

(2010) 12 CAL CK 0018
In the Calcutta High Court
Case No : C.R.R .1877 of 2009

Barun Banerjee and Another

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 179, 181, 181(4), 93
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 24
Penal Code, 1860 (IPC) — Section 120B, 406, 498A, 506

Citation : (2011) 2 Crimes 565 : (2011) 2 DMC 441

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : Joymalya Bagchi and Avishek Sinha, for the Appellant; Satyajit Talukdar and Pushpal Satpati, for the Respondent

Final Decision : Allowed

Judgement

Syamal Kanti Chakrabarti, J.—In the instant revisional application the legality and propriety of the proceeding in C.R. Case No. 1049 of 2007 u/s 406/120B Indian Penal Code and order passed therein dated 04.10.2007 now pending before the Learned Judicial Magistrate, 2nd Court, Siliguri has been called in question with prayer for quashing of the same.

2. Both the Petitioners contend that the Petitioner No. 1 is the father-in-law of the defacto complainant, i.e., the opposite party No. 2 and the Petitioner No. 2 is her mother-in-law. Their son was married to OP No. 2 on 22.11.2004 in accordance with Hindu rites and customs and after marriage they led conjugal life at the place of vocation of his son Som Sankar Banerjee at Mumbai. In the month of June 2005 his son was transferred to Bangalore where the OP No. 2 used to reside with him. On 23.02.2006 the OP No. 2 left her matrimonial home at Bangalore with her belongings along with her mother and brother and their attempt to bring her back was proved to be abortive. His son lodged a G.R. Entry with the local police station in January, 2007. Subsequently the OP No. 2 filed a

written complaint on 03.08.2007 with the Kotwali Police Station alleging of commission of offence u/s 498A Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act against the present Petitioners and five others which was registered under Kotwali Police Station Case No. 341/07 dated 03.08.2007. After completion of investigation charge sheet was submitted in that case on 26.09.2007 against all the accused persons. Thereafter on 03.10.2007 the OP No. 2 filed another complainant before the Court of Learned Additional Chief Judicial Magistrate, Siliguri against the present Petitioners and their son for commission of offences u/s 406 of the Indian Penal Code alleging, inter alia, that OP No. 2 entrusted her Stridhan property with the son of the Petitioners and at the time of leaving her matrimonial home the son of the Petitioners did not allow her to take back her Stridhan property being encouraged by his parents. By order dated 03.10.2007 the Learned Additional Chief Judicial Magistrate, Siliguri took cognisance of the offence and transferred the same to the 2nd Court of Learned Judicial Magistrate, Siliguri. On prayer of the complainant the learned transferee Court issued a search warrant on 21.11.2007 u/s 93 Code of Criminal Procedure. for recovery of her Stridhan articles from the Bangalore residence of the son of the Petitioner. On 01.03.2008 the Petitioners herein and their son surrendered before the Learned Court concerned and were released on bail. The OP No. 2 subsequently also filed an application u/s 125 Code of Criminal Procedure being M.R. Case No. 73/07 before the Learned Additional Chief Judicial magistrate, Siliguri who was pleased to grant an interim maintenance allowance at the rate of Rs. 15,000/per mensem which was subsequently reduced to Rs. 9,000/- by an interim order passed by this Hon"ble Court and the matter is still sub judice. The OP No. 2 also filed a matrimonial suit being Matrimonial Suit No. 177 of 2007 before the Court of the Learned District Judge, Darjeeling seeking dissolution of their marriage and permanent alimony of Rs. 70,00,000/- with an application u/s 24 of the Hindu Marriage Act seeking alimony pendent lite at the rate of Rs. 25,000/- per mensem.

3. It is the specific case of the Petitioners that in the first complaint lodged u/s 498A Indian Penal Code and Section 3/4 of the Dowry Prevention Act there was no allegation of retention of the Stridhan property by them and after a long lapse of time by instituting another case the OP No. 2 purposefully and motivatedly introduced the story of unlawful retention fo Stridhan property for harassment of the present Petitioners who are all senior citizens. Under the circumstances they have prayed for quashing the said proceeding being case No. 1049 of 2007 u/s 498A/406 Indian Penal Code and all orders passed therein including order dated 03.10.2007. Learned lawyer for O.P. No. 2 has opposed the move and contended that the complaint u/s 406 Indian Penal Code has been lodged according to law and the aggrieved party may claim for return of her Stridhan property from the place of her residence where she wants return of the same. Learned lawyer for the State also supported such contention and further contended that the question of jurisdiction should be taken at the Court of first instance and the same cannot be called in question in revision.

4. Considering the rival contention of the parties present I hold that only point to be decided in this case is the legality and propriety of the jurisdiction imbibed by the Learned Trial Court in order to exercise the powers u/s 93 Code of Criminal Procedure. in granting search warrant for recovery of the retained Stridhan property.

5. Mr. Joymalya Bagchi, Learned Lawyer for the Petitioner has contended that in the petition of complaint there was no whisper of entrustment of the property to the present Petitioners. He has drawn my pointed attention to the averment of the OP No. 2 made in paragraph 19 of her petition of complaint being C.R. Case No. 1047 of 2007 which is quoted below:

That subsequently the accused No. 1 has been transferred to Bangalore and the complainant and the accused No. 1 started to live as wife and husband at Bangalore and the complainant has brought her all Stridhan Properties to Bangalore.

6. In paragraph 20 of the said complaint it is further alleged as follows:

The accused No. 1 had asked the mother and brother of the complainant to come at Bangalore and accordingly in the month of February, 2006 the mother and brother of the complainant went to Bangalore but the accused No. 1 has misbehaved with them by using filthy language and asked them to take back the complainant and thereafter on 16/02/2006 the accused No. 1 has driven out the complainant from his house though the complainant was ill and the complainant has been compelled to come in the house of her father at Haren Mukherjee Road, Hakimpara, P.O. & P.S. Siliguri, Dist. Darjeeling with her mother and brother after leaving her Stridhan properties at Bangalore and also leaving her different types of books, various sets of kitchen utensils, photo albums, camera, passport, different certificates etc.

In this connection Learned lawyer for the Petitioners has also drawn my attention to paragraphs 29, 31, 32 and 33 which are quoted below to show how there has been futile attempt to implicate both the parents-in-law in the alleged offences which are apparent on the face of record.

29) That during the period of conjugal life the complainant has entrusted her Stridhan Property as mentioned above with the accused No. 1 and at the time of leaving the house of the accused No. 1 the complainant did not allow to take back her Stridhan Properties.

31) That the accused No. 2 & 3 have also encouraged the accused No. 1 and asked him not to return back the Stridhan properties to the complainant.

32) That the accused No. 2 & 3 are also now residing at Bangalore with the accused No. 1 and all the accused persons have made conspiracy and they have been using the Stridhan properties of the complainant as their own and they have misappropriated the Stridhan properties of the complainant and committed breach of trust.

33) That all the Stridhan properties are lying in the above mentioned flat of the accused No. 1 at Bangalore but said Stridhan properties were required to be returned to the complainant at 18 Haren Mukherjee Road, Hakimpura, P.O. & P.S. Siliguri, Dist. Darjeeling.

7. Therefore, in the four corners of the petition of complaint the parents of the OP No. 2 were not implicated in any way in the matter of retention of her Stridhan property and the entire allegation is directed against the husband of the complainant at Bangalore where the present Petitioners neither lived nor stayed at the time of alleged offence of retention of Stridhan property. Therefore, the cause of action for filing the complaint u/s 406 Indian Penal Code obviously arose at Bangalore but the said complaint was lodged before the Learned Additional Chief Judicial Magistrate, Siliguri in the District of Darjeeling who has no jurisdiction to entertain such prayer.

8. From a copy of the order dated 04.10.2007 passed by the Learned Trial Court it appears that on examination of the complaint and another witness the Learned Court below was satisfied that a prima facie case has been made out u/s 120B and 406 Indian Penal Code against both the parents-in-law, i.e., the present two Petitioners and their son and as such issued Summons. It also appears from the order dated 21.11.2007 passed by the Learned Court below that in allowing the prayer u/s 93 Code of Criminal Procedure. for recovery of the retained Stridhan property the Learned Court below directed the Commissioner of Police of Bangalore and of Karnataka to take adequate steps and to make necessary arrangements to execute the search warrant in terms of the said petition u/s 93 Code of Criminal Procedure. by 28.03.2008 and to send the report by 13.05.2008.

9. In support of his contention Learned lawyer for the Petitioner has relied upon the principles laid down in:

- i) 2007 (7) Supreme 334 (All Cargo Movers (I) Pvt. Ltd. and Ors. v. Dhanesh Badarmal Jain and Anr.);
- ii) (2010) 1 SCC (Cri) 383 (Bhaskar Lal Sharma and Anr. v. Monica);
- iii) 1992 SCC (Cri) 636 (Chand Dhawan (Smt.) v. Jawahar Lal and Ors.);
- iv) (2010) 1 SCC (Cri) 286 (Neelu Chopra and Anr. v. Bharti);
- v) 2007 (8) Supreme 405 (Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr.);
- vi) 2002 (2) Supreme 487 (Rishi Anand and Anr. v. Government of N.C.T. of Delhi and Ors.);
- vii) 1998 SCC (Cri) 1400 (Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.) and
- viii) 2004 SCC (Cri) 2134 (Y. Abraham Ajith and Ors. v. Inspector of Police,

Chennai and Anr.).

10. Learned lawyer for the contesting opposite parties on the contrary has relied upon the principles laid down in:

i) (2007) 1 C Cr LR (Cal) 800 (Shipra Raj Roy v. The State of West Bengal and Anr.);

ii) Trisuns Chemical Industry Vs. Rajesh Agarwal and others,

iii) Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another,

iv) Rajesh Bajaj Vs. State NCT of Delhi and Others,

v) Joynab Mirza and Another Vs. State and Another, and

vi) Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others,

11. In 1998 SCC (Cri) 1400 the duty of the Magistrate taking cognisance of an offence has been clearly indicated by the Hon''ble Apex Court in the following terms:

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

12. It is further clarified by the Hon''ble Apex Court in (2010) 1 SCC (Cri) 286 that in order to lodge a proper complaint, mere mention of the sections and the language of the sections is not the be all and end all of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused in the commission of that offence.

13. Learned lawyer for the contesting opposite party on the contrary has argued that as per Sub-section (4) of Section 181 Code of Criminal Procedure. the deserted wife is entitled to make a prayer for return of her Stridhan property at the place of her present residence and for this purpose the cause of action will be treated as arose at the place where she has claimed return of the same. In the instant case though averment was made to the effect that her husband retained all her Stridhan property at Bangalore and driven her out retaining the same, she

can very well claim return of the same at her residence at Siliguri within the district of Darjeeling. In connection with this he has relied upon the principle laid down in Joynab Mirza and Another Vs. State and Another,) in support of his contention. Learned lawyer for the Petitioner on the contrary has drawn my attention to another case of this Hon''ble Court reported in (2007) 1 C Cr LR (Cal) 800 (Shipra Raj Roy v. The State of West Bengal and Anr.).

14. The views of both the Single Bench decisions are thus referred to by the contesting parties. In the case of Joynab Mirza and Another Vs. State and Another, , by order dated 28.09.2004 the Hon''ble Single Judge held inter alia, "although the offences were committed by the Petitioners at Aligarh, state of U.P., the consequence ensued at Brahamarigram, P.S. Labpur, District Birbhum, West Bengal because the complainant and her daughter being frightened had to leave Aligarh under compulsion to save their life. Thus, in view of Section 179 Code of Criminal Procedure. and the facts and circumstances disclosed in the case, it can be concluded that Sub-Divisional Judicial Magistrate, Bolepur, District - Birbhum has jurisdiction to try the case against the Petitioner u/s 498A/506 Indian Penal Code". Therefore, from the ratio of this judgement it will appear that this Hon''ble Court has taken into account the place where the consequence of torture ensued in determining the jurisdiction of this Court in taking cognisance of such offence.

15. But in a later judgement in the case of Shipra Raj Roy v. The State of West Bengal and Anr. reported in (2007) 1 C Cr LR (Cal) 800 same type of matter was dealt with by the another Hon''ble Single Bench and it has been decided therein that any case of such nature which discloses that the entire incident or the cause of action arose at Mumbai, the aid of Section 179, 181(4) of the code cannot be invoked for the exercise of jurisdiction of the Court of the Learned Magistrate at Durgapur for the purpose of investigation and trial. Entire elements of Section 498A Indian Penal Code, if any, as well as Section 406 Indian Penal Code, if any, occurred within the jurisdiction of Mumbai Court. If jurisdiction of Durgapur Court is invoked with the aid of Section 179 and 181(4) of the Code it would have far reaching consequence. Anybody in order to harass a person may lodge a complaint in any part of this vast country, if it is construed that provisions of Section 179 and 181(4) of the Code empowers a Magistrate of a particular area in the matter of investigation and trial though, in fact, the entire incident took place in a different area beyond the territorial jurisdiction of the said Magistrate.

16. From the above different views of two different Hon''ble Judges over the same issue what appears to me is that in 2007 (1) Cr. LR (Cal) 800 the provisions of Section 179, 181(4) and 184 Code of Criminal Procedure. were taken into consideration for the purpose of harmonious construction but at the time of conclusion the probable meaning and extent of the proviso to Section 181(4) has not been taken into account. This is contrary to the principles of harmonious construction. Where different provisions of the Code deals with identical matters on different context, to give effect to the intention of the

legislature each and every provision should be interpreted in a way so that it gives full vent to the legislative intent contained in each provision otherwise the existence of such provision will be at stake will not serve the purpose for which it has been made by the legislature.

17. In Clause 4 of Section 181 Code of Criminal Procedure. it has been clearly stipulated:

Section 181(4) - Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

Similarly, Section 179 Code of Criminal Procedure. reads as follows:

Section 179 - Offence triable where act is done or consequence ensues. - When an act is an offence by reason of anything which has been done and of a consequence which has ensued, 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.

18. In the instant case the complainant has prayed for return of her Stridhan at the place of her present residence. Therefore, Clause 4 of Section 181 should be liberally interpreted so as to give full effect to the legislative intent of Section 179 Code of Criminal Procedure. which confers jurisdiction of the Court under which consequence ensued. In the earlier case of Joynab Mirza and Another Vs. State and Another, this aspect was liberally looked into and the Learned Single Judge while considering the identical matter has taken into account the place where the consequence of alleged torture ensued and thereby allowed the prosecution to be continued at Bolpore, District Birbhum though the alleged torture did take place at Aligarh U.P. Therefore, I am tempted to rely upon the aforesaid principle which is based on liberal construction of all the provisions dealing with the matter regard being had to the legislative intent and social object of protecting the deserted wife who wants to survive with her Stridhan.

19. Therefore, in the present facts and circumstances I hold that the Sub-Section 4 of Section 181 read with Section 179 Code of Criminal Procedure. confers jurisdiction upon the Learned Trial Court to take cognisance of the offence u/s 498A/406 Indian Penal Code at Siliguri where consequence arose though the Stridhan property was retained at Bangalore.

20. Then comes the question whether a prima facie case has been made out against both the Petitioners herein. Learned lawyer for the Petitioner has already drawn my attention to paragraph Nos. 9, 19 and 29 of the petition of complaint which are quoted below to establish the sequence of events at the cost of repetition.

9. That after expiry of about a month, the accused No. 1 has brought the

complainant in Mumbai as the accused No. 1 was posted in Mumbai at that point of time and the complainant went to Mumbai with accused No. 1 and she has brought her Stridhan Properties in Mumbai and during the period of stay in Mumbai, the father-in-law and mother-in-law of the complainant have abused filthy language towards the complainant over telephone and also told that they will not allow the complainant to live with the Respondent if the father of the complainant will not pay Rs. 3,00,000/- and 40 Bhories gold.

19. That subsequently the accused No. 1 has been transferred to Bangalore and the complainant and the accused No. 1 started to live as wife and husband at Bangalore and the complainant has brought her all Stridhan Properties to Bangalore.

29. That during the period of conjugal life the complainant has entrusted her Stridhan Property as mentioned above with the accused No. 1 and at the time of leaving the house of the accused No. 1 the complainant did not allow to take back her Stridhan Properties.

From the above it will appear that the allegation is directed solely against the accused No. 1 Som Sankar Banerjee, husband of the complainant and not against her father-in-law and mother-in-law.

21. From the four-corners of the petition of complainant also I do not find any specific allegation of retention of the Stridhan Properties by the present Petitioners. Unless the petition of complaint disclosed any cognizable offence the Court cannot take any cognisance. It has been set at rest in (2010) 1 SCC (Cri) 286 (paragraph 9) that in order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. In the present complaint the complainant has failed to state the overt act and role played by the present Petitioners in the alleged offence of retention of her Stridhan.

22. Therefore, I hold that prosecution of the present Petitioner who are senior citizens for commission of the offence u/s 406/120B Indian Penal Code will be mere an abuse of the process of law and to prevent it the aforesaid proceedings against both the Petitioners is not sustainable in law and is hereby quashed but the case shall proceed against the rest as per law.

23. Urgent photostat certified copy of this order, if applied for, be supplied to the respective parties, upon compliance of all requisite formalities.