
(2009) 03 JH CK 0052

In the Jharkhand High Court

Case No : Criminal M.P. No. 1417 of 2007

Amit Kumar Kesarwani @ Amit Kumar

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154(1), 156(2), 156(3), 177, 178
Penal Code, 1860 (IPC) — Section 304(B), 341, 342, 498A, 506

Citation : (2009) 57 BLJR 2120 : (2010) CriLJ 1200 : (2010) 7 RCR(Criminal) 37

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : Viresh Mishra and Indrajit Sinha, for the Appellant; A.P.P and Jai Prakash, for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal prosecution registered as Garhwa P.S. case No. 218 of 2006 under Sections 304(B)/498A/341/342/506 of the Indian Penal Code.

2. Before advertng to the submission advanced on behalf of the parties, case of the prosecution as disclosed in the complaint case No. 538 of 2006 giving rise to Garhwa P.S. case No. 218 of 2006 needs to be taken notice of.

3. It is the case of the prosecution that the deceased Richa Kesarwani, daughter of the complainant, was married to the petitioner in the year 2003 Immediately thereafter accused person started putting forth demand of a Car as dowry and in order to get the demand fulfilled, accused person started subjecting her to torture physically as well as mentally and even the marks of violence were noticed by the witnesses when he had occasion to come to the place of deceased.

4. Further case is that on 19.7.2006 when the deceased Richa Kesarwani and her husband (petitioner) came to Garhwa, she made complaint to her parents that

she is being thrashed by the petitioner who is having illicit relation with other woman. Upon it petitioner assaulted his wife badly in presence of the complainant and witnesses and then on the next date, the petitioner took his wife forcibly to his place. After some days, the deceased made a phone call to her mother on 2.8.2006 and made request to them to come to Allahabad for celebrating birthday of her child but in the afternoon of 2.8.2006 some unknown persons informed on telephone that Richa has been done to death. On getting this information, when enquiry was made on telephone, it was informed by the petitioner that she has been admitted to a Nursing Home as she has fallen ill all on a sudden. Upon which, complainant along with others rushed to Pratapgarh and when they reached over there, they asked about the Nursing Home where she has been admitted but it was told that she has already died and the dead body was lying on the back seat of the Car. On seeing the dead body, they suspected that she has been done to death as they noted some marks over the neck and also found blood coming out from nose and mouth. That apart, there were marks of violence over the back arm and belly and then, they were threatened not to inform to police. Thereafter a complaint was filed on 7.8.2006 in the court of Chief Judicial Magistrate, Garhwa, which was numbered as complaint case No. 538 of 2006 and on the same day it was sent to Garhwa Police directing Officer-in-Charge for institution and investigation in terms of Section 156(3) of the Code of Criminal Procedure. On the next day, Garhwa P.S. case No. 218 of 2006 was registered u/s 304(B), 498A, 341, 342 and 506 of the Indian Penal Code.

5. Mr. Viresh Mishra, learned senior counsel appearing for the petitioner submits that as per the complaint case itself, every rituals of the marriage took place at Pratapgarh and the deceased gave birth of a child there and even the allegation of cruelty or harassment and even the demand of dowry, if any, allegedly took place at Pratapgarh and in this manner, no part of any cause of action had taken place in the district of Garhwa and as such, Magistrate had no jurisdiction to take cognizance u/s 190 of the Code of Criminal Procedure and to pass order u/s 156(3) of the Code of Criminal Procedure directing the Garhwa Police to institute the case and to investigate the matter as Section 177 of the Code of Criminal Procedure specifically states that every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed and under that situation, neither the first information report could have been lodged nor investigation can be gone into and even trial cannot be held at Garhwa. Therefore, any order passed by the learned Magistrate for institution of the case is without jurisdiction as the Magistrate who is empowered to take cognizance u/s 190 of the Code of Criminal Procedure can only pass an order in terms of Section 156(3) of the Code of Criminal Procedure.

6. Learned Counsel further submits that in order to create cause of action false, averment has been made in the complaint wherein it has been stated that the deceased when along with the petitioner came at Garhwa, she was assaulted in presence of the complainant which allegation appears to be quite baseless and

gets falsified from the fact which itself has been narrated in the complaint wherein it has been stated that the complainant by making phone call asked her mother to come to Allahabad, as they will be celebrating birthday party of the child which clearly indicates that everything was normal and therefore, any false allegation will never create any cause of action for the purpose of jurisdiction. Thus, it was submitted that learned Chief Judicial Magistrate wrongly assumed jurisdiction, rather as per the averment made in the complaint, offence alleged needs to be enquired into or tried by a court at Pratapgarh within whose local jurisdiction, offence has been alleged to have been committed. It was further submitted that in such situation, where Magistrate has got no jurisdiction to deal with the matter, the Hon''ble Supreme Court has quashed several proceedings.

7. In this regard, learned Counsel has referred to a case of Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. 2004 SCC 2134, Manish Ratan and Ors. v. State of Madhya Pradesh and Anr. 2007 (1) JIC 269 Ramesh and Ors. v. State of Tamil Nadu 2005 SCC 735 Naresh Kavarchand Khatri Vs. State of Gujarat and Another, and lastly Bhura Ram and Ors. v. State of Rajasthan and Anr. (2009) 1 SCC 109.

8. Mr. Jai Prakash, learned Counsel appearing for the opposite party No. 2 submits that the instant application is devoid of any merit as the averments made in the complaint petition go to show that part of cause of action arose within the local jurisdiction of the Magistrate who passed an order to institute the case in terms of Section 156(3) of the Code of Criminal Procedure as the deceased, before being done to death, is said to have come to Garhwa along with her husband where she was assaulted constituting offence u/s 498A of the Indian Penal Code and thereby the Magistrate gets jurisdiction in terms of Section 178 of the Code of Criminal Procedure to deal with the matter brought before him by way of complaint.

9. It has been well settled that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is bundle of facts, which taken with the law applicable, to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise. In that event, there may be only one fact which may constitute an offence whereas in other situation, there may be several acts done which may constitute offence/offences and, therefore, the court having jurisdiction over any of such local areas where any act was done constituting an offence is competent to enquire or try offence and this situation has been contemplated in Section 178 of the Code of Criminal Procedure though Section 177 speaks about the ordinary place of inquiry and trial. The aforesaid provision reads as follows:

177- Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

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.

Therefore, whether Officer-in-Charge of a police station has the requisite jurisdiction to make investigation or not will depend upon large number of factors including those contained in Sections, 177, 178 and 181 of the Code of Criminal Procedure in a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the Officer-in-Charge of the police station concerned which has jurisdiction to investigate in relation thereto.

Here in the instant case, as has been noticed above, among the several acts one of the acts constituting offence of cruelty has been committed in the local jurisdiction of the Garhwa police and as such, Magistrate who took cognizance and also the Police Officer who has been investigating the case cannot be said to have assumed jurisdiction illegally in taking cognizance and instituting the case. Moreover, the petitioner is not entitled to raise the question of jurisdiction, in view of an embargo put forth by Section 156(2) stipulating therein that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate.

10. So far the decisions referred to on behalf of the petitioner are concerned, that is not applicable in the facts and circumstances of the case as in all those cases proceedings were quashed having been found that the Magistrate had had no jurisdiction to deal with the matter.

11. So far submission made on behalf of the petitioner that any allegation of assault made at Garhwa will not confer any jurisdiction upon the Magistrate or the police at Garhwa as the same not only appears to be improbably rather seems to have been concocted for the purpose of creating jurisdiction has no leg to stand, in view of the ratio laid down in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, holding therein that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a

case on the ground that the information is not reliable or credible.

12. It has been further held that on the other hand, the officer-in-charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence. Further it has been held that reasonableness or credibility of the said information is not a condition precedent for registration of a case, rather condition which is sine-qua non for recording a first information report is that there must be an information and that information must disclose cognizable offence and if both the conditions are fulfilled then the said police officer has no other option except to register a case on the basis of such information.

13. Thus, I do not find any illegality in the order passed by the learned Magistrate whereby complaint was sent to the concerned police station and in terms of Section 156(3) of the Code for its registration and investigation and at the same time, there has also been no illegality in institution of the case on the basis of the information received by the police officer.

14. Accordingly, I do not find any merit in this application. Hence, this application is dismissed.