background, the Respondent No.2 who had lost his young son aged 34 years on 14.06.2020 went into depression and on regaining his senses after the mourning period of 40 days was over, realised that Respondent No. 3 was derailing the inquiry and not investigating the criminal offences committed. The Respondent No.3, thereafter gave a complaint, after which FIR dated 25.07.2020 which was registered at the nearest police station from the residence of Respondent No.2.
40. The Respondent No.1 being duty-bound to register the FIR in terms the law laid down by the constitution bench of this Hon'ble Court in *Lalita Kumari vs. State of U.P* (2014) 2 SCC 1, rightfully registered the FIR and undertook the

investigation, which was being delayed by the Respondent No.3 on one pretext or the other.

**H. Scope of investigation of Patna Police in the State of Maharashtra** □

41. While this issue has become purely academic as the present case has already being handled by the CBI pursuant to the notification issued by the Government of Bihar for CBI inquiry. However, it is submitted that the Code of Criminal Procedure arms the officer of one police station to investigate into the jurisdiction of another police station. S. 48, 77, 79, 80 CrPC deals with arrest to be made by the police officer outside its jurisdiction. Similarly, S. 79 (3) and S. 166 (3) CrPC envisage a situation where there is inaction or delay on the part of one police station in conducting an effective search or to give an endorsement for arrest, the officer-in-charge of another police station, in order to prevent the evidence from being destroyed or preventing the offender to abscond, can take immediate steps for search and arrest a person outside his jurisdiction as well. Therefore, the Respondent No.1 within the powers prescribed to them under the CrPC started the investigation. □

**I. Jurisdiction of CBI to inquire into the present FIR on the recommendation of State of Bihar**

43. While the inquiry by CBI under the present FIR is not the subject matter of the present litigation, Nevertheless, it is submitted that this Hon'ble Court in *Kanwal Tanuj vs State of Bihar*, 2020 Scc Online SC 395 and the Hon'ble Delhi High Court in the case of *Anand Agarwal vs Union of India*, 2018 SCC Online 11713 has dealt with the proposition of CBI inquiry in two states when the consent is only taken from one state. And both the judgments have consistently held

that no consent would be required from another state once consent is given from the state which had registered the FIR. □

**I. PARAWISE REPLY**

1. That the contents of paragraph 1 of the petition are based on the incorrect application of the law. The present transfer petition of the Petitioner is not maintainable. S. 406 CrPC is applicable only when there is a '*particular case pending*' before a High Court or a criminal court subordinate to it. However, in the present case, there is no particular case pending, which could be transferred from one jurisdiction to another. The criminal proceedings are at an investigation stage at Patna (now CBI), which cannot be transferred under S. 406 CrPC. □
2. That the contents of paragraph 2 of the petition are denied to an extent that the deceased committed suicide by hanging himself on 14.06.2020. The Petitioner cannot call it suicide when she planned and abetted the suicide of deceased in the circumstances culled out in detail in the FIR, which is presently under investigation. □
3. That the contents of paragraph 3 of the petition are denied for the want of knowledge. However, it is apposite to point out that the inaction on the part of Respondent No.3 for calling the Petitioner being a prime suspect four days after the death of the deceased caused grave miscarriage of justice. Moreover, it is further clarified that the inquiry said to be pending before the Additional Chief Metropolitan Magistrate, Bandra Mumbai is an inquiry under S. 174-175 CrPC, only to ascertain the cause of the death of the deceased and not an investigation. The Petitioner's admission qua the pendency of the inquest proceedings till

date, reflect grave delay and inaction on the part of the Respondent No.3 in conducting a speedy inquiry.

4. That the contents of paragraph 4 of the petition are a matter of record, therefore does not merit a reply. It is submitted that the Respondent No.2 filed a complaint about the commission of the cognizable offence to the nearest police station as prescribed under law.
5. That the contents of paragraph 5 of the petition are a matter of record, therefore does not merit a reply. □
6. That the contents of paragraph 6 of the petition are denied as wrong and incorrect. It is denied that the allegations in the FIR are entirely false and concocted with ulterior-motive. The Respondent No.2 is only seeking justice for the death of his young son.
7. That the contents of paragraph 7 stand as an admission of the Petitioner that she has no objection if the investigation is conducted by the CBI. Therefore, now once the investigation has been transferred to CBI, the present Petition has become infructuous and nothing survives in it.
8. That the contents of paragraph 8 are denied for want of knowledge and further, paragraph 8 has no bearing on the present transfer petition. □
9. That the contents of paragraph 9 of the petition regarding Section 156 (1) CrPC are based on an erroneous interpretation of the law. S. 156 (1) CrPC cannot be read in isolation and has to be read along with S. 156 (2) CrPC which has been explained in great detail in the preceding paragraphs. Further, reliance placed by the Petitioner on S.

177 CrPC is completely misplaced. It is submitted that S. 177 CrPC has no application at an Investigation stage and objection qua the same can only be raised at the post-cognizance stage.□

10. That the contents of paragraph 10 of the petition are denied as wrong and incorrect interpretation of the law. It is denied that the copy of the FIR was erroneously sent to Judicial Magistrate at Patna. It is submitted that since the FIR is registered in Patna, the Judicial Magistrate at Patna will be empowered to take cognizance of the offence registered at Patna. Thus the copy of the FIR was correctly forwarded to the Additional Chief Judicial Magistrate, Patna Sadar in terms of S. 157 CrPC.
11. That the contents of Paragraph 11 of the Petition are denied for want of knowledge. However, as submitted in the Petition itself, it is evident that the Respondent No.1 took all efforts to seek the cooperation of the Respondent No.3 in conducting the investigation.□

## **II. REPLY TO THE GROUNDS**

- A. That the contents of the Ground A are denied as wrong and incorrect. The present FIR is registered at Patna and thus the same is forwarded to the Additional Chief Judicial Magistrate, Patna Sadar in terms of S. 157 CrPC. There is no FIR till date in Mumbai, therefore, it is incorrect to state that Additional Chief Judicial Magistrate, Bandra has any jurisdiction. Nevertheless, no objection qua the jurisdiction could be raised once the investigation has started in terms of S. 156 (2) CrPC.
- B. That the content of the Ground B is denied as wrong and incorrect interpretation of the law. It is submitted that the

reliance of the Petitioner on S. 177 CrPC is completely misplaced. An objection under S. 177 CrPC is applicable only post cognizance stage and not at an investigation stage. Nevertheless, without prejudice to the above submission, the cause of action has arisen in Patna in terms of S. 178, S. 179 and S. 181 (4) CrPC as detailed in the FIR and thus any objection qua jurisdiction is not tenable.

- C. That the contents of the ground C are denied as wrong and incorrect. It is denied that the Respondent no. 1 ought to have registered the FIR and should have forward the case to jurisdictional Police Station at Bandra, Mumbai for conducting an investigation. It is submitted there was no occasion for the Respondent No.1 to transfer the FIR to the jurisdictional police station at Mumbai. Once an FIR disclosing a cognizable offence was made to the Respondent No.1 by the Respondent No.2, it was for the Respondent No.1 to conduct a speedy investigation. The part cause of action and the jurisdiction of Respondent No.1 has been dealt with in the above paras, therefore same are not repeated herein for the sake of brevity.
- D. That the contents of the ground D are denied as wrong and incorrect. It is submitted that since the FIR was registered in Patna, the FIR was correctly forwarded to the Additional Chief Judicial Magistrate 3, Patna Sadar at Patna. Since there is no FIR in Mumbai, Additional Chief Metropolitan Magistrate, Bandra Mumbai has no jurisdiction in the case.
- E. That the contents of the ground E are denied for want of knowledge. However, the Respondent No.3 questioning the Petitioner, under S. 175 CrPC, four days after the death of the deceased, despite being the prime suspect, raises doubts about the inquiry being conducted by the Respondent

No.3. The Respondent No.2 is surprised that the Respondent No.3 found no culpable role of the Petitioner during the investigation. The Respondent No.2 has stated in detail the active role of the Petitioner in abetting the suicide of the deceased and misappropriating his money. If the Respondent No.3 has found no evidence qua the Petitioner in 54 days of inquiry, it only reflects one conclusion that the Respondent No.3 is trying to shield the Petitioner for the reason best known to them.

- F. That the contents of ground F have no bearing on present transfer petition and the same has been incorporated in the petition by the Petitioner only to gain sympathy. □
- G. That the contents of ground G are denied as wrong and incorrect. The reply qua ground G is elaborately dealt in the preliminary submissions and the same are not replied herein for the sake of brevity.
- H. That the contents of the ground H are denied as wrong and incorrect. The contents of the ground do not pertain to the Respondent No.2, therefore it does not merit a reply. However, it is pertinent to point of that the FIR was registered on 25.07.2020, the Petitioner filed the present transfer petition on 29.07.2020. The Petitioner's apprehension that she would not be treated fairly within 4 days of the registration of FIR is nothing but an attempt to escape the contours of law. The Petitioner has no reason to doubt the professionalism and integrity of the Patna Police. The investigation of the case cannot be transferred merely based on apprehension as held in various judgments .
- I. That the contents of the Ground I are denied as wrong and incorrect. It is denied that any 'investigation' qua any



cognizable offence is going on in Mumbai. Only inquiry under S. 174-175 CrPC is being conducted in Mumbai, the purpose which is only to ascertain the cause of death or a preliminary inquiry may be going on to find out if a cognizable offence is made out or not. However, the period for such an inquiry has expired a long time back in terms of law laid down in *Lalita Kumar vs. State of U.P* (2014) 2 SCC 1.

- J. That the contents of the ground J are denied as wrong and incorrect. It is submitted that the Respondent No.2 has lost complete faith in Respondent No.3, who despite the passage of 54 days since the death of the deceased has failed to register an FIR till date.□
- K. That the contents of ground K are denied as wrong and incorrect. It is denied that the Respondent No.2 has a substantial influence at Patna and he is able to mobilize the investigation. If the Respondent No.2 has had any influence at Patna, the Petitioner would have been arrested by now, whom the Respondent No.2 believes abetted the suicide of his young son. Moreover, the Petitioner has not yet joined the investigation pursuant to registration of FIR by the Patna police and any apprehension of bias before even joining the investigation is completely baseless. The Patna Police till date has not taken any steps to either arrest or summon the Petitioner and therefore, the apprehension of the Petitioner is based on conjectures.
- L. That the contents of ground L are denied as wrong and incorrect. It is incorrect that the case filed at Patna against the Petitioner is entirely misconceived and have been so filed only to harass the Petitioner. It is submitted that the mail relied upon by the Petitioner in the said ground raises a question if the email was sent by Siddharth Pithani to

Mumbai Police, why was the same shared by the potential witness with the Petitioner, who is a prime suspect in the case. Nevertheless, the email is sent after the registration of the FIR and one day before the filing of the present transfer petition and thus the said email seems to be procured by the Petitioner from the potential witness, who seems to be already under her influence.

- M. That the contents of Ground M are denied as wrong and incorrect. It would not be just, proper, convenient for the Respondent No.2 if the investigation is transferred to Mumbai.
- N. That the contents of the Ground N are denied as wrong and incorrect. It is denied that the present case is a fit case for the exercise of the jurisdiction of this Hon'ble Court under S. 406 CrPC. It is submitted the present petition is not maintainable as set out in detail in the preliminary submissions.

### **III. REPLY TO THE PRAYER**

- a) The prayer (a) of the Petitioner is not maintainable under S. 406 CrPC for the reasons that:
- i. The investigation in the FIR has already been transferred to the CBI and thus the present prayer now stands infructuous;
- ii. Secondly, the prayer is also not maintainable since there is not a case said to be pending which could be transferred under S. 406 CrPC.

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