

(2013) 05 DEL CK 0068

In the Delhi High Court

Case No : Writ Petition (Criminal) 503 of 2013

Dr. Baljeet Singh

APPELLANT

Vs

State NCT of Delhi and Another

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 178, 179, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 178, 179, 34, 406, 498A

Citation : (2013) 8 AD 471 : (2013) 201 DLT 791 : (2013) 3 DMC 338

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Amarjet Sahni and Petitioner Alongwith Petitioner in Person, for the Appellant; Charu Dalal, Proxy for Mr. Saleem Dalal, ASC for State and IO/ASI K.L. Yadav, P.S. Krishna Nagar, Mr. B.P. Singh, for R-2, for the Respondent

Judgement

Pratibha Rani, J.

Crl. M.A. No. 4075/2013

1. Exemption allowed, subject to all just exceptions. Application stands disposed of.

W.P.(Crl.) No. 503/2013

2. This is a petition filed by the petitioner under Article 226 of the Constitution of India read with Section 482 Cr. P.C. seeking quashing of FIR No. 21/2013 u/s 498-A/406/34 IPC, PS Krishna Nagar, Delhi.

3. Notice.

4. Ms. Charu Dalal, Advocate, proxy for Mr. Saleem Ahmed, ASC accepts notice on behalf of State.

5. Heard.

6. In brief, the case of the petitioner is that he completed his MDS from Belgaum (Karnataka). The complainant was studying at Belgaum and he had a Court Marriage with her.

7. The marriage was formally solemnized on 15.10.2000 in Gurudwara in Ludhiana according to Sikh rites.

8. The marriage turned sour resulting into MOU dated 01.06.2011 whereby the dispute between the couple was settled finally.

9. However, with some malafide intentions, the complainant came from Ludhiana to Delhi and by making false and frivolous allegations, got FIR No. 21/2013 under Sections 498-A/406/34 IPC registered at PS Krishna Nagar. The petitioner obtained anticipatory bail from the Courts at Delhi.

10. Learned counsel for the petitioner is seeking quashing of FIR mainly on the ground that though the Court marriage in Belgaum was in the year 1998, but the marriage was formally solemnised in Gurudwara in Ludhiana according to Sikh rites, so the marriage took place about 13 years back and the parties lived in Ludhiana and the alleged cause of action had arisen in Ludhiana. It is further submitted that the complainant of case FIR No. 21/2013 u/s 498-A/406/34 IPC, PS Krishna Nagar has also filed various cases at Ludhiana and thereafter just to harass and humiliate the petitioner, who is a Doctor, she has got the FIR in question registered at Delhi. Learned counsel for the petitioner has also referred to the MOU dated 01.06.2011 between the parties submitting that in view of this settlement, nothing survived and deliberately there is no mention of this MOU by the complainant in the FIR.

11. The quashing of the FIR has also been prayed on the ground that not only the contents of FIR are false, even otherwise the Courts at Delhi have no territorial jurisdiction in the matter. Referring to the contents of FIR, he submitted that all the offences referred to in the FIR were allegedly committed in Ludhiana, hence Delhi Police had no jurisdiction to investigate the matter. Learned counsel for the petitioner has relied upon *Bhura Ram vs. State of Rajasthan* in CrI. A. No. 587/2008 decided on 02.04.2008 and *Sudhir Kapur & Ors. vs. State & Anr.* in CrI. M.A. No. 799/2009 decided on 10.08.2010 wherein in similar circumstances, FIR has been quashed by the Courts.

12. Learned counsel for the petitioner has further placed reliance on *Bimla Rawal & Ors. vs. State (NCT of Delhi) & Anr.* in W.P.(CrI.) No. 1541/2007 decided on 03.01.2008 wherein it was held that if, after registration of FIR and on scrutiny or investigation, it is found that crime was not committed within the jurisdiction of that Police Station but was committed within the jurisdiction of some other Police Station, the FIR should be transferred to that Police Station. However, if at the time of registration of FIR itself, it is apparent on the face of it that crime was committed outside the jurisdiction of the Police Station, the Police after registration of FIR should transfer the FIR to that Police Station for investigation. Normally a "Zero" FIR is registered by Police in such cases and after registration

of FIR, the FIR is transferred to the concerned Police Station.

13. On behalf of State, it has been submitted that part of the cause of action has arisen at Delhi also and matter is under investigation. It has been further submitted that in exercise of power under Article 226 of The Constitution of India read with Section 482 Cr. P.C., this Court should not quash the FIR especially when the investigation is at advance stage. On the aspect of territorial jurisdiction, it has been submitted that part of cause of action having been arisen at Delhi, the Delhi Police has the jurisdiction to investigate this case, hence Writ Petition may be dismissed.

14. First of all, I shall deal with the contentions of the petitioner that Delhi Police has no territorial jurisdiction to investigate FIR No. 21/2013 u/s 498-A/406/34 IPC, PS Krishna Nagar, Delhi. Perusal of the FIR shows that after referring to the various incidents of cruelty that took place in Ludhiana, the complainant has mentioned in the complaint that after the incident dated 31.05.2011, she came to Delhi with her parents and daughters on 02.06.2011. She has further stated in the complaint that thereafter her father and other relatives tried to resolve the dispute to save the matrimonial life but as she called the police while in Ludhiana at the time of incident dated 31.05.2011, not only she was threatened but also not permitted to return to her matrimonial home. She also apprehended threat to her life and that of her daughters and her parents at the hands of her husband and in-laws.

15. Recently, the issue of territorial jurisdiction in offences of continuing nature in matrimonial dispute arose before the Supreme Court in Sunita Kumari Kashyap Vs. State of Bihar and Another, . In Sunita Kumari Kashyap's case, which also pertaining to matrimonial dispute, the complainant/wife was residing in her matrimonial home at Ranchi where she was harassed and tortured and after giving birth to a girl child, circumstances became worse as her husband started demanding that the house belonging to her father in Gaya be given to him. Not only that she was also asked not to return to her matrimonial home at Ranchi till this demand was fulfilled. The complainant lodged FIR u/s 498-A/406/34 IPC at Gaya i.e. where she was living at her paternal home. The question that arose for consideration before Supreme Court was whether the Courts at Gaya, where the complainant was residing, had the territorial jurisdiction as the atrocities on her were allegedly committed at Ranchi at her matrimonial home.

16. When the matter came up before Judicial Magistrate at Gaya, the objections regarding territorial jurisdiction was rejected. However, the High Court of Judicature at Patna quashed the criminal proceedings holding that the proceedings at Gaya are not maintainable for lack of jurisdiction. The complainant preferred SLP before the Supreme Court. After considering the provisions of Section 498-A/406/34 IPC, Sections 3 and 4 of Dowry Prohibition Act and Sections 178 & 179 IPC, it was observed as under:-

7. Keeping the above provisions in mind, let us consider the allegations made in

the complaint. On 17.10.2007, Sunita Kumari Kashyap - the Appellant herein made a complaint to the Inspector In-charge, Magadh Medical College Police Station, Gaya. In the complaint, the Appellant, after narrating her marriage with Sanjay Kumar Saini, Respondent No. 2 herein on 16.04.2000 stated that what had happened immediately after marriage at the instance of her husband and his family members" ill-treatment, torture and finally complained that she was taken out of the matrimonial home at Ranchi and sent to her parental Home at Gaya with the threat that unless she gets her father's house in the name of her husband, she has to stay at her parental house forever. In the said complaint, she also asserted that her husband pressurized her to get her father's house in his name and when she denied she was beaten by her husband. It was also asserted that after keeping her entire jewellery and articles, on 24.12.2006, her husband brought her at Gaya and left her there warning that till his demands are met, she has to stay at Gaya and if she tries to come back without meeting those demands she will be killed. It was also stated that from that date till the date of complaint, her in-laws never enquired about her. Even then she called them but they never talked to her. Perusal of the entire complaint, which was registered as an FIR, clearly shows that there was ill-treatment and cruelty at the hands of her husband and his family members at the matrimonial home at Ranchi and because of their actions and threat she was forcibly taken to her parental home at Gaya where she initiated the criminal proceedings against them for offences punishable under Sections 498A and 406/34 IPC and Sections 3 and 4 of the D.P. Act. Among the offences, offence u/s 498A IPC is the main offence relating to cruelty by husband and his relatives. It is useful to extract the same which is as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty - 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 purpose 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 or is on account of failure by her or any person related to her to meet such demand.

8. Similar allegations as found in the complaint in the case on hand with reference to the offences punishable under Sections 498-A, 406/34 IPC were considered by this Court in the following decisions:

i) In Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, , similar issue was considered by this Court and found that Clause(c) of Section 178 of the Code is

attracted and the Magistrate at wife's parents' place has also jurisdiction to entertain the complaint. In the said decision, wife was the Appellant before this Court and the Respondents were the husband, parents-in-law and two sisters-in-law of the Appellant Sujata Mukherjee. The gist of the allegation of the Appellant, Sujata Mukherjee was that on account of dowry demands, she had been maltreated and humiliated not only in the house of her in-laws at Raigarh but as a consequence of such events, the husband of the Appellant had also come to the house of her parents at Raipur and assaulted her. On behalf of the Respondents therein, it was contended before the learned Chief Judicial Magistrate, Raipur that the criminal case was not maintainable before the said learned Chief Judicial Magistrate because the cause of action took place only at Raigarh which was outside the territorial jurisdiction of the learned Magistrate at Raipur. A prayer was also made to quash the summons issued by the learned Chief Judicial Magistrate by entertaining the said complaint of Smt. Mukherjee. As the Chief Judicial Magistrate was not inclined either to quash the summons or to transfer the criminal case to the competent court at Raigarh, the criminal revision petitions were filed before the High Court, one by all the five Respondents and another by four of the Respondents excluding the husband presumably because there was specific allegation against the husband that the husband had also gone to Raipur and had assaulted the Appellant and as such the husband could not plead want of territorial jurisdiction. Both the said criminal revision cases were disposed of by a common order dated 31.08.1989 by the High Court holding that the case against the husband of the Appellant alone is maintainable and in respect of other Respondents related to the incidents taking place at Raigarh, hence, the criminal case on the basis of complaint made by the Appellant is not maintainable at Raipur. The said order of the High Court was challenged by the Appellant-Sujata Mukherjee in this Court. It was submitted that it will be evident from the complaint that the Appellant has alleged that she had been subjected to cruel treatment persistently at Raigarh and also at Raipur and incident taking place at Raipur is not an isolated event, but consequential to the series of incidents taking place at Raigarh. Therefore, it was contended that the High Court was wrong in appreciating the scope of the complaint and proceeding on the footing that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur. This Court basing reliance on Section 178 of the Code, in particular Clauses (b) and (c), found that in view of allegations in the complaint that the offence was a continuing one having been committed in more local areas and one of the local areas being Raipur, the learned Magistrate at Raipur had jurisdiction to proceed with the criminal case instituted in such court. Ultimately, accepting the stand of the Appellant, this Court held as under:

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

ii) In State of M.P. Vs. Suresh Kaushal and Another, , again in a similar circumstance, considering the provisions of Section 179 with reference to the complaint relating to the offences u/s 498A read with Section 34 IPC, this Court held as under:

6. The above Section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore.

17. In the instant case also, as per the complainant, after the incident dated 31.05.2011, she was compelled to come to Delhi to her parents house alongwith her daughters, the offence u/s 498-A IPC being of continuing nature, it cannot be said that the Courts at Delhi lack the necessary territorial jurisdiction.

18. Another contention raised by learned counsel for the petitioner is that the marriage took place 13 years ago. There was a memorandum of understanding dated 01.06.2011 between the parties which has not been referred to in the complaint and due to malafide on the part of the complainant, the FIR need to be quashed is also liable to be rejected. In C.P. Subhash Vs. Inspector of Police Chennai and Others, , the Apex Court has dealt with the circumstances in which the FIR can be quashed by High court in exercise of powers u/s 482 Cr. P.C. The legal position has been summarised in para 7 of the report as under:-

7. The legal position regarding the exercise of powers u/s 482 Code of Criminal Procedure or under Article 226 of the Constitution of India by the High Court in relation to pending criminal proceedings including FIRs under investigation is fairly well settled by a long line of decisions of this Court. Suffice it to say that in cases where the complaint lodged by the complainant whether before a Court or before the jurisdictional police station makes out the commission of an offence, the High Court would not in the ordinary course invoke its powers to quash such proceedings except in rare and compelling circumstances enumerated in the decision of this Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, . Reference may also be made to the decision of this Court in Rajesh Bajaj Vs. State NCT of Delhi and Others, where this Court observed:

...If factual foundation for the offence has been laid down in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR. (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts

which are absolutely necessary for making out the offence.

19. In view of above legal position enumerated above by Supreme Court, reliance placed by learned counsel for the petitioner on Simla Rawal's case and Sudhir Kapur's case is of no help to the petitioner. The contentions of learned counsel for the petitioner attributing malafide to the complainant by not disclosing about the MOU dated 01.06.2011 is also insignificant at this stage for the reason that admittedly the petitioner has handed over the MOU to the Investigating Officer and is going to form part of investigation/final report. Further, it is the material collected during investigation that has to be considered and malafide of the complainant is of secondary importance. Thus, on this score the petitioner cannot ask for quashing of FIR. The Writ Petition has no merits and the same is hereby dismissed.