

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

RHEA CHAKRABORTY

...PETITIONER

VERSUS

STATE OF BIHAR & ORS

...RESPONDENTS

ADDITIONAL AFFIDAVIT FILED ON BEHALF OF PETITIONER

(PAPERBOOK)



ADVOCATE ON BEHALF OF PETITIONER :MALAK MANISH BHATT

INDEX

S.No.	Particulars	Page Nos.
1.	Additional Affidavit filed on behalf of Petitioner	1-11
2.	Annexure – 1: A Copy of Summons dated 07.08.2020 issued by Enforcement Directorate	12

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

RHEA CHAKRABORTY

...PETITIONER

VERSUS

STATE OF BIHAR & ORS

...RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF THE PETITIONER

I Rhea Chakraborty, d/o Mr. Indrajit Chakraborty, aged 28 years, R/o 101, Primrose Apartments, near Ajivasan Hall, next to SNDT College, Juhu Road, Santacruz West, Mumbai – 400054 do hereby solemnly affirm and state as follows:

1. That I am the Petitioner in the present case & I have perused the replies filed on behalf of Mumbai Police, State of Bihar, First Informant and Union of India. The allegations as leveled in the FIR 241 of 2020 registered by Rajeev Nagar Police Station, Patna (**FIR**) are denied and nothing shall be deemed to be admitted for want of specific denial.

A. NO JURISDICTION WITH ANY COURT IN STATE OF BIHAR-

1. It appears that Section 179 has been misconstrued to usurp jurisdiction in Bihar under political pressure. Example of offence for the purpose of Section 179 can be - a case of a cheque issued in

Maharashtra, and returned unpaid on being deposited in Bihar. The Section 179 can be read as follows-

“When an act is an offence by reason –

(i) of anything which has been done and

(ii) 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.”

2. In the case of **Kashi Ram Mehta vs Emperor 1934 All 499** it was held as under:

“But the main question for our consideration is not whether if Section 179 applies, it has been overridden by Section 181, Sub-section (1), but whether Section 179 at all applies to this case. The expression "of any consequence which has ensued" in that section obviously means 'by reason of any consequence etc.'" The repetition of the word "of" leaves no doubt that the prepositional phrase "by reason of" governs "consequence" as well. In this view the section can have only one meaning, namely, that the commission of the offence must be "by reason of anything which has been done and by reason of any consequence which has ensued." Another noteworthy fact is that the word "and" has been used instead of the word "or". Indeed, if the doing of anything were in itself sufficient to constitute the offence contemplated in this section, there would have been no

occasion to use the expression of any consequence which has ensued" at the place at which it occurs; it would have been quite sufficient to mention it at the end of the section where it is already mentioned. If therefore the act done and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that Section 179 be applicable. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for the completion of the offence, then Section 179 would not be applicable."

3. From a plain reading of FIR, neither any such act which is done in the State of Bihar, nor any such consequence which has ensued in State of Bihar, is forthcoming by reason of which such act and consequence is an offence, out of any alleged in the FIR.
4. The jurisdiction lies only with jurisdictional Court in State of Maharashtra, notwithstanding FIR registration or transfer to CBI.
5. Even though the Enforcement Directorate has purportedly registered a case for investigation under the Prevention of Money laundering Act, 2002 by filing ECIR/MBZO/-I/31/2020 on the basis of the predicate offences in FIR 241 of 2020 at Patna. The

Petitioner was served with a summon from Enforcement Directorate Zonal Office at Mumbai and she had joined investigation by visiting the Enforcement Directorate, Mumbai office where she was interrogated for hours on 8.8.2020. Copy of the Summons dated 07.08.2020 issued by Enforcement Directorate is annexed herewith and marked as **Annexure - 1**.

6. Residence of first informant-the father of deceased at Patna is no ground in law to usurp jurisdiction and farwading the case to Magistrate at Patna. At the highest an FIR can be registered and the same is required to be forwarded to the magistrate having jurisdiction over the matter.

B. Chronology of relevant events:

- 14.06.2020 Sushant Singh Rajput committed suicide at his residence in Bandra at Mumbai.
- 14.06.2020 'Unnatural Death Report was registered under Section 174 of CrPC by Mumbai Police and investigation was commenced on the same day to ascertain cause of death of the deceased. Said investigation is pending.
- June/July Statement of father of Sushant Singh Rajput (First informant in FIR) was recorded under Section 175 of CrPC by Mumbai Police where no offence or foul play was alleged.
- 25.07.2020 First Informant who is resident of Patna filed a complaint to Bihar Police at Patna.

- 25.07.2020 Bihar Police registered FIR and forwarded the case to Additional Chief Metropolitan Magistrate at Patna Sadar despite the Advisory of Union Ministry of Home Affairs dated 10.05.2013 whereby at the highest a 'Zero" FIR could have been registered and the case ought to have been transferred to police station having jurisdiction over the matter.
- 28.07.2020 Bihar Government had sent a 4 member police team to Mumbai for investigation.
- 29.07.2020 Petitioner filed the present Transfer Petition before this Hon'ble Court.
- 29.07.2020 Transfer Petition was served on the officers of Bihar Police.
- 04.08.2020 Bihar Government in exercise of Section 6 of Delhi Special Police Establishment Act, 1945 accorded consent for investigation of FIR by CBI.
- 05.05.2020 The present matter came up for listing for the first time. UOI made a statement that during the course of the day UOI will publish a notification to accept the request of Bihar Government for CBI inquiry of the FIR registered at Patna.
- 05.05.2020 UOI vide notification accepted to get the FIR investigated by CBI.

07.08.2020 Enforcement Directorate's Zonal office at Mumbai registered case on the basis of FIR at Patna and summoned the Petitioner.

C. The word 'case' is not only used in Section 406 of CrPC but also used in definition of 'cognizable offence' in Section 2(c), 'non-cognizable offence' in Section 2(l) and in Sections 56 & 57 of CrPC which relates to pre-cognizance stage. Meaning ascribed to the word 'case' in Section 406 cannot be restricted to 'case after cognizance'.

D. TRANSFER TO CBI WITHOUT JURISDICTION BY BIHAR POLICE.

1. Admittedly, the case registered by Bihar Police was transferred to CBI for the reasons of a) '*sensitivity*' and b) '*inter-state ramifications*'. The concept of sensitivity is alien to criminal jurisprudence. There is not even a remote whisper of any material to support the theory of 'inter-state ramification'. The offence if at all, as alleged is complete within the jurisdiction of Mumbai even as per Enforcement Directorate.
2. After being served with the present Petition on 29.07.2020 and having realized that the Respondent State of Bihar has acted in an illegal manner in farwading the case to Additional Chief Metropolitan Magistrate at Patna Sadar instead of jurisdictional magistrate at Mumbai coupled with the fact that ruling party in Bihar and Centre is same and the said party is in minority in the State of Maharashtra; the purported transfer the case to ACJM Patna and

further to CBI on 04.08.2020 is only to render the present petition infructuous.

3. Principles governing transfer of a case to CBI are as under: -

a) Case of national importance:

b) Case having inter-state ramifications:

No material has been adduced to show any cause of action or any consequence that has ensued from the allegations outside the jurisdiction of Mumbai. Even Enforcement Directorate has commenced its purported investigation in proper jurisdiction. Admiror of Mr. Rajput filed Complaint Case No.-1275/2020 before The Court of Chief Judicial Magistrate, Muzaffarpur(Bihar) for seekinf investigation against Petitioner. Said case was dismissed and relevant part of the order reads thus:

“...In RajandraRamchendraKavelkar V/s Sate of Maharashtra AIR 2009 SC 1792, it was held that the territorial jurisdiction of a court with regard to criminal offence would be decided on the basis of place of occurrence of the incident and not on the basis where complaint was filed or the FIR registered...

...Accordingly this complaint case is dismissed at the initial stage itself for want of jurisdiction for inquiry and trial and without proceeding any further with the present complaint petition. Let this case record be consigned to the record room as per rules...”

Challenge to the said order of Chief Judicial Magistrate, Muzaffarpur(Bihar) through Criminal Miscellaneous Petition No. 71895 of 2020 before this Hon'ble Court stands dismissed as withdrawn in terms of common order dated 05.08.2020 in the present matter.

c) Laxity in investigation by state agency

This is subject matter of satisfaction by this Hon'ble Court in terms of the order dated 05.08.2020 passed by this Hon'ble Court.

4. The Petitioner submits that legal maxim *sublato fundamento cadit opus* square applies in the instant case in as much as the purportedly commenced investigation is the foundation of the CBI case against the Petitioner which if found to be without jurisdiction, the entire case of CBI as well as ED would fall.
5. For the reasons set out hereinabove, it is submitted that the transfer of investigation to CBI by Bihar Police is illegal and bad in law. However, the Petitioner reiterated that she has no objection if this Hon'ble Court refer the matter to CBI by its order and even if the CBI investigates the matter the jurisdiction will still be with the Courts at Mumbai and not at Patna.

E. NON-COMPLIANCE OF SECTION 6 OF DSPE ACT, 1946.

1. Section 6 of The Delhi Special Police Establishment Act, 1946 reads thus:

*“Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of **that State.**”*

2. In the present case, the consenting state i.e. Respondent State of Bihar had no jurisdiction to retain the investigation since the entire cause of action has occurred in Mumbai. No cause of action has ensued in State of Bihar. Thus, the consent by State of Bihar under Section 6 is bad in law. Said consent is merely to render the present Petition infructuous.

F. SENSATIONALIZING & MEDIA TRIAL OF CASE

1. The sad incident of the death of Sushant Singh Rajput who hailed from Bihar unfortunately occurred just in wake of elections in Bihar. This has led to the issue of suicide of deceased being isolated and blown out of proportion. Actors Ashutosh Bhakre (32) and Sameer Sharma (44) were also reported to have committed suicide in last 30 days and yet no whisper about the same in power corridors. Incase of death of Sushant Singh Rajput, Chief Minister of Bihar is reported to be responsible for registration of FIR in Patna.
2. The issue is blown out of proportion in Media. Media Channels are examining and cross-examining all the witnesses in the

case. Petitioner is already convicted by media even before a foul-play in the death of Sushant Singh Rajput is established.

3. Extreme trauma and infringement of privacy of the rights of petitioner is caused due to constant sensationalisation of this case.
4. Media had convicted accused in 2G and Talwar case in similar fashion where each and every accused was later on found innocent by the Courts.
5. Investigation into financial scams of thousands of crores by Enforcement Directorate & CBI never see the light of the day and at drop of a hat, cases gets registered even without there being a jurisdiction in the foundational case.

Petitioner urges before this Hon'ble Court that she should be protected and not be made scapegoat of political agendas.

6. I say that the averments of facts stated above are true to my knowledge and derived from the records, no part of it is false and nothing material has been concealed therefrom.



DEPONENT

VERIFICATION :

I, the above-named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at Mumbai on this 10 day of August, 2020.

**DEPONENT**



ANNEXURE -1

प्रवर्तन निदेशालय

भारत सरकार

चौथा तल, कैसर-इ-हिन्द बिल्डिंग, बलाड इस्टेट, कुरीम भाँय मार्ग, क्षेत्र - १, मुंबई - ४०० ००१.

ENFORCEMENT DIRECTORATE

GOVERNMENT OF INDIA.

4th Floor, Kaiser-I-Hind Building, Opp Grand Hotel, Currimbhoy Road, Ballard Estate, Zone - I, Mumbai - 400 001.

Tel.: 022- 2271 9938

Fax: 022-2262 2282

फा. सं. File No.

समन / SUMMONS

Book No. 79 Sr. No. 3940

ECIR/MBZO-I/31/2020

जबकि मैं.....घनशोधन निवारण अधिनियम, 2002 (2003 का 15) के प्रावधानों, के अंतर्गत जाँच कर रहा हूँ।
 Whereas I, Archana Salaye, Assistant Director am making investigation under the provisions of Prevention of Money Laundering Act, 2002 (15 of 2003).
 और जबकि मैंने.....को उक्त जाँच के संबंध में उपस्थित होना आवश्यक माना है।
 And Whereas I, consider the attendance of Ms. Rhea Chakraborty necessary in connection with the said investigations.

अतः मैं उक्त अधिनियम की धारा 50 की उपधारा (2) और उप - धारा (3) के अंतर्गत दिए गए अधिकारों का प्रयोग करते हुए उपर्युक्त को व्यक्तिगत रूप से अथवा अपने प्राधिकृत प्रतिनिधि के माध्यम से नीचे दर्शाई गई अनुसूची के अनुसार कागजातों सहित दिनांकको.....बजे मेरे कार्यालय में उपस्थित होना आवश्यक है।

Now, therefore, in exercise of the powers conferred upon me under Sub-section (2) and Sub Section (3) of the Section 50 of the said Act, I require the said person /entity Ms. Rhea Chakraborty to appear before me in person/authorised representative at my office on 10/08/2020 at 11:00 hours along with the documents as per schedule below:-

अनुसूची / SCHEDULE

(संलग्नक 'क' के अनुसार) (As per Annexure 'A' enclosed)

दो हजार.....केमास कीकीतारीख को मेरे हस्ताक्षर और मोहर से दिया गया है।

GIVEN UNDER MY HAND & SEAL, THIS 07th DAY OF Aug, TWO THOUSAND twenty 2020.

सेवा में

To

Ms. Rhea Chakraborty

Archana Salaye
 ARCHANA SALAYE
 सहायक निदेशक / ASSISTANT DIRECTOR
 प्रवर्तन निदेशालय / DIRECTORATE OF ENFORCEMENT
 (वि.मु.प्र.अ./ध.शा.नि.अ.) / FEMA / PMLA
 भारत सरकार / GOVT. OF INDIA
 मुंबई / MUMBAI

नोट Notes:

- घनशोधन निवारण अधिनियम, 2002 (2003 का 15) की धारा 50 की उपधारा (2) और उप-धारा (3) के अंतर्गत प्रत्येक कार्यवाही को भारतीय दंड संहिता, 1860 (1860 का धारा 45) की धारा 193 और धारा 228 के अर्थ के भीतर एक न्यायिक कार्यवाही के रूप में माना जाएगा)
- Every proceeding under Sub- Section (2) and Sub-Section (3) of Section 50 of Prevention of Money Laundering Act, 2002 shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of Indian Penal Code (45 of 1860).
 - वर्तमान में लागू किसी अन्य कानून के प्रावधानों के पुर्वाग्रह के बिना यदि आप अनुसूची में उल्लिखित के अनुसार साक्ष्य प्रस्तुत करने में विफल रहते हैं तो आप घन शोधन निवारण अधिनियम, 2002 (2003 का 15) के अंतर्गत दंडात्मक कार्रवाई के लिए दायी होंगे।
 - Without prejudice to the provisions of any other law for the time being in force, if you fail to give evidence as mentioned in the schedule, you shall be liable to penal proceedings under the Prevention of Money Laundering Act, 2002 (15 of 2003).