

(2015) 02 KAR CK 0151

In the Karnataka High Court

Case No : Criminal Petition No. 101125/2014

Ankush Gupta and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 153(3), 156, 156(3), 170, 177

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 149, 307, 323, 324, 326

Citation : (2015) 02 KAR CK 0151

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : S.B. Malagoudar, Advocate, for the Appellant; K.S. Patil, High Court Govt. Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Rathnakala, J.—Though the matter is listed for admission, by consent it is taken up for final disposal.

2. This petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings arising out of a private complaint in P.C. No. 140/2014 including the proceedings of Gandhinagar Police Station, Bellary District in Crime No. 129/2014 arising out of the private complaint in respect of the offence punishable under Section 498A , 307 , 323 , 324 , 326 and 4 of Dowry Prohibition Act, so far as petitioners are concerned.

3. The facts succinctly stated, the first petitioner herein is the legally wedded husband of second respondent Smt. Rakhi Mittal having married for about 12 years and they have two issues from the marriage. The marriage was celebrated at Bellary and the parties resided together at Delhi, where the husband was working. On the relationship between the spouse getting stained, the husband filed a petition for divorce before the Family Court at Bellary. The wife returned to her parental home and she filed a private complaint under Section 200 of Cr.P.C.

against her husband, in laws and kith and km of her husband and some common friends on the allegation of the offence punishable under Section 498A , 307 , 323 , 324 , 326 , 354 , 504 , 506 read with Section 149 of IPC and Section 3 and 4 of Dowry Prohibition Act. On presentation of the complaint, learned Magistrate referred the matter for police investigation under Section 156(3) of Cr.P.C and consequently, the respondent-Police have registered the case in their Crime No. 129/2014. Aggrieved by the said reference, the petitioners who are the husband and laws of the complainant/wife are before this Court.

4. Learned counsel for the petitioners submits that for the last 12 years the family of the first petitioner, the complainant and the children were residing at Delhi. No cause of action arose at Bellary for the wife to file private complaint before the Court. As many as 17 persons are arrayed as accused persons in her complaint, without there being any specific overt act or allegation against them. The major offence alleged in the complaint is under Section 307 of IPC for which, there is no documentary proof The complaint lacks merits and unnecessarily the petitioners are dragged to this litigation. This complaint is filed to counter blast the matrimonial proceedings pending before the Family Court, Bellary. Learned counsel relies on the judgment of the Apex Court in the case of Y. Abraham Ajit v. Inspector of Police, Chennai reported in SCC 2004(8) 108 wherein the relevant para 7 and 8 read thus:

"7. 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.

It is settled law 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 a 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.

8. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

The expression "cause of action" has sometimes been employed to convey the

restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf."

5. Learned counsel further submits that the case on hand is identical with that of the issues dealt by the Apex Court in the above said case. The Magistrate had no authority to deal with the private complaint lodged by the wife in the absence of territorial jurisdiction and also when the complaint prima facie did not reveal any commission of offence as alleged. The said principle was reiterated in the matter of Bhura Ram and Others Vs. State of Rajasthan and Another, Learned counsel further adds to his submission that the married daughter and son-in-law of the family i.e., 4th and 5th petitioners herein are also not spared and are dragged to this case to malign their reputation and to harass them under the guise of this private complaint. Learned counsel referring the judgment of the APEX COURT in the matter of Preethi Gupta v. State of Jharkhand reported in AIR (SCW) 2010 PAGE 4975 wherein the Apex Court came down heavily on the cognizance taken by the Magistrate on a complaint filed by the wife against sister-in-laws who were not residing under the same roof with her, submits that the complaint lodged by the wife herein also deserves to be deplored for the very same reason as observed by the Apex Court. At paragraphs 15 and 16 which the relevant lines from the judgment of the Apex Court reads thus:

"15. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided

would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

"16. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

6. On the above submission, the private complaint and consequential investigation are sought to be quashed.

7. In reply, learned Government Pleader submits that case is at precognizance stage. The authority of the Investigating Officer to investigate the matter on the complaint is a part of his official duty which cannot be curtailed. At the stage of investigation, the complaint cannot be quashed only for the reason that part of the alleged offence has taken place at Bellary.

8. Learned counsel for the second respondent submits that on a plain reading of the complaint, there is categorical averments about the indulgence of all the accused persons in the alleged offence. Addressing the contention of territorial jurisdiction taken by the learned counsel for the petitioners, he submits that there is narration at paragraphs Nos. 11 and 12 of the complaint about the occurrence of the incident at Bellary for the offence under Section 177 of Cr.P.C. If the Investigating Officer the matter and finds that no offence as alleged has occurred within the limits of respondent-Police Station under Section 170 of Cr.P.C. he is obliged to transfer the investigation to the jurisdictional Magistrate concerned.

9. It is for the Investigating Officer to investigate the truthfulness or otherwise of the allegation made in the complaint, it is in his jurisdiction to submit the final report after completing investigation. The judgment of the Apex Court in *Y Abraham Ajit v. Inspector of Police, Chennai* and *Preethi Gupta v. State of Jharkhand* were of post cognizance stage and have no relevance to the facts on hand.

10. He placed reliance on the judgment of Apex Court reported in *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi)* and Another, , wherein, in a similar circumstances, the Apex Court held at paragraph 8 as follows:

"8. In our view, the submission made by the learned counsel for the appellant requires to be accepted. The limited question is whether the High Court was justified in quashing the FIR on the ground that Delhi Police Station did not have territorial jurisdiction to investigate the offence. From the discussion made by the learned Judge, it appears that learned Judge has considered the provisions applicable for criminal trial. The High Court arrived at the conclusion by appreciating the allegation made by the parties that the S.H.O., Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction to entertain and investigate the F.I.R. lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala and that the alleged cause of action for the offence punishable under Section 498 A.I.P.C. arose at Patiala. In our view, the findings given by the High Court are, on the face of it, illegal and erroneous because:

(1) The S.H.O. has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an F.I.R. is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the Investigating Officer has no territorial jurisdiction.

(3) After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence".

11. In the light, of the above, the submission is, mere investigation of the matter in no way prejudice the petitioners over and again, it has been held by judicial pronouncements that quashing the complaint on the threshold should be sparingly done.

12. Having heard the rival submission, the sole point that arise for my consideration is:

"Whether there are valid grounds to quash the private complaint filed by the second respondent wife and the consequent investigation?".

13. Without going to the merits, truthfulness or otherwise of the complaint, it is to be noted that the learned Magistrate on presentation of the complaint, had simply referred the matter for investigation.

14. Though it is not the statutory requirement under Section 153(3) of Cr.P.C., that the Magistrate referring the matter for investigation has to convince himself about the veracity of the complaint averments, in the case on hand, on receipt of the complaint and after hearing the complainant, he has passed an order to the effect that the averments and the allegation made in the complaint discloses cognizable offence. That suggests, before referring the matter for investigation, the learned Magistrate has not acted mechanically, how far his satisfaction is correct is a different aspect of the matter. However, it is evident that the learned Magistrate on application of his mind has referred the matter for investigation and he has not taken cognizance.

15. The grievance of the respondents herein about including unconcerned persons in the complaint and filing a complaint at a distant place from the place of occurrence etc. are the matters now which are within the regime of the Investigating Officer to probe into. At least, there is some allegation in the complaint about the untoward incident that occurred within the jurisdiction of the concerned Magistrate Court at Bellary. That being so, it cannot be said that the act of the Magistrate in receiving the complaint and referring the matter for investigation was beyond his jurisdiction.

16. Other contentions raised by the petitioners in respect of the factual aspect of the complaint can be urged by them, before the Investigating Officer to convince him that the complaint averments are not true. Within the scope of the present petition and with the available materials on hand, it is not possible to hold an enquiry about the merits of the allegations made in the complaint. It is for the Investigating Officer, after investigation, to come to conclusion about the allegations made and also about the proper Court having territorial jurisdiction submit charge sheet to the concerned Court.

With this observation, this petition is disposed of.