

(2005) 10 OHC CK 0041
In the Orissa High Court
Case No : CRLMC No. 2155 of 2005

Binod Kumar Agrawal

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(2), 170, 177, 178
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 307, 323, 34, 406, 498A

Citation : (2005) 10 OHC CK 0041

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Advocate : H.S. Mishra and R.K. Sarangi, for the Appellant; Addl. Standing Counsel, D. Panda, D.P. Dhal, G.R. Mohanty, A.K. Parida and A.K. Budhia (For informant), for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—This CRLMC arises out of a petition filed u/s 482 read with Sections 177, 188 and 407 of Code of Criminal Procedure wherein the Petitioner has sought for quashing the F.I.R. in Kesinga P.S. Case No. 59 of 2005 corresponding to G.R. case No. 287 of 2005 of the Court of S.D.J.M., Bhawanipatna or in the alternative, transfer of the said case to the Court of S.D.J.M., Titilagarh.

2. The nub of the facts, as per the F.I.R. giving rise to this CRLMC is that Sheetal Agrawal married Bikash Agrawal of Titilagarh in accordance with Hindu rites and their caste customs on 23.6.2004 at Visakhapatnam. Before solemnization of the marriage the bride groom, his parents and other relatives including the Petitioner demanded Rs. 25,000,001/-, one diamond set and jewellery with other household articles as dowry, but in keeping with his financial status the father of the bride gave Rs. 10,00,000/- a diamond set and jewellery with other household articles. At the time of marriage the husband, parent-in-law and the other family

members including the Petitioner expressed their displeasure because of less payment of dowry and insisted upon payment for the balance amount of Rs. 15,00,000/-. The parents of the bride expressed their inability to meet the said demand, but assured to give the same sometime thereafter. After the marriage was over Sheetal was brought to the matrimonial home at Titilagarh where her husband and his relations including the Petitioner started torturing her in many ways. She was forced to do all menial work as a maid servant. On 15.2.2005 Sheetal visited her parental house at Kesinga to attend the marriage ceremony of her brother. Her husband, father-in-law and their other relations also attended the said function. It is alleged that all of them renewed their demand of further dowry. However, the parents of Sheetal persuaded them not to ill-treat their daughter and agreed to comply with their demand after arranging the money. While Sheetal was at Titilagarh, on 3.5.2005 all of them asked her to talk with her parents over phone for payment of the balance amount of Rs. 15,00,000/- and when she expressed the inability of her parents to pay such a huge amount her in-laws asked her husband to finish her. At this Subash got furious and holding the tuft of her hair dragged her to the bedroom and throttled her to kill. He also pressed her mouth and nose with a pillow to kill her. Some how she managed to escape.

3. On 22.6.2005 Sheetal lodged a written report before the O.I.C. of Kesinga P.S. pursuant to which the aforesaid case was registered under Sections 498A/323/307/34 I.P.C. read with Section 4 of D.P. Act against Subash his parents and the Petitioner, his brother. The O.I.C. of Kesinga P.S. investigated into the case. Sometimes thereafter the H.R.P.C. took charge of investigation of the case, and one of its Inspectors at Cuttack being designated as Addl. C.I. of Kesinga P.S. was entrusted with the investigation of the case.

4. While the investigation is in progress, the present CRLMC has been filed by one of the accused to quash the F.I.R. on the ground that the O.I.C. of Kesinga P.S. or the H.R.P.C. Inspector who has been designated as the Addl. C.I. of the said P.S. has no territorial jurisdiction to investigate into the case since the occurrence took place at Titilagarh, or in the alternative to transfer the aforesaid G.R. Case along with the investigation to the Court of S.D.J.M., Titilagarh.

5. Learned Counsel appearing for the Petitioner submitted that as per Section 177 of Code of Criminal Procedure the F.I.R. ought to have been lodged before the O.I.C. of Titilagarh P.S. When it was lodged before the O.I.C. of Kesinga P.S. it was his duty to transfer the F.I.R. to the O.I.C. of Titilagarh P.S. When either of the two has not been done the F.I.R. should be quashed, or in the alternative the F.I.R. should be forwarded to Titilagarh P.S. In support of his submission he relied upon the decision in *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai* and Ors. 2004 Cr.L.J. 4180.

6. On the other hand, learned Addl. Standing Counsel submitted that the offence u/s 498(A) of I.P.C. is a continuing one. In the present case torture for non-fulfilment of demand of dowry was meted out to the informant not only at

Titilagarh alone, but also at Kesinga. So the case can be enquired into or tried either by the S.D.J.M., Bhawanipatna or the S.D.J.M. Titilagarh as per the provision contained u/s 178(c) of Code of Criminal Procedure. Consequently either the O.I.C. of Kesinga P.S. or the O.I.C. of Titilagarh P.S. can investigate into it. In support of his submission he relied on the decisions in Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, and Samit Francis and Ors. v. State of Orissa and Anr. (2003) 25 OCR 52.

7. Learned Addl. Standing counsel next submitted that the investigation of the case is still on its way. Investigation is the statutory function of the police. Court should not interfere with such investigation without compelling and justifiable reasons. So quashing of the F.I.R. or investigation at the very threshold is impermissible. In support of his submission he relied upon the decision in M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, . He further submitted that when investigation is in progress, F.I.R. cannot be quashed on the ground that the O.I.C. concerned has no territorial jurisdiction to investigate into the case. It cannot also be forwarded to Anr. Police Station at the investigation stage. In support of his submission he relied upon the decision in Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, . So, he pressed to dismiss the CRLMC.

8. In the case at hand since torture on the informant was meted out at Titilagarh and also at Kesinga and the torture taking place at Titilagarh is not an isolated event, but consequential to the series of incidents taken place at Titilagarh, Section 178(c) of Code of Criminal Procedure would squarely be attracted to the present case. Section 178(c) of the Code of Criminal Procedure reads as follows:

178. Place of inquiry or trial.-

(a) xx xx xx

(b) xx xx xx

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) xx xx xx,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

So, the case at hand can be enquired into or tried by the S.D.J.M., Bhawanipatna or the S.D.J.M., Titilagarh. Consequently, the O.I.C. of Titilagarh Police Station or that of Kesinga Police Station has territorial jurisdiction to investigate into the case. This view is fortified by the decision in the case of Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, cited by learned Addl. Standing Counsel, wherein the apex Court held:

We have taken into consideration the complaint filed by the Appellant and it appears to us that the complaint reveals a continuing offence of mal treatment

and humiliation meted out to the Appellant in the hands of all the accused-Respondents and in such continuing offence, on some occasions all the Respondents had taken part and on other occasion, one of the Respondents had taken part. Therefore, Clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted.

This Court has also taken a similar view in the case of *Samit Francis and Ors. v. State of Orissa and Anr.* (2003) 25 OCR 52. In that case the informant was threatened over phone when she was staying with her parents at Baripada. On 27.2.1999 Petitioner No. 1 therein arrived at Baripada and demanded payment of money towards dowry and also physically assaulted the informant. Earlier the informant was tortured for non-fulfilment of demand of dowry by the Petitioner at Bhubaneswar, Berhampur and Oman. So this Court held that the J.M.F.C., Baripada has also territorial jurisdiction to entertain the case instituted at the instance of the informant.

In the case of *Y. Abraham Ajith (supra)* cited on behalf of the Petitioner, the complainant filed C.C. No. 3532 of 2001 before the Court of XVIII Metropolitan Magistrate, Saidapet, which was forwarded to the O.I.C. of the local Police Station for investigation. After completion of investigation and submission of Charge Sheet under Sections 498(A)/406 of I.P.C., the accused therein challenged the territorial jurisdiction of the said Court on the ground that all the allegations of torture took place at Nagercoil and, therefore, the Court of XVIII Metropolitan Magistrate, Saidapet lacks territorial jurisdiction to try the said case. At that stage the apex Court held that the Court of XVIII Metropolitan Magistrate, Saidapet had no territorial jurisdiction to deal with the matter. Accordingly, the proceedings were quashed and it was directed to return the complaint to the complainant to file it before the appropriate Court. But in the present case both the Court of S.D.J.M., Bhawanipatna and Titilagarh have territorial jurisdiction to deal with the matter. Furthermore, while in the said decision the territorial jurisdiction of the Court of Saidapet was challenged after the submission of the Charge Sheet, in the case at hand it has been challenged while the investigation is in progress. So the aforesaid decision cited above on behalf of the Petitioner cannot be applicable to the present case. At this Stage learned Counsel for the Petitioner further submitted that in fact no cause of action arose at Kesinga, but just to lodge the F.I.R. before the O.I.C. of Kesinga P.S., with oblique motive at the bottom of the F.I.R. it has been alleged that demand of dowry by some of the accused persons was made at Kesinga. It is not the stage to scrutinize the correctness or otherwise of the F.I.R.

9. Even if it is held that no cause of action took place at Kesinga, still then the investigation of the case cannot be challenged at this stage on the ground of territorial jurisdiction in view of the provisions contained u/s 156(2) of Code of Criminal Procedure which reads as follows:

156. Police Officer's power to investigate cognizable cases (1) xxx

(2) No proceeding of a police officer in any such case, shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

In the case of M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, cited by the Addl. Standing Counsel, the apex Court has also held:

As repeatedly pointed out by various decisions of this Court that investigation into an offence is a statutory function of the police and the superintendence thereof is vested with the State Government and the Court is not justified without any compelling and justifiable reasons to interfere with the investigation.

In the decision Satvinder Kaur (supra) the apex Court again held as follows:

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 u/s 156 of the Code of Criminal Procedure 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 u/s 482 of the Code of Criminal Procedure 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 u/s 170 of the Code of Criminal Procedure and to forward the case to the Magistrate empowered to take cognizance of the offence.

In the case at hand if after conclusion of the investigation the designated Addl. C.I. of Kesinga Police Station finds that no cause of action arose within the territorial jurisdiction of Kesinga Police Station he shall forward the case to the Court of S.D.J.M., Titilagarh who is empowered to take cognizance of the offences.

In the result of the CRLMC stands dismissed.