

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF NOVEMBER, 2009

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

CRIMINAL PETITION No.949 OF 2008

BETWEEN:

C. Dinakar,
Aged 67 years,
S/o Late Dr.C.R.Dinakar,
No.380, 100 Feet Road,
HAL II Stage,
Bangalore - 560 008 ... Petitioner

(By Sri C. Dinakar - in person)

AND:

S. Krishnamurthy,
No.71, N.N.Farms,
Geddalahalli, Sanjaynagar,
Bangalore - 560 094. ... Respondent

(By Sri S. Krishnamurthy - in person)

This Crl.P is filed U/S.482 Cr.P.C by the advocate for the petitioner praying that this Hon'ble Court may be pleased to quash the impugned two orders dated 29.11.2006 of the C.M.M., Bangalore City at Annexures-A and B and proceedings in C.C.No.8409/05 in the Court of the CMM, Bangalore and order returning the complaint to the respondent with a direction to present it in the Jurisdictional Court and further discharge the bail bonds executed by the petitioner in C.C.No.8409/05.

This Crl.P having been heard and reserved for orders on 24.04.2009, coming on for pronouncement of orders on this day, the Court made the following:

ORDER

The petitioner has raised the challenge to the orders, dt.29.11.2006 (Annexures-A and B respectively) passed by the learned Chief Metropolitan Magistrate (C.M.M.), Bangalore City in C.C.No.No.8409/2005.

2. The facts of the case in brief are that the respondent filed a private complaint against the petitioner alleging commission of the offence of defamation. When the respondent was working as the Director General of Police, Prisons as on the material date of 23/24.12.2001, a construction worker, namely, Murugan with two others had entered his house situated in Sanjaynagar, Bangalore. The said Murugan was shot dead. It is the case of the respondent that a police constable by name Purushotham Rao opened the fire at Murugan and two others on his seeing the three men breaking open the kitchen door with a stone slab. The petitioner found this to be a mere cover-up story for the cold-blooded murder with no justification for the plea of private defence. In this regard, the petitioner wrote to the Home Minister of the State Government on 26.12.2001 and the

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National Human Rights Commission (NHRC), New Delhi on 28.12.2001. In and through the said letters, the petitioner requested for the registration of the case and handing over the case to the C.B.I. Aggrieved by the alleged defamatory imputations, the respondent filed the private complaint. In the said proceedings, the respondent made an application invoking Section 201 of Cr.P.C with a prayer for the dropping of the proceedings and for returning of the complaint on the ground that C.M.M. has no territorial jurisdiction to try the case. By his order, dt.29.11.2006, the C.M.M. dismissed the said I.A holding that his Court has the territorial jurisdiction to try the case.

3. Pursuant to the Special Order passed under Section 19(1)(2) and (3) of Cr.P.C, he transferred the matter to the VIII A.C.M.M. to whom the cases of Sanjaynagar jurisdiction and other places were assigned. Aggrieved by these orders, the petitioner filed Criminal Revision Petition No.2/2007, which was dismissed by the Court of the Additional Judge, IV Fast Track Court by its order, dt.13.02.2008.

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4. This petition is filed assailing the two orders passed by the C.M.M. Court on 29.11.2006 negating the petitioner's contention that it has no territorial jurisdiction to try the case and its further order transferring the case to the VIII Addl.C.M.M.

5. Sri C.Dinakar, the petitioner party-in-person submits that the C.M.M. does not have the territorial jurisdiction to take the cognizance of the alleged offence. With reference to Section 177 of the Cr.P.C., he raises the argument that there is a clear mandate that every offence should be inquired into and tried by a Court within whose jurisdiction it was committed. He contends that nothing has happened within the Sanjaynagar jurisdiction. The offence of defamation requires that the contents of the letter should be made known to one or more persons other than the person defamed. He has not released the letter to the press and has not given any interview to any T.V channel. Therefore the place of occurrence of the offence in respect of the first letter is Vidhana Soudha and in respect of the second letter, it is New Delhi where the office of the NHRC is situated. Under

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these circumstances, the complaint can be filed only in the Court having jurisdiction over the Vidhana Soudha area in Bangalore or the Court having the jurisdiction over the NHRC area in New Delhi. If the complaint is to be filed in Bangalore, it has to be only with VIII A.C.M.M. to which Vidhana Soudha Police Station jurisdiction is assigned. He sought to draw support from the Hon'ble Supreme Court's decision in the case of **SHRI RAJENDRA RAMCHANDRA KAVALEKAR v. STATE OF MAHARASHTRA AND ANOTHER**, reported in **2009(1) SCALE 751**. The relevant paragraph of the said decision is extracted hereinbelow:

"13. 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 of where the complaint was filed and the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or charge sheet. Section 177 of Criminal Procedure Code provides that every offence shall ordinarily be inquired into and tried by a court within

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whose local jurisdiction it was committed. Reference can be made to the observations made by this Court in Asit Bhattacharjee v. Hanuman Prasad Ojha and Ors. MANU/SC/7676/2007., 104(2007) CLT488 (SC), 2007 CriLJ3181, (2008)1 GLR1(SC), RLW2007(4)SC 3074, 2007(7) SCALE241, (2007)5SCC786. This Court at paragraph 23 has stated as under:

The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen..."

6. He also relied upon the judgment of the Apex Court in the case of **OM HEMRAJANI v. STATE OF U.P AND ANOTHER**, reported in **2005 SCC (Cri) 443**, wherein it is held that in the scheme of Chapter XIII of the Cr.P.C neither the place of business nor the place of residence of the accused and for that matter of even the complainant is of any relevance.

7. The petitioner has also relied on the judgment of the Hon'ble Supreme Court in the case of **Y. ABRAHAM AJITH AND OTHERS v. INSPECTOR OF POLICE, CHENNAI**
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AND ANOTHER, reported in **(2004) 8 SCC 100**. The relevant paragraphs of the said judgment are extracted hereinbelow:

"8. Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common-law rule referred to in Halsbury's Laws of England (Vol.9, para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which reads as follows:

"178. 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 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."

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12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases."

8. He submitted that if the consequence is not part of the offence, Section 179 has no application at all. In this regard, he relied upon the judgment of this Court in the case of **C.S.SATHYA v. STATE OF KARNATAKA**, reported in **1993(1) Kar.L.J. 56**. In the said case, the editing, printing and publishing of weekly had taken place at Bangalore. As the 'Jwalamukhi' was circulated in Udupi, the complaint for the offence punishable under Section 500 IPC was filed in Udupi Court. This Court held that mere circulation of the paper at Udupi is not a consequence ensued from the act of

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the accused which forms part of the ingredients of the offence alleged in the case, as no part of the offence or its consequence has ensued within the jurisdiction of the Udupi Court; it was hence held that Udupi Court has no jurisdiction to try the said offence.

9. Sri Dinakar pointedly brought to my notice the averments contained in para V(17) of the complaint which read as follows:

"V(17). From the facts it is seen that it was at this stage that, Sri C Dinakar sent a petition dated 26.12.2001 to the Home Minister of the State of Karnataka in his own name and under his own signature. He had apparently sent copies of his petition as above also to the media. Further, he appeared as well on the Star TV in the news channel making the same wild and baseless allegations against the complainant....."

10. The petitioner also read out what the respondent has stated in para III (2) at page 7 of his complaint. It reads as follows:

"III(2) The complainant is trying to get a certified copy of the said video version (from the said TV

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channel), which will be submitted at an appropriate time."

Despite this assertion, the respondent has not produced the said video version for the last 7-8 years.

11. He emphatically denied that he has sent the copies of the letters to the media. The allegation that the petitioner had apparently sent copies of his petition is absolutely baseless. He also takes exception to the editor, correspondent, printer and the publisher of the newspapers not being arraigned as the co-accused in the complaint; nor are they cited as witnesses. Till now the respondent has not produced the video version of the petitioner giving interview to Star TV. No video version is produced, as the petitioner has not given any interview to the TV channel.

12. He contends that the decision regarding jurisdiction has to be given on the basis of the allegations made and the averments contained in the complaint or the charge sheet, as the case may be. For canvassing this point, he relied upon the following decisions:

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- i) 1981 K.L.T 702 - ABHAY LALAN v. YOGENDRA MADHAVLAL
- ii) AIR 1970 Calcutta 110 - BIJOYAND PATNAIK v. MRS. K.A.A. BRINNAND
- iii) AIR 1957 SC 196 - STATE OF MADHYA PRADESH, v. K.P. GHIARA.

13. As per the Special Order, dt.22.02.2001, the local area of Vidhana Soudha police station falls within the territorial jurisdiction of the VIII A.C.M.M., Bangalore. The petitioner submits that the respondent has stated in his complaint that the letters were published at Vidhana Soudha in Bangalore and the NHRC office in New Delhi. Now he cannot contend that the C.M.M. has the territorial jurisdiction, as the respondent read the newspapers containing the extracts from the two letters in his Sanjaynagar residence or as the DCP Jayaprakash Naik showed the copies of the letters to the respondent in his Sanjaynagar residence. The petitioner submits that the respondent has been thus approbating and reprobating. In support of his submissions, he has relied on the judgment of

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Hon'ble Supreme Court in the case of **NAGUBAI AMMAL AND OTHERS v. V.B. SHAMA RAO AND OTHERS**, reported in **1956-(SC2)-GJX-0037-SC**. The respondent has been blowing hot and cold. The petitioner presses into service Section 115 of the Indian Evidence Act, 1872 and contends that the petitioner is estopped from giving one after the other explanation for justifying his act of filing the complaint in the wrong Court. The respondent is estopped from contending that all the Metropolitan Magistrates will have jurisdiction to accept any complaint.

14. The question of jurisdiction of the Court has to be decided when the complaint is filed in the Court and not when the jurisdiction is challenged. He cited the Hon'ble Supreme Court's judgment in the case of **FATMA BIBI AHMED PATEL v. STATE OF GUJARAT AND ANOTHER**, reported in **(2008) 6 SCC 789**. The relevant paragraphs of the said judgment are extracted hereinbelow:

"21. This Court, in a matter like the present one where the jurisdictional issue goes to the root of the matter, would not allow injustice to be done to a party.

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The entire proceedings having been initiated illegally and without jurisdiction, all actions taken by the court were without jurisdiction, and thus are nullities. In such a case even the principle of *res judicata* (wherever applicable) would not apply.

23. Where a jurisdictional issue is raised, save and except for certain categories of the cases, the same may be permitted to be raised at any stage of the proceedings."

15. The petitioner submits that summoning of a case in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. He relied upon the judgment of the Hon'ble Supreme Court in the case of **PEPSI FOODS LTD. AND ANOTHER v. SPECIAL JUDICIAL MAGISTRATE AND OTHERS**, reported in (1998) 5 SCC 749. The relevant paragraph of the said judgment is extracted hereinbelow:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning

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the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

16. Relying on the judgment of the Hon'ble Supreme Court in the case of **MANISH RATAN v. STATE OF M.P.**, reported in **(2007)1 SCC 262** on what constitutes a continuing offence, he submits that a continuing offence is the one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. Whether the allegations made in the complaint would constitute a continuing offence is the core question for determining the jurisdictional issue.

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17. The petitioner complains of the delay and latches on the part of the respondent. He submits that the date of alleged offence is 24.12.2001 and the complaint is filed 2 years and 358 days thereafter i.e., on 18.12.2004. Thus only 7 days were there for the expiry of period of limitation of three years. He further submits that no explanation whatsoever is forthcoming for the delay in filing the complaint. The inordinate delay in filing the complaint shows that the respondent has not launched the prosecution in good faith.

18. The petitioner also highlights the background of the respondent, who has done LL.B, LL.M, Ph.D and LL.D. Having been in the Indian Police Service for 35 years and having taught law, he cannot take 2 years 358 days in preparing the complaint.

19. The C.M.M's order transferring the case from his Court to the Court of the VIII A.C.M.M. is without jurisdiction. Under Section 407 of Cr.P.C., the High Court and under Section 408 of the Cr.P.C., the Sessions Court can exercise such power of transferring the criminal cases from one Court

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to another. This aspect of the matter has been over-looked by the Fast Track Court, which considered and dismissed the petitioner's criminal revision petition. The petitioner takes serious exception to the learned C.M.M. holding that he has the jurisdiction and thereafter transferring the matter to the VIII A.C.M.M.

20. Making these submissions, the petitioner prays for setting aside of the order, dated 07.03.2005 (Annexure-J) of the C.M.M. On the private complaint issuing the process, the orders, dated 29.11.2006 (Annexure-A and B) dismissing the petitioner's I.A. and transferring the case to the Court of VIII A.C.M.M. and also the order, dated 13.02.2008 (Annexure-N) passed by the Fast Track Court IV, Bangalore city.

21. Per contra, Sri Krishna Murthy, the respondent party-in-person submits that Section 201 of Cr.P.C. is relevant only before the act of taking cognizance of the complaint by a Magistrate.

22. Sri Krishna Murthy submits that even according to the petitioner, VIII A.C.M.M., before whom the criminal

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case is now pending, is indeed the Court having the jurisdiction over the cases falling under Vidhana Soudha Police Station. The impugned order, dated 29.11.2006 (Annexure-B) is more in the nature of an administrative order. He submits that any intervention in the matter by this Court would result in the further delay in the commencement of the trial. Now even if the complaint is returned to the respondent with a direction to re-present it to the Court of VIII A.C.M.M., the outcome would be the same, as the case has already landed in the said Court (Court of VIII A.C.M.M).

23. Sri Krishna Murthy complains of suppression of material facts. He submits that the petitioner has stated in the letters in question that the "bullet has entered the forehead of Murugan and passed through the head and outside, which indicates that the pistol must have been aimed at the chest and fired at point-blank range." The post-mortem report to which the reference is made in the memorandum of writ petition does not speak of such injuries. Even Mallan, on whose behalf the W.P.No.5250/2002 was filed by the petitioner, has not complained of the injury

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specified by the petitioner in his letters. He submits that the petitioner has made bogus and false claims.

24. He further submits that the plea of jurisdiction is simply a ruse to delay the process of law; it is a grossly unmerited plea. He submits that the process of law is being abused by the petitioner by filing one after the other petition. He submits that he first filed W.P.No.12490/2005 for quashing the proceedings in C.C.No.8409/2005 (PCR No.21233/2004) pending on the file of the Court of the C.M.M. On 05.04.2005 the order was dictated by this Court dismissing the said petition on merits; but in the afternoon session, the petitioner filed the memo seeking leave of the Court to withdraw the petition with the liberty to approach the appropriate forum. Accordingly, this Court dismissed the petition as withdrawn reserving the liberty to the petitioner to approach the appropriate forum. Thereafter the petitioner filed Criminal Revision Petition No.231/05 before the XXI Addl. City Civil and Sessions Judge, Bangalore (CCH-4). The Criminal Revision Petition was dismissed by the learned Sessions Judge on 03.09.2005. The petitioner filed

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Criminal Petition No. 3994/2005 invoking Section 482 of Cr.P.C. This Court rejected the said criminal petition by its order, dated 22.11.2005, as it found prima facie case against the petitioner. The petitioner unsuccessfully approached the Hon'ble Supreme Court in Special Leave Petition (Criminal) 785/2006.

25. Sri Krishna Murthy submits that the petitioner has filed W.P.No.5250/2002 on behalf of Sri M. Mallan, the brother of deceased Murugan and W.P.No.6671/2002 on behalf of Murugan's wife, Anjali seeking a direction to the concerned authorities to register a case of murder and a further direction for the payment of compensation to her and the other dependents of the deceased Murugan, stating that he was the victim of cold-blooded murderer. This Court, by its common order, dated 8.4.2008 dismissed both the writ petitions. The petitioner filed W.A.No.760/2008 on behalf of Anjali and Mallan. The Division Bench, by its order, dated 23.6.2008 dismissed the said writ appeal. Sri Krishna Murthy submits that the matter did not end there; the matter was taken to the Hon'ble Supreme Court in the Special Leave

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to Appeal (Crl) No.(s) 7523/2008. The Hon'ble Supreme Court, by its order, dated 03.11.2008 dismissed the said case.

26. The respondent submits that he is a senior citizen and that therefore the VIII A.C.M.M. Court be directed to dispose of the criminal case expeditiously.

27. The respondent also submits that the complaint is not a compendium and that the process of criminal law is one of substance and than of form; the complaint should not be allowed to be befogged by hair splitting technicalities.

28. He submits that the offence of defamation is inclusive of making and/or publishing the defamatory material or the statement. Every other or subsequent act of publication of the same defamatory material is a fresh violation of law and each and every such publication is an independent and new offence and each one of them is actionable. For every repetition, both the maker and publisher are individually as well as severally liable. The

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petitioner is liable to answer the charge of making the defamatory material.

29. Sri Krishna Murthy brings to my notice the provisions contained in Section 16(3) of the Cr.P.C and submits that all the A.C.M.M.s have the same jurisdiction which the C.M.M of Bangalore City has. Section 16(3) of the Cr.P.C reads as follows:

"16(3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area."

30. He relied upon the Gujarat High Court decision in the case of **SEVANTILAL S. SHAH v. STATE OF GUJARAT**, reported in **1969 Cr.LJ, 63**, wherein it is held that a City Magistrate can exercise jurisdiction in a case within the city.

31. Sri Krishna Murthy has also relied upon the Division Bench judgment of the Bombay High Court in the case of **KHODABUX v. EMPEROR**, reported in **AIR 1926 BOMBAY 564**, wherein it is held that the Presidency

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Magistrate has the jurisdiction to try the offences committed at any place within the limits of the town.

32. Nextly he brings to my notice the Full Bench decision of the Rajasthan High Court in the case of **MAHESH CHAND AND ETC. v. STATE OF RAJASTHAN AND ETC.**, reported in **1985 CrLJ 301**, wherein it is held that the Chief Judicial Magistrate can take cognizance of any offence, committed anywhere in the District. In this regard, he takes me through para-15 of the said decision which is extracted hereinbelow:

"15. Turning now to question 5, a plain reading of the question itself will suggest the answer. Like all other Judicial Magistrates of the first class in his district, the Chief Judicial Magistrate is also a Judicial Magistrate of the first class. In the absence of any definition by the Chief Judicial Magistrate of the local limits of the area of such Magistrates under S.14 Cr.P.C., the territorial jurisdiction of each Magistrate shall extend throughout the district. It is implicit from a reading of S.14 that whereas the local limits of the area in a district, within which any Judicial Magistrate of the first class may exercise his jurisdiction and powers, may be defined and constricted by the Chief Judicial

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Magistrate, there is no scope of the powers and jurisdiction of the Chief Judicial Magistrate, which extend throughout the territory of the district, being constricted and confined to a portion of the territory of that district.

In other words, notwithstanding the fact that the Chief Judicial Magistrate has by a general or special order under S.15(2) read with S.14 Cr.P.C. defined the local limits of the area of jurisdiction of each Magistrate and made rules or given special orders as to the distribution of business among the Judicial Magistrates subordinate to him, he does not thereby lose his own jurisdiction to exercise the powers of Judicial Magistrate of the first class throughout the district. That being so, the Chief Judicial Magistrate is competent to take cognizance of any offence, committed anywhere in his district, notwithstanding the fact that the area in which the offence was committed, happens to fall within the local limits of the area assigned by the Chief Judicial Magistrate to some other Judicial Magistrate, subordinate to him, in accordance with the provisions of Ss.14 and 15 Cr.P.C. Of course, taking of such cognizance by the Chief Judicial Magistrate would be possible only if the complaint or police report, as the case may be, is presented in his court instead of being presented in the court of the Judicial Magistrate within the local limits of whose jurisdiction the crime might have been committed.

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33. He also brought to my notice the Bombay High Court judgment in the case of **SHAH JETHALAL LALJI v. KHIMJI M. BHUJPURIA**, reported in **(1974) 76 BOMLR 270**, wherein it is held that under Section 20 of Cr.P.C.1898, a Presidency Magistrate has jurisdiction to try an offence committed in any place within the presidency town. He has relied on this judgment for another proposition, which he has canvassed. In a defamation case the venue of the trial before a Magistrate can be either the Court within the jurisdiction of which the publication was made or the Court in whose jurisdiction the defamatory matters were posted, circulated or spread.

34. He sought to draw support from the Division Bench judgment of the Bombay High Court in the case of **STATE OF MAHARASHTRA v. SHANTI PRASAD JAIN** reported in **(1979) 81 BOMLR 184**. In para 16 of the said case, it is held that the jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area. In para-40 of the said judgment, the
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expression 'Chief Judicial Magistrate' includes in it the Additional Chief Judicial Magistrate also.

35. Sri Krishna Murthy submits that none of the decisions relied upon by Sri Dinakar have any application for the facts of this case. In those cases the issue was not involving the various locales within a Metropolitan City.

36. The question that falls for my consideration is whether the complaint could have been presented to the Court of C.M.M. and whether the Court of C.M.M., even on holding that he has jurisdiction to try the complaint, is justified in assigning the complaint to the Court of VIII Addl. C.M.M.?

37. For answering the aforesaid questions, it is necessary to know the scheme contained under the Cr.P.C pertaining to the distribution of business amongst the Metropolitan Magistrates. Section 16(3) of Cr.P.C states that the jurisdiction and powers of Metropolitan Magistrate shall extend throughout the Metropolitan area. Section 19(3) of the Cr.P.C states that the Chief Metropolitan Magistrate may,

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from time to time, make rules or give special orders, consistent with this Code as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

38. What follows from the above statutory provisions is that all the Metropolitan Magistrates have co-ordinate jurisdiction over the entire Metropolitan Area of a City. Every Metropolitan Magistrate can exercise jurisdiction within the Metropolitan Area. Allotment of area to different Magistrates is merely for the sake of administrative convenience. As held by the Full Bench of the Rajasthan High Court in case of **Mahesh Chand (supra)**, the Chief Judicial Magistrate does not lose his own jurisdiction to exercise the powers of Judicial Magistrate of First Class throughout the District, notwithstanding the fact that he has, by a general or special order under 15(2) r/w 14 Cr.P.C, defined the local limits of area of jurisdiction of each Magistrate and made Rules or given special orders as to the distribution of business amongst the Judicial Magistrate sub-ordinate to him. His competence to take cognizance of any offence committed

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anywhere in the District remains undisturbed despite his distributing the business amongst the various judicial Magistrates. The Division Bench of Bombay High Court, in the case of **State of Maharashtra (supra)** has held the jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the Metropolitan area. Further, it is held that the expression Chief Metropolitan includes an Addl. C.M.M. also. The relevant portion of the said judgment is extracted hereinbelow:

"40. We have given our anxious consideration to this argument. We have pointed out earlier the provisions of Section 337(2/4) of the old Code. But for this direction a Chief Judicial Magistrate in the District or a Chief Metropolitan Magistrate in Bombay could under the provisions of his normal administrative powers or the powers relating to the administration of distribution of business have transferred this case to the file of any other Judicial Magistrate, First Class, or a Metropolitan Magistrate for disposal. The Legislature does not want to have that consequence, as the Court of trial must be a Court of superior experience. The ending portion of Clause (b) merely means that the trial now must take place in the Court of the Chief Judicial Magistrate or the Chief Metropolitan Magistrate or any other allied Court

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of the same status which could be described as if trial by himself. If the expression 'Chief Judicial Magistrate' includes in it an Additional Chief Judicial Magistrate and like-wise if the term Chief Metropolitan Magistrate includes an Additional Chief Metropolitan Magistrate, the trial either by the Chief Metropolitan Magistrate or one of his Additional amounts to trial by himself. No anomaly seems to be created by the ending portion of Sub-section(5)(b), if the real intention of the Legislature is understood against the background of the legislative history of this section."

39. The decision relied upon by Sri Dinakar relate to two different areas coming under two different Sessions Districts. They are not in respect of two or more different areas or different police station limits within a metropolitan area or town or city. None of the judgments relied upon by Sri Dinakar apply for the case on hand where the C.M.M. exercised power under Section 16(3) of the Cr.P.C.

40. The other ground, urged by the petitioner, is the delay in filing the complaint. Delay itself is not the ground to quash the crime. For what reasons, the respondent delayed the filing of the complaint and whether the delay is fatal to prosecution are all to be decided by the Magistrate on the

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conclusion of the trial. As the complaint is filed within the prescribed period of limitation of three years, it cannot be thrown out at the threshold stage.

41. The view taken by the Sessions Judge that Section 201 of Cr.P.C has the application for a stage before taking cognizance is correct. Section 201 of Cr.P.C cannot be invoked once the cognizance is taken. The provisions contained in Section 201 of Cr.P.C are extracted hereinbelow:

"201 Procedure by Magistrate not competent to take cognizance of the case – If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court."

42. As on the date of taking cognizance of the offence by the learned C.M.M., Sanjaynagar Police Station area fell within his territorial jurisdiction. When the petitioner's I.A filed under Section 201 Cr.P.C came to be dismissed on

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29.11.2006, the territorial jurisdiction of Sanjaynagar was with the VIII A.C.M.M., Bangalore. As the cognizance had already taken by the learned C.M.M, he made over the case to VIII A.C.M.M., which has the jurisdiction over Sanjaynagar Police Station area. By the subsequent Special Order, dt.26.09.2006, the jurisdiction of Sanjaynagar Police Station was given to VIII A.C.M.M. The order states as follows:

"Henceforth VIII ACMM shall deal with all the cases, except the cases ripened and posted for evidence, arising of the said Police Station in addition to the distribution of business already allocated."

As the complaint in question had not ripened for evidence, it was made over to the VIII A.C.M.M. Considering all these aspects of the matter, the Sessions Judge has rightly dismissed the revision petition.

43. Considering the provisions contained in Section 16(3) of Cr.P.C and the interpretation it has received at the hands of different Courts, it cannot be held that the learned C.M.M. had no competence to take cognizance of the offence and issue the process. Further, as per the provisions

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contained in 19(3) of the Cr.P.C., the C.M.M is also competent to distribute and allocate the business to the Additional C.M.M. Pursuant to the Special Order, dt.26.09.2006, he has transferred the case to the VIII A.C.M.M. Though the word used in the impugned order is transfer, it is only by the operation of the Special Order. In effect, it is an order making over or reassigning the case to the VIII A.C.M.M.

44. Further, it is also worthwhile to notice that VIII A.C.M.M. has the territorial jurisdiction over both Vidhana Soudha Police Station and Sanjaynagar Police Station. Even if the petitioner's argument that, only that Magistrate, who has the territorial jurisdiction to try a case, which has arisen within the limits of Vidhana Soudha police station, is accepted, the matter has to be tried by VIII A.C.M.M. only. Now the learned C.M.M has made over the case to the VIII A.C.M.M.

45. Thus, the taking of cognizance and the issuance of the summons by the learned C.M.M. cannot but be held to be legal and valid. Further, the C.M.M cannot be held to be at fault for reassigning the case to the VIII A.C.M.M. The order

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passed by the Sessions Court dismissing the petitioner's Criminal Revision Petition also does not suffer from any perversity or infirmity. I answer the question, which I have formulated in paragraph 36 hereinabove, in the affirmative.

46. Where a party has already availed the remedy of revision, the same party cannot be allowed to agitate the same point before the High Court by filing criminal revision petition under Section 482 Cr.P.C., as it would amount to second revision being barred by Section 397 (3) of Cr.P.C. In this regard, it is profitable to refer to a decision of the Madhya Pradesh High Court in the case of **MANOJ v. SAVITHA**, reported in **2003 Cr.L.J 3087**. The relevant portion of the said decision is extracted hereinbelow:

"5. Thirdly, this petition for quashment of complaint, is filed after remaining unsuccessful in the two Courts below, which in fact is a second revision in the garb of application filed u/S.482 of the Code, which is not permissible."

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47. The Hon'ble Supreme Court in the case of **DHARMAPAL AND OTHERS v. RAMSHRI (SMT) AND OTHERS**, reported in **(1993) 1 SCC 435** has this to say:

"6.....The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of respondent 1. Admittedly respondent 1 had preferred a Criminal Application being Cr.R.No. 180 of 1978 to the Sessions Court against the order passed by the Magistrate on October 17, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on May 14, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

48. The Hon'ble Supreme Court in the case of **G.N.HEGDE v. S.BANGARAPPA**, reported in **1995 Cr.L.J 2935** has taken the following considered view:

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"12. While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges....."

49. It is also profitable to refer to this Court's decision in the case of **S.P. BOEATI v. MAHADEV VIRUPAXAPPA LATTI**, reported in **2005 Cr.L.J 692**, wherein it is held that even after dismissal of the revision petition by the Sessions Judge, this Court can exercise its power under Section 482 Cr.P.C., if the facts of the case so warrant.

50. The power under Section 482 Cr.P.C should be exercised sparingly and with circumspection and that too in the rarest of the rare cases. Under Section 482 of Cr.P.C,

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this Court can make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In the instant case, the main ground urged by the petitioner is that the C.M.M. has no jurisdiction to take cognizance of the offence alleged. In view of the provisions contained in Section 16(3) and 19(3) of Cr.P.C, the contentions urged by the petitioner have no merit. I decline to exercise the inherent power to quash the impugned orders.

51. In the result, I dismiss this petition. No order as to costs.

**Sd/-
JUDGE**

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