

CASE NO.:
Special Leave Petition (crl.) 4516 of 2006

PETITIONER:
Vishwanath Gupta

RESPONDENT:
State of Uttaranchal

DATE OF JUDGMENT: 21/03/2007

BENCH:
A.K. Mathur & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

ORDER

1. Heard Learned counsel for the parties.

2. This special leave petition is directed against the order passed by the High Court of Uttaranchal at Nainital dated 17.7.2006 whereby the High Court has set aside the order passed by the Additional Sessions Judge, Third Fast Track Court, Nainital dated 29.6.2006 whereby the Additional Sessions Judge has held that no Sessions Court of the State of Uttaranchal has the territorial jurisdiction to conduct the trial of the case and only the Sessions Court of Lucknow or Unnao District in the State of Uttar Pradesh has the jurisdiction to try this offence. Aggrieved against the order of the High Court, the accused petitioner has approached this Court by way of special leave petition.

3. Brief facts which are necessary for the disposal of the special leave petition are that on the basis of written information of Sub Inspector Shyam Nath Pandey of Police Station Haldwani of District Nainital on 22.12.2003, the first information report was registered under Section 364A IPC. There was a news item published in the Daily Dainik Jagran to the effect that one Ravi Varshney, Advocate, was pleading the matters of members of the gang of Prakash Pandeya alias P.P. and was in touch with them on telephone and cell phone. Shri Ravi Varshney, Advocate, had gone from Dehradun to Lucknow by train along with one contractor named Anoop Samant and thereafter the family members of Ravi Varshney were receiving calls for ransom amount and it has also been stated that Ravi Varshney was abducted at Lucknow for ransom money. Thereafter, the investigation was taken up and the statement of Surendra Chandra Varshney, father of Ravi Varshney was recorded and in that statement it was alleged that the calls were received from the abductors at Nainital for the ransom money. It is alleged that thereafter two bodies one that of Anoop Samant and other that of Ravi Varshney were recovered from the factory of the accused under the Kotwali Police Station in District Unnao. The dead bodies were seized and panchnama was prepared at Unnao, U.P. Then an application was filed that the Nainital Court has no jurisdiction to frame the charges as the offence has been committed in the State of Uttar Pradesh and, therefore, the State of Uttaranchal has no territorial jurisdiction. The matter was taken up to this Court and this Court, by order dated 24.4.2006, declined to transfer the trial from Nainital to Lucknow. However, the Court left the question of territorial jurisdiction open to be decided by the appropriate forum. When the matter was taken up before this Court, the grievance was that the accused Petitioner was not likely to get a fair trial because none of the members of the Bar were going to take up the case of the accused-Petitioner. But an affidavit was filed by the Bar Association, Nainital, before this Court that they will provide sufficient legal assistance to the accused and on that basis the matter was disposed of. When the case was committed to the Additional Sessions Judge, again a question was raised of

the territorial jurisdiction and the learned Additional Sessions Judge, after hearing both the parties, recorded a finding that mere receiving of telephone calls at Nainital from Lucknow demanding a ransom cannot be said that the offence was committed in Nainital and therefore the learned Additional Sessions Judge by his order dated 29.6.2006 held that in view of the provisions of Section 181 (2) of the Code of Criminal Procedure, the case should be tried in the Court located either in District Unnao or District Lucknow, in the State of Uttar Pradesh. The matter was taken up before the High Court and the High Court without examining the matter in that light, set aside the order of the Additional Sessions Judge and dismissed the application on the basis of the order passed by this Court on 24.4.2006. The order passed by the High Court was an ex parte order. Aggrieved against that order present special leave petition.

4. We have heard learned counsel for the parties and have perused the record. Section 364A of the Indian Penal Code reads as under:-

"364A. Kidnapping for ransom, etc, - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

5. According to Section 364A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

6. The important ingredient of Section 364A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A is complete. There are three stages in this Section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places. In the present case the demand of the money with the threat perception has been made at (Haldwani) Nainital. The deceased were kidnapped at Lucknow and they were put to death at Unnao. Therefore, the first offence was committed by the accused when they abducted Ravi Varshney and Anoop Samant at Lucknow. Therefore, Lucknow could have territorial jurisdiction to try the case, Second, threat perception was communicated to the complainant at Haldwani, Nainital raising a demand for money. Therefore, the Court at Haldwani, Nainital could also have territorial jurisdiction to try the matter. Likewise, ultimately the dead bodies were recovered at Unnao, therefore the District Court at Unnao could also have jurisdiction to try the offence. It is unfortunate that the learned Additional Sessions Judge, did not examine the necessary ingredients of Section 364A. As a matter of fact one of the important ingredients is the threat perception coupled with the demand of money which had taken place at Haldwani, Nainital, and when the demand of payment of ransom was not satisfied, the victims were put to death. Therefore, all the three courts will have territorial jurisdiction to try the matter. In the present case two States are involved i.e., Uttaranchal and the State of Uttar Pradesh. Part of the offence was committed in Uttaranchal and part of the offence was committed in Uttar Pradesh. Therefore, both the Courts at Uttar Pradesh as well as Uttaranchal will have territorial jurisdiction to try this offence. But

the first information was registered at Haldwani.

7. Learned counsel for the Petitioner has tried to persuade us reference to Sections 177, 178, 179 and sub-section (2) of Section 181 of the Code of Criminal Procedure and submitted that the offence has been completed at Unnao/Lucknow therefore the District Court Unnao/Lucknow will have jurisdiction to try the offence. Chapter 13 of the code of Criminal Procedure deals with the jurisdiction of the Criminal Courts in inquiries and trials. Section 177 says that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. "Local jurisdiction" has been defined in Section 2(j) of the Code of Criminal Procedure, which reads as under :-

"local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify."

8. The expressions "local jurisdiction" means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State or any part of the State as the State Government may by notification specify. Normally, the State issues the notification wherein the local limits of the each Magistrate is defined and Section 7 of the Cr. P.C. says about the territorial divisions. Section 9 defines about the Court of Session. Section 9 further states that the State Government shall establish a Court of Session for every sessions division. Every Court of Session shall be presided over by a Judge, to be appointed by the High Court and the High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct. Where the offence of the Sessions Judge is vacant, the High Court may make arrangement for the disposal of any urgent applications which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a chief Judicial Magistrate, in the Sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application. Therefore, for the administrative convenience of the State the aforesaid session division has been defined and their local limits are also earmarked. Section 11 deals with the Courts of Judicial Magistrates and Courts of Magistrates are constituted like first class or second class at such places as the State Government after consultation by the High Court by notification specify and that Magistrate will have local area and wherein he will exercise his jurisdiction of the class of cases specified therein. In this hierarchy of the courts if any offence is committed in the local area of particular police station then the concerned Magistrate of that area alone will have power to entertain the case and if the offence is triable by the Court of Sessions then that Magistrate will commit the case to the Sessions Court. Section 178 deals with the place of inquiry or trial. when there is uncertainty as to in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is continuing one, and continues to be committed in more local areas than one, or 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. Therefore, Section 178 has to be construed liberally and it has to be inquired into that how the offence has been committed. In case offence has been committed in two local areas then it can be tried by any of them. Section 179 deals with the offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and consequence which has ensued in another area, 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 deals with the place of trial in case of certain offences. Under Sections 181 various offences has been characterised and specially it has been meant that where the offence has been committed that Court will have jurisdiction to try that offence. we are concerned with sub-section (2) of Section 181 of the Code of Criminal Procedure, which reads as under :-

"Sections 181(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained."

Any offence of kidnapping or abduction may be inquired or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained. In case of kidnapping and abduction the local jurisdiction shall be where the person concerned has been abducted or kidnapped or was conveyed or concealed or detained. It is likely that a person has been kidnapped from one part of the country and kept in another part of the State. For example, if a person is kidnapped from Rajasthan and is kept in the State of Haryana, then both the Magistrate and Sessions Judge will have jurisdiction to try the offences. As regards the completion of Section 364A is concerned, something more is required for that offence. Section 364A was introduced in the IPC by the Criminal Amendment Act of 42 of 1993 which came into effect with from 22.5.1993 because of the increasing number of cases where the victim is abducted and a demand for money is raised with a threat perception or danger to the life on that person and that person is ultimately put to death. Such kind of offences are not covered under sub-section (2) of Section 181. It is not simply abduction or kidnapping. It is something more in ordinary case of abduction or kidnapping as defined in Sections 359 and 362. They are offence simplicitor of kidnapping and abduction. But here in the case of Section 364A something more is there that is, that a person was abducted from Lucknow and demand has been raised at Haldwani, Nainital with threat. If the amount is not paid to the abductor then the victim is likely to be put to death. In order to constitute an offence under Section 364A, all the ingredients have not taken place at Lucknow or Unnao. The two incidents took place in the State of Uttar Pradesh that is abduction and death of the victims but one of the ingredient took place that is threat was given at the house of the victims at Haldwani, Nainital demanding the ransom money otherwise the victim will be put to death. Therefore, one of the ingredients has taken place within the territorial jurisdiction of Haldwani, Nainital. Therefore, it is a case wherein the offence has taken place at three places i.e. at Haldwani, Nainital, where the threat to the life of the victim was given and demand of money was raised, the victim was abducted from Lucknow and he was ultimately put to death at Unnao. Therefore, the trial could be conducted in any of the local jurisdiction that is Haldwani, Nainital, in the State of Uttaranchal, Lucknow or Unnao, within the State of Uttar Pradesh. But in the present case the case was registered at police Station, Haldwani, and the investigation started at Haldwani therefore the local jurisdiction to try the offence shall be at Haldwani/Nainital. If the investigation agency wants to prosecute or file a challan at Haldwani/Nainital Court, then District Nainital will have jurisdiction to try the matter. It is wrong to say that Additional Sessions Judge, Third Fast Track Court, Nainital has no jurisdiction. The view taken by the Additional Sessions Judge. Third Fast Track Court, Nainital is wrong and we set aside the same though High Court, has set aside but for wrong reasons. In this view of the matter, we are not inclined to interfere with this matter. We dismiss the special leave petition and direct that Additional Sessions Judge, Nainital will have jurisdiction to try the offence.