

(2017) 04 DEL CK 0003

In the Delhi High Court

Case No : WP(Crl.) 241 of 2010, Crl. M.A. 2023 of 2010 and 10053 of 2011

Chaman Rani

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 406
Penal Code, 1860 (IPC) — Section 498A, Section 504, Section 506

Citation : (2017) 4 ADDelhi 428

Hon'ble Judges : Mr. R.K. Gauba, J.

Bench : Single Bench

Advocate : Ms. Geeta Luthra, Sr. Advocate with Ms. Shreya Singh, Advocate, for the Petitioner; Mr. Rajesh Mahajan, ASC, for the State; ASI Shri Ram, PS Hari Nagar, Advocates, for the Respondent No. 2; Sh. Soumitra Chatterjee and Ms. Sriparna Chatterjee, Advocates, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Mr. R.K. Gauba, J.—The first information report (FIR) no.337/09 was registered on 13.07.2009 at the instance of the third respondent in these proceedings alleging offences punishable under Sections 498A, 504 and 506 of the Indian Penal Code, 1860 (IPC), apparently on the basis of a complaint lodged under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr. PC), in police station Serampore District Hooghly, West Bengal under the directions of Additional Chief Judicial Magistrate (ACJM), Serampore, District Hooghly, in the State of West Bengal. It appears from the copy of the said FIR and the other documents on record that the third respondent, a native of district Hooghli in the State of West Bengal had, inter alia, claimed in her complaint that she had entered into a marriage with Sh. Prashant Meena, son of the first petitioner, according to vedic rites and customs on 10.02.2009 at a temple in New Delhi.

2. By the petition at hand, invoking criminal writ jurisdiction of this court under Article 226 of the Constitution of India, presented in February 2010, the

petitioners prayed for the above-said FIR to be quashed or, in the alternative, for a writ of mandamus to be issued directing the appropriate authority to transfer the said FIR from Kolkata (State of West Bengal) to the jurisdiction of appropriate court in New Delhi.

3. It may be mentioned here that the writ petition was presented for and on behalf of the six petitioners including the first petitioner, she being the mother of the person of whom the third respondent (the first informant of the case) claimed to be the lawfully wedded wife, others being their close relatives. On submissions made, at the instance of the third respondent on 07.07.2004, two of the original petitioners (Sunita and Gaurav) were, however, deleted from the array on the ground that the FIR was "not directed" against them. In terms of the amended memo of parties submitted on 04.08.2010, in the wake of the said order dated 07.07.2010, the petition has been pressed further by the remaining four original petitioners, the second petitioner (Arvind) and fourth petitioner (Renuka) being the other son and daughter of the first petitioner, they being siblings of Prashant Meena while the third petitioner (Seema), is wife of another son of the first petitioner.

4. Notice on the writ petition was issued by order dated 22.02.2010. It is noted that the additional standing counsel for the second respondent (Govt. of NCT of Delhi) appeared and accepted notice on the very first date, though it must be added that his presence was inadvertently wrongly recorded to be on behalf of the first respondent (State of West Bengal).

5. The matter essentially arises between the petitioners on one hand and the first and third respondents on the other. The third respondent filed a formal reply resisting the prayer made in the writ petition and the accompanying applications. After she had put in appearance, some efforts were made to explore the possibility of amicable settlement, inter alia, by referring the parties to mediation, though with no fruitful results.

6. Before filing the petition at hand, the petitioners had moved bail application (217/2010) in this court invoking Section 438 of the Cr. PC. The said application was granted by order dated 03.02.2010 in terms of which the petitioners were to be released, in the event of they being arrested, on interim bail for the specified period, subject to they furnishing personal bonds and surety bonds to the satisfaction of the arresting officer, taking note of their submission that they intended to approach the concerned court in the State of West Bengal. The interim bail was granted to enable the petitioners "to approach the competent court in the State of West Bengal for any appropriate relief which they think would be available to them in law". By a subsequent order dated 11.02.2010, this court extended the period of interim bail by two more weeks.

7. During the pendency of these proceedings, the petitioners approached the Calcutta High Court by moving an application under Section 438 Cr. PC (C.R.M. No.2945/2010) which came up for consideration before a division bench of the

said court. By order dated 08.04.2010, Calcutta High Court declined to entertain the said application under Section 438 Cr. PC and directed the petitioners to appear before ACJM, Serampore, District Hooghly, in the State of West Bengal, calling upon the said court to take an appropriate decision "keeping in view the fragile materials" against them and also suggesting their absence from the proceedings to be condoned, after their initial appearance, having regard to the fact that they would have to travel "all the way from Delhi".

8. It is the submission of the third respondent that the petitioners challenged the order dated 08.04.2010 of the High Court of Calcutta before the Supreme Court by filing a special leave petition (Crl.) no.22934/2010 but opted to withdraw the same seeking liberty to move the appropriate court for grant of order under Section 438 Cr. PC which request was granted. It is the submission of the petitioners that by subsequent order on another petition later moved, the Supreme Court granted relief in the nature of anticipatory bail to at least one of the petitioners (Renuka), the counsel being not aware about status of others.

9. It is fairly conceded by the learned senior counsel appearing for the petitioners that during the pendency of the proceedings at hand, the investigation into the FIR by the West Bengal police was concluded and a report under Section 173 Cr.PC has come to be filed in the court of ACJM, Serampore, District Hooghly, in the State of West Bengal. It was submitted on behalf of the third respondent, and conceded at the hearing by the learned senior counsel for the petitioners, that except for the fourth petitioner (Renuka), no other petitioner has appeared in the court of ACJM, Serampore, in the proceedings relating to the criminal case which has been registered on the basis of a report under Section 173 Cr. PC on which cognizance was taken and process issued by the said court. The senior counsel for the petitioners on being pointedly asked, expressed ignorance as to the status of appearance or bail for or in respect of the first, second or third petitioners, she adding that the question as to whether the petitioners have been appearing or not appearing should not be relevant for the proceedings at hand in this court. This position taken by the counsel representing all the petitioners cannot be accepted.

10. At the hearing, question of propriety of jurisdiction expected to be exercised by this court in this writ petition, particularly in the face of the fact that the charge-sheet has already been filed and the competent court of West Bengal has already taken cognizance and issued process and further in view of the alternative prayer for transfer of the case to a criminal court in New Delhi, came up for consideration. The learned senior counsel for the petitioners placed reliance on *Navinchandra N. Majithia v. State of Maharashtra and Ors.*, (2000) 7 SCC 640 and *Rajendra Ramchandra Kavalekar v. State of Maharashtra and Anr.*, (2009) 11 SCC 286 to argue that the fact that the FIR was registered in another State cannot be the sole criteria to take a decision on the contentions raised in the petition at hand. She referred to *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr.*, (2004) 8 SCC 100, *Bhura Ram and Ors. v. State of*

Rajasthan and Anr., (2008) 11 SCC 103 and Preeti Gupta and Anr. v. State of Jharkhand and Anr., (2010) 7 SCC 667 to argue that the facts set out in the FIR showing the acts alleged to have been committed so as to constitute the offences for which the petitioners are sought to be prosecuted primarily occurred within the territorial jurisdiction of this court, thereby submitting that it is appropriate that this court considers the contentions urged here to quash the proceedings since they are in the nature of abuse of the judicial process, the allegations of the third respondent being vague, absurd or inherently improbable not fulfilling the requisite ingredients of the prime offence under Section 498A IPC. In her attempt to raise issues concerning the merits of the case for prosecution brought before the court of ACJM, Serampore, District Hooghly, in the State of West Bengal, reliance is also placed on the view taken in R.P. Kapur v. State of Punjab, (1960) 3 SCR 388, State of Haryana and Ors. v. Bhajanlal and Ors., 1992 Supp (1) SCC 335, Chandralekha and Ors. v. State of Rajasthan and Anr., 2013 14 SCC 374, Anu Gill v. State and Anr., 2001 (59) DRJ 417, Neera Singh v. State, ILR (2007) 1 Delhi 691, Naresh Kumar and Ors. v. State, (2002) 61 DRJ 273, Bhaskar Lal Sharma and Anr. v. Monica, (2009) 10 SCC 604, Shakson Belthissor v. State of Kerala and Anr. (2009) 14 SCC 466, Onkar Nath Mishra and Ors. v. State (NCT, Delhi) and Anr., (2008) 2 SCC 561, Deepa Bajwa v. State & Ors, (2004) 77 DRJ 725, Neelu Chopra and Anr. v. Bharti, (2009) 10 SCC 184 and Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors., judgment dated 02.12.2010 passed in Crl. Appeal No.2271/2010.

11. There can be no quarrel with the legal propositions on the basis of which the learned senior counsel made her submissions. But the difficulty in continuation of these proceedings before this court stems from the subsequent developments wherein the West Bengal Police has already completed its investigation and has submitted its final report under Section 173 Cr. PC on which a competent criminal court in the State of West Bengal having the territorial jurisdiction over the crime registered by the police of State of West Bengal has already taken cognizance and issued process, as indeed from the position that questions of fact have also been raised by the writ petition which, in the given facts and circumstances, and the background, ought not be answered by this court sitting in writ jurisdiction. In the context of the last observation, by illustration, it need to be noted here that the petitioners dispute even the claim of the third respondent of she having married Prashant Meena, the son of the first petitioner. The questions as to whether the said son of the first petitioner had entered into a wedlock with the third respondent or further if she (the third respondent) was subjected to the alleged offences, particularly the offence of cruelty punishable under Section 498A IPC, would arise and need to be addressed by the competent criminal court, on the basis of evidence adduced, in accordance with law. In such proceedings, the questions as to whether or not some of the acts of commission or omission constituting such offences were committed or consequences thereof suffered within the territorial jurisdiction of the concerned court in the State of West Bengal or, to put it simply, whether the jurisdiction of the authorities in the

State of West Bengal has been properly invoked, would also need to be addressed.

12. In *State of Bihar and Anr. v. P.P. Sharma and Anr.*, AIR 1991 SC 1260, the Supreme Court referred to an earlier decision reported as *State of Bihar v. JAC Saldhana*, (1980) 2 SCR 16 observing that "when the information is lodged at the police station and an offence is registered, the malafides of the informant would be of secondary importance" and further that "it is the material collected during the investigation which decides the fate of the accused persons", holding "when the police report under Section 173 Cr. P.C. has been forwarded to the Magistrate after completion of the investigation and the material collected by the investigating officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction".

13. Similar is the view taken in the decision of the Supreme Court reported as *State of Punjab v. Dharam Vir Singh Jethi*, 1994 SCC (CrL.) 500, disapproving the order of the High Court quashing the FIR, though on the ground of delay, after filing of the charge-sheet, without applying its mind to the limitation prescribed in Cr. PC.

14. In the facts and circumstances, this court must refrain from making any comment on the merits of the criminal case brought before the court of ACJM at Serampore, District Hooghly, in the State of West Bengal, save and except to observe that it is for the said jurisdictional court to take an appropriate view on the basis of submissions made before it in accordance with law, the grounds sought to be agitated before this court being based on critique of the allegations in the FIR which, it is trite, is not expected to be a compendium of the entire set of facts, it being only the starting point of putting the criminal law into motion.

15. The petitioners had surrendered to the jurisdiction of the competent courts in the State of West Bengal, inter alia, by approaching the Calcutta High Court to seek the necessary reliefs. The order granted by the division bench of Calcutta High Court accorded the requisite protection to the petitioners even to the extent of calling upon the court of ACJM, Serampore, District Hooghly, in the State of West Bengal, not to insist on their personal presence provided, of course, that they are properly represented.

16. Since the court of ACJM, Serampore, District Hooghly, in the State of West Bengal, has issued process, it is only proper that the petitioners appear appropriately (may be through counsel) in the said court and raise all defences in fact, or law, as are available to them, including on the question of propriety of the territorial jurisdiction invoked by the third respondent. In the facts and circumstances, it would not be proper for this court to sit in judgment over the said issues which, it must be said, at the cost of repetition, include questions of facts - all the more so, because remedies before the superior courts in the State of West Bengal are available.

17. For transfer of a criminal case pending before the criminal court of competent jurisdiction in one State to another in different State, the power and jurisdiction of the Supreme Court, inter alia, under Section 406 Cr. PC, being available, it is inappropriate for this court to be exercising such jurisdiction at the present stage of the proceedings in the criminal case in the writ jurisdiction under Article 226 of the Constitution of India.

18. Thus, reserving all contentions of the petitioners concerning the merits of the criminal case, the writ petition with pending applications are disposed of giving liberty to the petitioners to approach the competent courts in the State of West Bengal to seek appropriate reliefs in accordance with law.