

(1997) 08 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4297-M of 1997

A.K.Gupta

APPELLANT

Vs

Raj Sharma

RESPONDENT

Date of Decision : 22-08-1997

Acts Referred:

Citation : (1997) 4 AICLR 492 : (1998) 1 RCR(Criminal) 30

Hon'ble Judges : M.L.Koul, J

Advocate : Vivek Suri, R.K. Bashamboo, Advocates for appearing Parties

Judgement

M.L. Koul, J.

1. The petitioners Dr. A.K. Gupta and Dr. (Ms) Poonam Bhargawa, have been summoned by the learned Judicial Magistrate Ist Class, Chandigarh, to face trial for the offences under Sections 337/338 of the Indian Penal Code, vide order dated 1.10.1996, on a complaint filed against them under Sections 319/337 of the Indian Penal Code, by the respondent Smt. Raj Sharma, on the allegation that she was operated by them in Dewan Chand Gupta Memorial Hospital, Sector 4, Panchkula (Haryana), on 7.2.1992 and was discharged on 11.2.1992. On 17.2.1992 the complainant complained of pain and the accused prescribed her certain medicines and directed her to visit the Hospital after five days. She was again examined on 22.2.1992, 2.3.1992 and 14.3.1992. Thereafter, she was advised to resume the normal work but the pain continued to persist and ultra/sound was got done on 10.11.1992. From ultra sound it was revealed by the Expert that there was Cystic Mass measuring 65 mm x 47 mm in the right ovaryA. The respondent Smt. Raj Sharma was advised operation by the petitioner No. 1 Dr. A.K. Gupta but when she told the doctor that the operation had already been conducted upon her, then he struck off the words "with Bilateral Oophorectomy" from the photostat copy of the medical record. Thereafter, the complainant got herself examined from the General Hospital and afterwards she was again operated upon for removal of Ovaries, which could have been done by the petitioners at the time she was firstly operated upon on

7.2.1992. The petitioners are seeking the quashing of the complaint annexure P1 and the order dated 1.10.1996 contained in annexure P2, on which they have been summoned by the trial court to face the trial, as indicated above.

2. According to the petitioners, the learned Judicial Magistrate, Chandigarh, was not competent to exercise the jurisdiction in the matter for the fact that the alleged offence committed by the petitioners was at Panchkula and not at Chandigarh. According to the learned counsel for the petitioners every offence ordinarily is to be enquired into and tried by a Court within whose jurisdiction it was committed. In this regard, it is relevant to refer to Section 177 of the Code of Criminal Procedure, which in verbatim, is described as under :

"177. Ordinary Place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed".

In order to see whether the Judicial Magistrate at Chandigarh, in any manner could assume the jurisdiction within Sec. 178 of the Code of Criminal Procedure it is felt necessary to describe the Section in verbatim as under :

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 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".

3. In the present case it is set out and found by the trial court that the alleged offence was committed by the accused petitioners on 7.2.1992 at Panchkula when the complainant respondent Smt. Raj Sharma was operated upon in a private Hospital and only uterus was removed despite the fact that the operation was fixed for removal of ovaries as well. It is nowhere mentioned in the complaint or in the order dated 1.10.1996 (annexure P2) as to when she was again operated upon, by Dr. Mrs. Dhillon, in Sector 16 General Hospital, Chandigarh, for the removal of ovaries. No doubt, in the complaint it is mentioned that she was discharged on 11.2.1992 and that thereafter she visited the hospital of the accused petitioners on 17.2.1992, 22.2.1992, 2.3.1992 and 14.3.1992 when she was declared fit to resume the work. According to her as the pain persisted, she met petitioner No. 1 Dr. A.K. Gupta, who advised her another operation for the removal of ovaries, when on ultra sound by an Expert, it was revealed that Cystic mass measuring 65 mm x 47 mm was lying in the right ovary.

4. In all the circumstances and the facts of the case, it is found that the alleged offence has been committed in Panchkula and thus the complainant could file a

complaint before a competent court of law at Panchkula and it was the court at Panchkula, which could inquire into the matter and try the accused, for the alleged offence was committed in its jurisdiction. In no manner it is proved from the record on the file or from the evidence adduced by the complainant that the said offence was partly committed in Panchkula and partly at Chandigarh and that the offence was a continuing one and therefore the courts at Chandigarh had also the jurisdiction to try the case. Also it is not found from the evidence of the complainant or from the assertions made in the complaint, that the crime consisted of several acts done in different local areas, of Panchkula and Chandigarh. Since, no offence was committed by the petitioners at Chandigarh, therefore, the trial court (Judicial Magistrate) at Chandigarh had no jurisdiction to take cognizance in the matter against the accused petitioners. The learned Judicial Magistrate, at Chandigarh, has fallen in legal error in having assumed the jurisdiction in the matter and he has not cared to thoroughly examine the complaint and the preliminary evidence in the right perspective so as to find out as to whether he had the jurisdiction to try the case or not. The learned Magistrate, in a routine manner has assumed the jurisdiction in the matter and summoned the accused petitioners, when he was debarred to take cognizance of the matter within the purview of Section 177 of the Code of Criminal Procedure for the offence committed was at Panchkula and it were the courts at Panchkula who had the jurisdiction to take cognizance and try the matter. Besides, the learned Magistrate could not take the trial of the case because the offence was committed once and it did not consist of parts that partly the offence was committed within the jurisdiction of courts at Chandigarh and partly within the jurisdiction of courts at Panchkula, or the acts done by the petitioners were several in nature and therefore the trial Magistrate was competent to assume the jurisdiction in the matter. In both the ways the Magistrate was without jurisdiction to take cognizance in the matter and summon the accused.

5. It is also material to see whether the filing of the complaint by the respondent was barred by limitation or not. In this regard, for ready reference the relevant provisions incorporated in Section 468 of the Code of Criminal Procedure, are quoted below :

"468. Bar to taking cognizance after lapse of period of limitation. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub section (2) after the expiry of the period of limitation.

(2) the period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) for the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

6. In the instant case, the alleged offence has been committed by the accused on 7.2.1992 and the complaint stood filed on 15.5.1995. This complaint, for the purpose of jurisdiction, is not covered by subclause 2(c) of Section 468 of the Code of Criminal Procedure wherein the period of limitation for such a complaint provided is three years. The complaint is filed on 15.5.1995, that is beyond three years from the date of commission of the crime, therefore, it is timebarred as well.

7. Hence, in view of the above discussion, both the annexures P1 and P2 i.e. complaint and the order dated 1.10.1996 are quashed and the petition is accepted accordingly.