

(2014) 01 MP CK 0084
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 1830 of 2012

Amitesh Tyagi and Others

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177 182(2) 198 468 482

Dowry Prohibition Act, 1961 — Section 3 4

Penal Code, 1860 (IPC) — Section 34 494 495 498A 506

Citation : (2014) 01 MP CK 0084

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Anil Khare and Mr. Priyankush Jain, for the Appellant; Yogesh Dhande, Public Prosecutor for the State/Respondent No. 1 and Shri Aditya Ahiwasi, Advocate for the Respondent No. 2, for the Respondent

Judgement

N.K. Gupta, J.—The applicants have preferred the present petition u/s 482 of the Cr.P.C. against the registration of crime No. 9/2010 registered at Police Station Mahila Thana, Bhopal on the FIR lodged by the respondent No. 2 for offence punishable under sections 498A, 506/34 of IPC. 2. The prosecution's case, in short, is that, the complainant Shweta Sharma was married to Amitesh Tyagi on 11.11.2005 at Delhi. 4 days prior to the date of marriage, the applicants and Amitesh demanded a sum of Rs. 7 Lacs to purchase a car. Kailash Narayan Sharma, father of the complainant transferred a sum of Rs. 3,50,000/- in the account of the applicant Varinder Tyagi. 15 days after the marriage, Amitesh Tyagi went to USA to prosecute his job and thereafter, Shweta resided with the applicants No. 2 and 3. The applicants were harassing her for demand of dowry specifically for the price of a car, which could not be given by her father. Before the marriage, Shweta was working at Bangalore in some bank. She transferred a sum of Rs. 2,85,000/- from her account to the account of the applicant Varinder Tyagi at Gurgaon. In the year 2006, Shweta went to USA to reside with her husband. Amitesh Tyagi assaulted Shweta at USA also and therefore, she was

admitted in Columbus hospital. She was being tortured by the applicants. In September, 2008, Shweta went to the house of her parents but, still the applicants demanded for dowry etc. to purchase a car and therefore, the complainant Shweta Sharma had lodged an FIR on 23.1.2010 at Police Station Mahila Thana, Bhopal.

2. I have heard the learned counsel for the parties.

3. The learned counsel for the applicants has submitted that there was no demand of dowry from the complainant. As per her own allegation, a sum of Rs. 3,50,000/- was transferred by her father in the account of the applicant No. 2 and thereafter, the complainant transferred a sum of Rs. 2,85,000/- from her account to the account of the applicant No. 2 then, in that amount, a car could be purchased and the complainant could not be tortured further for demand of dowry. He has further submitted that the FIR lodged by the complainant is not within the limitation for the offence committed prior to 23.1.2007 being barred by limitation and a divorce took place between the parties vide order dated 17.4.2009 before the concerned Magistrate at Ohio, USA and therefore, there was no possibility of any contact of the applicants with the complainant thereafter. She did not make a specific allegation as and when she resided with the applicants at Delhi thereafter and therefore, the Police Station Mahila Thana, Bhopal has no jurisdiction to register the case. The learned counsel for the applicants has placed his reliance upon the judgment passed by Hon"ble the Apex Court in case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, . It is further submitted by the learned counsel for the applicants that offence u/s 498A of IPC is not of a continuous nature. It is also laid by Hon"ble the Apex Court in case of Y. Abraham (supra) that offence was not of continuous nature. Similarly, the learned counsel for the applicants has placed his reliance upon the judgment passed by Hon"ble the Apex Court in case of Bhura Ram and Others Vs. State of Rajasthan and Another, to show that the Police Station Mahila Thana, Bhopal had no jurisdiction in the case and therefore, it is prayed that the entire crime registered against the applicants may be quashed.

4. On the other hand, the learned counsel for the respondent No. 2 has challenged the submissions made by the learned counsel for the applicants and submitted that the applicants tortured the complainant at Bhopal by phone and therefore, Police station Mahila Thana, Bhopal had jurisdiction in the case.

5. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is apparent that soon after the marriage of the complainant Shweta Sharma, she resided for few days at Delhi and thereafter, she went to USA. It is mentioned in the statements of Smt. Sunita Sharma that Shweta went to USA in the year 2006. FIR was lodged on 23.1.2010 and sentence prescribed for the offence punishable u/s 498A of IPC is of 3 years Rigorous Imprisonment and therefore, by the provisions of section 468 of the Cr.P.C. only limitation of 3 years is prescribed for the offence, which is

punishable by 3 years imprisonment. It is well established by Hon"ble the Apex Court in case of Y. Abraham (supra) that offence u/s 498A of IPC is not an offence of continuous nature and therefore, offence done by the applicants prior to the visit of the complainant to USA, offence done at Ohio and offence done after return of the complainant shall be treated separately.

6. So far as the offence done prior to her visit to USA is concerned, it is admittedly time barred because she went to USA in the year 2006, whereas the FIR was lodged on 23.1.2010 and therefore, by virtue of the provisions u/s 468 of the Cr.P.C., FIR relating to crime prior to 23.1.2007 was barred by limitation. The offence done at Ohio is alleged against the applicant No. 1 only but, not against the remaining applicants. Nothing is told by the complainant in detail in the FIR lodged at Police station Mahila Thana, Bhopal about the offence committed by the applicant No. 1 at Ohio. If the complainant was beaten by the applicant No. 1 and she was badly injured on 2.9.2006 then, papers relating to her treatment could be produced to show that she was beaten. Neither any FIR, nor any medical evidence is produced alongwith the FIR to show that the applicant No. 1 treated the complainant with cruelty at Ohio. Under such circumstances, the allegations made by the complainant for the offence committed at Ohio cannot be considered as it is.

7. So far as the harassment done after her return from USA is concerned, it was for the complainant to allege as to when she visited the house of the applicants at Delhi and she was harassed or assaulted by the applicants or the applicants No. 2 and 3. The complainant did not give any particulars about the date of harassment done by the applicants No. 2 and 3 at Delhi. It would be apparent that vide order dated 17.4.2009, the divorce passed by the Court of Magistrate having jurisdiction at Ohio, divorce was granted to the applicant No. 1 and therefore, the complainant did not remain the wife of the applicant No. 1 and therefore, if any harassment was done by the applicants thereafter then, it cannot be alleged to be an offence u/s 498A of IPC because that offence is prescribed only to help the wife and not the divorced wife. It is clear from the order passed by the concerned Magistrate that the complainant was represented in the matter and therefore, it was for her to show that when she returned from USA and after her return as and when she was tortured by the applicants at Delhi in the period from the date of her return upto 17.4.2009,. In the FIR as well as in the statements of various witnesses, it is nowhere specifically established that the complainant went to Delhi after her return from USA and therefore, no harassment done by the applicants is established prima facie after return of the complainant from USA.

8. As alleged by the learned counsel for the respondent No. 2 that the applicants gave threatening to the complainant on phone and also demanded dowry from the complainant. They rang her up from Delhi to Bhopal. However, if the entire investigation is considered then, no telephone number is given by the complainant or any witness by which the applicants gave any threat to the

complainant on phone. It was for the investigation officer to collect the call details of various phones by which the applicants demanded dowry from the complainant after her return from USA. Since no such call details could be collected, therefore, prima facie, it cannot be accepted that the applicants made any telephone call to the complainant after her return from USA for any purpose including the dowry demand or harassment and therefore, prima facie no offence punishable u/s 498A of IPC or section 506 of IPC is made out against the applicants on the basis of the evidence collected by the investigation officer.

9. As discussed above, after coming from USA, the complainant never resided at Delhi. It is not at all established that any telephone call was done by the applicants from Delhi to Bhopal after her return. On the contrary, it would be apparent that a litigation for divorce was going on between the complainant and her husband and therefore, there was no possibility from the side of the applicants to demand any amount etc. from the complainant during the pendency of the divorce application or thereafter. The complainant had lodged a vague FIR in that respect. The complainant could not establish that any telephone call was done by the applicants after her return from USA and she made vague allegations relating to those calls. However, by such vague allegations, it cannot be accepted that the applicants made telephone calls regarding dowry demand or threatening. As discussed above, there was no possibility of such calls to the complainant because when she came back, a litigation of divorce was pending at Ohio and it was in the knowledge of the applicants as well as the complainant. Under such circumstances, the complainant could not establish the harassment done by the applicants on the basis of dowry demand or otherwise done with her after her return from Ohio and therefore, prima facie no offence punishable u/s 498A or 506 of IPC is made out against the applicants either directly or with the help of section 34 of IPC. Similarly, no offence u/s 3/4 of Dowry Prohibition Act is made out against the applicants for the period when the complainant came back from Delhi till she lodged the FIR.

10. As discussed above, the complainant neither resided at Delhi after coming from USA, she did not visit her in-laws at Delhi during her stay at Ohio, USA and therefore, no alleged harassment has been done at Delhi. It is nowhere alleged that the applicants went to Bhopal to harass her and therefore, the cause of action, if any could arise then, it would have arisen at Delhi but, not at Bhopal. Initially, the Police Station Mahila Thana, Bhopal registered the case and thereafter, transferred it to Deputy Police Commissioner, South-west District, Sector No. 19 but, it was remanded back to the Police Station Mahila Thana, Bhopal. One deputy director prosecution gave his opinion vide letter dated 26.11.2009 that Police Station Mahila Thana, Bhopal had jurisdiction to entertain the case. However, an amendment in the Cr.P.C. was made in the year 1983 and section 198 of the Cr.P.C. was added that any person on behalf of the aggrieved can lodge FIR but, for the place of trial, the provisions u/s 177 of the Cr.P.C. would remain in force. Provisions of section 182(2) was modified that the wife

can make a complaint against her husband and others at her place of residence after the crime for offence under sections 494 and 495 of IPC but, no such provision is available for offence u/s 498A of IPC. Ordinarily enquiry or trial can be done before the Court in whose local jurisdiction crime was committed. It appears that the learned Deputy Director Prosecution, dealt with the case that before commencement of the marriage, the complainant alleged little harassment from the side of the applicants at Bhopal and therefore, he might have given such an opinion.

11. As discussed above, the alleged harassment done prior to 23.1.2007 is barred by limitation and offence is not of continuous nature and therefore, by the harassment done by the applicants at Bhopal, Police Station Mahila Thana, Bhopal does not get any jurisdiction to enquire the matter for the incidents, which never took place at Bhopal. In this connection, by the judgments passed by Hon"ble the Apex Court in case of Y. Abraham (supra) and Bhura Ram (supra), it would be apparent that after return of the complainant to Bhopal, no crime was committed at Bhopal. Neither, the Police Station Mahila Thana, Bhopal had any jurisdiction to investigate the matter, nor the concerned Magistrate has any jurisdiction to try the case and therefore, the contention advanced by the learned counsel for the applicants is acceptable that the trial Court has no jurisdiction to try the case for the offence which did not take place at Bhopal.

12. On the basis of the aforesaid discussion, it would be apparent that the allegations made by the complainant prior to her visit to USA are barred by limitation. There is no cognate evidence that the applicant No. 1 dealt the complainant with cruelty at Ohio and it is nowhere established that after return of the complainant to Bhopal, the applicants harassed her for dowry demand etc. and therefore, FIR is nothing but, a counter blast to the proceedings lodged by the applicant No. 1 to get divorce from the complainant at Ohio. Prima facie no offence is made out against the applicants. Also, the police station Mahila Thana, Bhopal as well as the Magisterial Court at Bhopal has no jurisdiction to try the case for want of territorial jurisdiction and therefore, it is a good case in which inherent powers of this Court can be exercised and registration of crime may be quashed.

13. On the basis of the aforesaid discussion, the petition u/s 482 of the Cr.P.C. filed by the applicants Amitesh Tyagi, Varinder Tyagi and Suchitra Tyagi is hereby allowed. The registration of crime No. 9/2010 at Police Station Mahila Thana, Bhopal is hereby quashed. Consequently, the learned Judicial Magistrate cannot try the present case if charge-sheet is filed. If any case is pending then, the proceedings of that case is also quashed. A copy of the order be sent to the learned Chief Judicial Magistrate, Bhopal so that it may be provided to the concerned magistrate who has the jurisdiction of Police Station Mahila Thana, Bhopal in the year 2010.