

(2015) 10 CAL CK 0033
In the Calcutta High Court
Case No : C.R.R. No. 1572 of 2011

Basanti Ghosh and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 178(c), 179, 180
Penal Code, 1860 (IPC) — Section 406, 498, 498A

Citation : (2015) 10 CAL CK 0033

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Sandipan Ganguly, Soumapriyo Choudhury and Arnab Sinha, for the Appellant; Amartya Ghosh, for the Respondent

Final Decision : Partly Allowed

Judgement

Siddhartha Chattopadhyay, J.—This is an application under Section 482 of the Code of Criminal Procedure 1973 filed by the accused petitioners for quashing of proceedings in G.R. Case No. 242 of 2010 pending before the Learned A.C.J.M. Bidhannagar, North 24 Parganas, arising out of Bidhannagar (South) Police Station Case No. 57 of 2010 dated 23.04.2010 under Sections 498A /406 of the Indian Penal Code, including orders dated 18.06.2010 and 11.11.2010.

2. In the said application, the petitioners have ventilated their grievances contending inter alia that the Petitioner No. 1 was the mother-in-law and the Petitioner No. 2 was the husband of the Opposite Party No. 2. The Petitioner No. 1 has been suffering from various ailments associated with geriatric disease. The Petitioner No. 2 is a resident of United States of America and for the purpose of his service he has been residing there. He has admitted that his marriage was held with the Opposite Party No. 2 on 06.05.2007 under the Special Marriage Act. At the relevant point of time he himself and his wife (Opposite Party No. 2) were gainfully employed into two different multi-national companies. Initially they resided at Hyderabad and thereafter he was shifted to United State of

America for his job. While he was residing at America with the Opposite Party No. 2, he had experienced that his wife picked up quarrels with him at a regular interval and lastly the Opposite Party No. 2 returned to India in February 2009. After returning from United States of America, the Opposite Party No. 2 went to her paternal house and never kept any contact with him. The Petitioner No. 1 had no control over the marital life of the Petitioner No. 2 and Opposite Party No. 2 at any point of time. As a couple they resided at United States of America for a very short period. On 6th June, 2009 the Opposite Party No. 2 filed a divorce suit against the present Petitioner No. 2 before the Learned District Judge at Barasat, North 24 Parganas being Matrimonial Suit No. 937 of 2009 which was transferred to the Court of Learned Additional District Judge, Fast Track, 2nd Court, at Barasat and renumbered as Mat Suit No. 90 of 2009 but finally the suit was renumbered as Mat Suit No. 20 of 2010 and it was heard by the Learned Additional District Judge, 5th Court, at Barasat, North 24 Parganas. The said suit was decreed finally in favour of the Opposite Party No. 2 on 30.07.2010.

3. According to the petitioners on a bare perusal of the averments made in the plaint in the aforesaid case it will reveal that all the conflicts and disputes arose between the couple took place outside West Bengal and there was no cause of action in Bidhannagar. They further contended that after a few months from filing of the suit for divorce, the Opposite Party No. 2 with an ulterior motive caused harassment and humiliation to the petitioners by falsely implicating them in a case under Section 498A /406 of the Indian Penal Code.

4. The main grievance against the Petitioner No. 1 was such that in spite of the fact that the petitioner No. 2 used to put torture upon the Opposite Party No. 2, the said Petitioner No. 1 (mother-in-law) never bothered about the agonies of the Opposite Party No. 2 rather she always lent support to her son. In the said written complaint she has categorically stated that before shifting to Hyderabad, the couple went for a pleasure trip at Sikkim where she was physically assaulted by her husband. While in United States of America, the Petitioner No. 2 used to torture her and at times it became extremely violent and she was kept confined in a room in order to prevent her from being in touch with her parents. However in one occasion she has managed to ring up the emergency number 911 and at this time the police of United States of America reached their apartment to apprehend her husband, but the Opposite Party No. 2 requested the police not to arrest her husband under an assumption that Petitioner No. 2 may change his mind. But as the act of violence continued for a long time she had made contact with one David and lodged FIR with the local police station and this time police had cautioned the husband Petitioner No. 2. Not only that, the de facto complainant took her husband to a marriage councillor but because of non-cooperation of Petitioner No. 2 said attempt failed. She was not given in any kind of financial assistance by her husband in cases of emergency and finally on 12.02.2009 she returned to India in order to save her life.

5. According to the petitioners, the allegation levelled in the complaint, even if

given its face value, the same would not make out any case either under Section 498 or 406 of the Indian Penal Code. He categorically stated that the act of the Petitioner No. 1 or 2 do not fall under the category "cruelty" as provided under Section 498A of the Indian Penal Code. There being no allegation of any entrustment of article of property belonging to the Opposite Party No. 2 and subsequent denial on the part of the petitioners to return the said property on demand. As a result, according to them, no case under Section 406 has been made out. Besides that, all the telephone calls allegedly called by the Petitioner No. 2, to the Opposite Party No. 2 were received by her either in Hyderabad or in United States of America and therefore there is no jurisdiction to entertain such FIR.

6. Finally they submitted that the case under Section 498A /406 of the Indian Penal Code is not at all maintainable due to lack of jurisdiction and there is no ingredient of Section 498A and 406 of the Indian Penal Code.

7. Learned Counsel appearing on behalf of the Opposite Party No. 2 wanted to show the other side of the shield. According to him, since Section 498A is a continuing offence so the question of jurisdiction does not arise. He also contended that there is every material regarding the offence under Section 406 of the Indian Penal Code. He also submitted that whether element of 498A /406 of the Indian Penal Code is there or not that can be ascertained only after a full-fledged trial and not at this initial stage.

8. He also contended that if any act is committed within more places, in that case, the case can be filed at any of such places where the cause of action arose. He has finally concluded by saying that there is no reason to quash the proceedings of the said case by this Court.

9. Now, I am to consider if the Learned Court below has any jurisdiction to try the case or not. For better appreciation I would like to quote Section 177 of Cr.P.C. which runs thus "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." The word "ordinarily" must be taken to mean except in the case provided hereinafter to the contrary. The word "ordinarily" appearing in Section 177 must be given its natural meaning. The provisions contending Section 178 and other provisions would be attracted when Section 177 cannot be given effect to. These provisions of the Court governing the field emanate from the doctrine that all crimes are local. Investigation into a crime, the witnesses who are required to be examined for the purpose of proving the offence and other relevant factors are required to be taken. In the instant case the de facto complainant is residing within the jurisdiction of Bidhannagar which is established from the cause title itself. The principal witnesses of this case are mainly family members of the de facto complainant. In any case it is not feasible for them to appear as a witness either at Hyderabad or at United States of America. If jurisdiction is questioned before the commencement of the trial the Court has to decide it before commencing the trial and Section 482 arises only after a decision is rendered by the Court. It is

however be remembered that the Court has to decide the question of jurisdiction with reference to the allegations and averments contained in the complaint or the charge. Section 407(1)(i) empowers the High Court to direct any offence to be inquired into or tried by any Court not qualified to try it under Sections 177 to 185 , but in other respect competent to inquire into or try of such offence. Therefore High Court will not interfere in its revisional jurisdiction and quash a complaint on the sole ground that the Magistrate who entertained the complaint had no territorial jurisdiction to try the offence. This apart, although the Section 177 Cr.P.C. lays down that every offence must be inquired into and tried by the Court within whose jurisdiction it was committed, still if the offence is inquired into or tried by Magistrate, who has no territorial jurisdiction over the place of offence it would be at most an irregularity which could be cured by Section 462 Cr.P.C.

10. Section 178(c) speaks "when an offence is a continuing one, and continues to be committed in more local areas then such offence can be tried by a Court having jurisdiction over any of such local areas. When the Magistrate is to take cognizance on the basis of complaint on the ground that at least some of the transactions constituting the offence have taken place under his jurisdiction, the Trial Court assumes that jurisdiction. At this stage there is no scope to ascertain whether the allegations are true or not.

11. Section 179 contemplates two things. The first is that the offender has done an act and second is that a consequence has followed from such act and the offender is being tried for the offence as a result of both the acts and the consequence, or in other words, the act by him does not by itself render him liable for the offence and that it is the act coupled with the consequence which constitutes the offence and makes him liable for it. The provisions of Section 179 /180 Cr.P.C. are wider enough to enable the Court to take cognizance where anything was done within the local limits of its jurisdiction, or a Court where the consequence ensued.

12. Learned Counsel appearing on behalf of the petitioner has relied on a decision reported in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, . Considering the judgment reported in Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, and State of Bihar Vs. Deokaran Nenshi and Another, , Hon"ble Apex Court held the crucial question is whether "any part of the cause of action arose within the jurisdiction of the Court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceeding against the accused." In that case factual aspect was such that no part of the cause of action arose within the jurisdiction of the Court concerned. Complaint itself disclosed that after 15.04.1997, the respondent left Nagercoil and came to Chennai and was staying there. All the allegations took place according to the complainant, at Nagercoil and therefore the Courts at Chennai did not have the jurisdiction to deal with the matter. Besides that, in that case an another complaint was lodged

previously by the complainant before the police official concerned having jurisdiction and after inquiry no action was deemed necessary.

13. In the instant case admittedly the parties had been residing at Hyderabad for some months and thereafter they went to United States of America where alleged physical torture was inflicted upon the Opposite Party No. 2 and even when she came back from United States of America to West Bengal, the Petitioner No. 2 threatened her over telephone. Therefore in my considered view that decision will not be applicable here as the factual aspect is totally different.

14. Learned Counsel also referred to a decision reported in Bhura Ram and Others Vs. State of Rajasthan and Another, . In that case Hon"ble Apex Court held that the charges were framed under Section 498A and 406 of the Indian Penal Code although complaint disclosed that the complainant had left the place where she was residing with her husband and in laws and was then residing in Shri Ganganagar and that all the alleged acts as per the complaint had taken place in the State of Punjab. But in the instant case alleged torture was perpetrated upon her at Sikkim, Hyderabad and United States of America.

15. It was argued that since the Petitioner No. 2 is a resident of United States of America and the alleged incident took place there so the Magistrate has lost its jurisdiction to try the offence.

16. Learned Counsel appearing on behalf of the petitioner has drawn my attention in regard to the decision reported in (2007) 1 C.Cr.L.R. Cal 800 wherein a single bench of this Court held that the entire incident or the cause of action arose at Mumbai, and therefore Section 179 , 181(4) and 184 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 Learned Single Judge also held that entire elements of Section 498A of the Indian Penal Code, if any, as well as Section 406 of the Indian Penal Code, if any, took place 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 consequences. Anybody in order to harass a person in any part of this vast country can file a case at any place. It cannot be construed that provision of Section 179 and 181(4) of the Code empowers a magistrate of 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 Learned Magistrate.

17. Learned Counsel appearing on behalf of the petitioner referring those judgments contended that there is lack of territorial jurisdiction in the instant case and for that reason the F.I.R. is required to be quashed.

18. At the time of argument Learned Counsel appearing on behalf of the petitioner has further submitted that there is also lack of cause of action under Section 498A of the Indian Penal Code against the Petitioner No. 1. He has referred to a decision reported in Bhaskar Lal Sharma and Another Vs. Monica, . Referring that judgment Learned Counsel appearing on behalf of the petitioner

has contended that there is no element of Sections 498A and 406 of the Indian Penal Code so far as the accused Petitioner No. 1 (Basanti Ghosh) is concerned. On perusal of the FIR I find that neither there is any unlawful demand of dowry made by the accused Petitioner No. 1 nor there is any willful conduct on the part of the accused Petitioner No. 1 was of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. At the same time there was nothing on record that there was any entrustment of property to the accused Petitioner No. 1 or that she had refused to hand over on demand. Referring the decisions reported in Ramesh and Others Vs. State of Tamil Nadu, and Shakson Belthissor Vs. State of Kerala & Anr., he had argued that no case lies in fact against the Petitioner No. 1. After going through the FIR itself I am of the view that no allegation is prima facie exists against the Petitioner No. 1 in respect of the offence under Section 498A and 406 of the Indian Penal Code.

19. Learned Counsel also referred to decisions reported in connection with Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, and Bhaskarlal Sharma & Anr Vs. Monica. Learned Counsel appearing on behalf of the opposite party contended that if any material is there or not that cannot be adjudicated at this initial stage. The Court has to form a presumptive opinion as to existence of factual ingredients constituting offence alleged.

20. Learned Counsel appearing on behalf of the opposite party has cited a decision reported in Sunita Kumari Kashyap Vs. State of Bihar and Another, and contended that if any offence is a continuing offence committed in more local areas than one, then the said offence may be tried by a Court having jurisdiction over any such local area. While coming to that conclusion Hon"ble Apex Court considered the reported cases, on which the petitioner relied, i.e. Bhura Ram and Others Vs. State of Rajasthan and Another, and Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, . Distinguishing those decisions Hon"ble Apex Court this time held that if the offence was continuing one and consequence of continuing offence of harassment and ill-treatment is meted out to the complainant, Clause(c) of Section 178 will be attracted. In the instant case, I find that alleged torture was started from the very beginning i.e. from their honeymoon trip at Sikkim and continued to Hyderabad where they had resided for a limited period and also at United States of America where they had been for their employment. According to the complainant, she had to come back as she could not bear with the torture inflicted upon her and the said story of torture has been stated by her in the petition of complaint and even after coming back to the Calcutta she received threatening telephonic calls from her husband. Therefore, it is absolutely comes within the purview of continuing offence and therefore, in view of the decision of the Hon"ble Apex Court undoubtedly Clause(c) of Section 178 of the Code is attracted here.

21. Learned Counsel appearing on behalf of the petitioners had contended that there is no prima facie case to go to trial and for that reason it will be an abuse

of process of Court to allow the proceedings to go on. I am in respectful disagreement with him in view of the decisions reported in Sahebrao Bajirao vs. Suryabhan Ziblati and Another AIR 1948 251 (Nagpur) that if the complaint itself makes out a prima facie case to go to trial in that case proceeding should not be quashed.

22. After hearing a threadbare discussion over the decisions cited by the respective parties, I am of the view that so far as Section 498A of the Indian Penal Code is concerned it does not lie in respect of the Petitioner No. 1 because there is no whisper that the Petitioner No. 1 went to Sikkim, Hyderabad and United States of America. Petitioner No. 1 is an aged lady and the mother of the Petitioner No. 2. From the complaint itself it does not make out that she has tortured the victim (complainant) for demand of dowry or harassed her in such way as is likely to cause the complainant to commit suicide or to grave injury to her health. Only giving a support to her son does not come within the purview of Section 498A of the Indian Penal Code. At the same time there was no entrustment of property upon the Petitioner No. 1 and that the Petitioner No. 1 had refused to handover the same on demand. Therefore section of 406 of the Indian Penal Code and Section 498A of the Indian Penal Code do not lie in respect of Petitioner No. 1.

23. The Petitioner No. 2 is not entitled to get that benefit. Firstly, since 498A of the Indian Penal Code is a continuing offence so in view of the judgments reported in Sunita Kumari Kashyap Vs. State of Bihar and Another, and Sahebrao Bajirao vs. Suryabhan Ziblati and Another AIR 1948 251 (Nagpur) and as from United States of America the Petitioner No. 2 over telephone threatened the Opposite Party No. 2, when she is in West Bengal, obviously comes within the mischief of Section 498A of the Indian Penal Code.

24. This apart, while she came back she received threatening telephonic call from her husband. Therefore, at this stage without taking evidence it cannot be said that Learned A.C.J.M., Salt Lake does not have any jurisdiction.

25. We are armed with the decision reported in connection with Om Hemrajani Vs. State of U.P. and Another, wherein Hon'ble Apex Court relying on the decision of Sahebrao Bajirao vs. Suryabhan Ziblati and Another AIR 1948 251 (Nagpur) authored by Justice Vivian Bose) held that the scheme underlying Section 188 is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired into and tried by any Court that may be approached by the victim. The victim who has suffered at the hands of the accused on a foreign land can complain about the offence to a Court, otherwise competent, which he may find convenient. The convenience is of the victim and not that of the accused. It is not the requirement of Section 188 that the victim shall state in the complaint as to which place the accused may be found. It is enough to allege that the accused may be found in India. The Court where the complaint is filed and the accused either appears voluntarily

pursuant to issue of process or is brought before it involuntarily in execution of warrant would be the competent Court within the meaning of Section 188 of the Code as that Court would find the accused before him when he appears. The section deems the offence to be committed within the jurisdiction of the Court where the accused may be found. If we consider the aforesaid sections in connection with the territorial jurisdiction and also the consequence which constitutes the offence and the relevant factors i.e. the witnesses where to be examined for the purpose of proving the offence then I have no hesitation to hold that the said Court has territorial jurisdiction to try the offence.

26. Learned Counsel appearing on behalf of the petitioner has also submitted that there is no ingredient of Section 498A of the Indian Penal Code. It is perhaps needless to say that the avowed object of Section 498A of the Indian Penal Code is to combat with the menace of "cruelty". Nevertheless the provisions should not be applied as a device to harass the accused. The object of Section 498A of the Indian Penal Code is to curb the vice of cruelty to woman by her husband. For effective adjudication I would like to quote Section 498A of the Indian Penal Code which speaks "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.-For the purposes of this section, "cruelty" means-(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person or her to meet such demand." It is true that on a bare perusal of the complaint petition it transpires that there was no harassment with a view to coercing her relating to any unlawful demand of any property or valuable security and therefore that part i.e. explanation (b) Section 498A of the Indian Penal Code does not attract here. It appears from the petition of complaint that the Petitioner No. 2 assaulted her by hot iron, kicked at her abdomen even when they were on a honeymoon trip at Sikkim, goes to suggest that prima facie there was danger to life or health as well as mental or physical torture. Therefore, it cannot be said, of course before taking evidence, that there is no danger to life or health whether mental or physical. So, in my considered view from the petition itself it appears to me that there is ingredients of Section 498A of the Indian Penal Code and accordingly the submission of the Learned Counsel appearing on behalf of the petitioner is not accepted. Learned Counsel appearing on behalf of the opposite party cited a decision reported in Sahebrao Bajirao vs. Suryabhan Ziblati and Another AIR 1948 251 (Nagpur) where the Hon'ble Apex Court held that complaint itself makes out a case to go to trial. It is during trial the husband will have to disprove the complainant's case.

27. It will not be out of place to mention that every decision is based on the facts of the case, which has been placed for judicial scrutiny. Decision of one case

cannot be mechanically applied in other case, if there is different facts and circumstances. It is also needless to say that fact of a case differs from another. In such circumstances, the duty of the Court is to take into account every minutest details, principles laid down by the Hon''ble Apex Court as well as parent High Court. Our main mission is to render justice to the litigant, otherwise existence of the last bulwark of the society will be at stake.

28. In the instant case, marriage was solemnized in Calcutta and there was no torture on demand of dowry and misappropriation in any way from the part of the Petitioner No. 1. After the marriage, the Petitioner No. 2 and Opposite Party No. 2 had been to Gangtok (Sikkim) for honeymoon. Obviously, the Opposite Party No. 2 dreamt of a rosy life but if the alleged assault really took place in the hotel, her dream for a rosy life might become a jinxed matrimony. However, in our tradition bound non-permissive society initially the bride does not like to divulge her agonies to law enforcing agency. They wait for some days under the impression that mind of the groom may likely to be changed.

29. After going through the materials on record I find that there is no prima face case under Section 498A and 406 of the Indian Penal Code in respect of the accused Petitioner No. 1. There is prima facie material against the husband Petitioner No. 2 under Section 498A and 406 of the Indian Penal Code. In view of the aforesaid discussions I have no hesitation to say that Learned A.C.J.M., Salt Lake, has a territorial jurisdiction to try the offence as alleged.

30. In the result, the petition under Section 482 of Cr.P.C. is allowed in part. The proceedings of G.R. Case No. 242 of 2010 is quashed in respect of accused Petitioner No. 1 (Basanti Ghosh) only.

31. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

32. Learned Court below is directed to take appropriate steps for expeditious trial.

33. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.