

(1997) 01 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 19185 of 1996

Girdhari Lal Jatana and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 161, 179, 181, 192, 202

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 120B, 123, 323, 324, 403

Citation : (1997) 1 BLJR 504 : (1997) 1 PLJR 590

Hon'ble Judges : M.Y. Iqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioners who are nine in numbers have filed this application u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding including the order dated 27.1.1996 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 975(C) of 1995 taking cognizance of an offence u/s 323, 324, 120B, 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. The aforesaid complaint case was initiated on the basis of complaint filed on 27.7.1995 before the Chief Judicial Magistrate Patna by opposite party No. 2 who is wife of petitioner No. 9.

2. The undisputed facts are that the elder sister of opposite party No. 2 (complainant) resides with her husband and other family members in Delhi. The negotiation of marriage was initiated and settled by the petitioner and father of complainant and ultimately the marriage was solemnised at Delhi and, thereafter, petitioner No. 9 and the opposite party No. 2 started living their conjugal life as husband and wife.

3. It appears from the complaint petition, a copy of which is Annexure 1 to the application that the petitioners started torturing the opposite party No. 2

(Complainant) as a result of which the opposite party No. 2 had to return back to Patna.

4. For better appreciation the allegations made in the complaint petition are reproduced hereinbelow:

The complainant and the accused were consuming and consumating their conjugal life as husband and wife but the complainant was never left without unwarranted unpleasant comments from the mouth of especially from accused Nos. 3, 4, 5, 6 and 7 by saying PATNA WALE HAM LOGO KO THAG DIYAE as such started "revoking" accused No. 1 who under/of the other accused persons started misbehaving, ill treating and torturing the complainant and sometimes started beating the complainant with kick and fists as and when the complainant protested the demand of her ornaments by accused No. 1 who is a gambler who lost most of the ornaments of the complainant presented by her parents

The the accused Nos. 8 and 9 the next door neighbour of the complainant's elder sister as Bahno were also very much displeased for want of special respect as they were very much instrumental in settlement of the marriage of the complainant as such goaded with the motto of revenge become the frequent visitors of the house of accused Nos. 1 to 7 and started provoking to other accused persons for compelling the complainant to demand Rs. 50, 000 (fifty thousands) only together with Freeze, four bangles of gold and a piece of land at Delhi from her parents to which the complainant always refused with request to consider the poverty of her parents.

That all the accused persons by entering into criminal conspiracy with each other started creating various troubles by disturbing the complainant in providing kerosene oil mixed food as well as stopping the use of daily use household articles like tooth paste, soap, clothing, fooding etc.

That accused Nos. 1 to 9 by torturing the complainant started compelling the complainant to demand one Freeze, four bangles of gold together with Rs. 50, 000 (Rupees fifty thousands) only and one piece of land at Delhi for which complainant was brutally assaulted by all the accused persons on her refusal to do act according to their whims and direction.

That the complainant was subjected upto high degree of cruelty and tortured physically as well as mentally which is very much apparent from unstamped letter dated 10.7.1995 addressed by the complainant to her parents which is annexed as Annexure-1 and envelope as Annexure I/A to this complaint petition for vivid picture of the complainant's position and her case.

That on 3.8.1995 in the night all the accused persons by entering into criminal conspiracy to each other for fulfilment of their illegal demand for dowry as well as the act of torturing broke the boundary of limitation of torturing when the complainant was subjected to heated substance on her hands as well as back as the complainant was alone whereas accused were 9 in number which is very

much visible and apparent till date which can be perceived by any one after seeing the spots of burns committed at the hands and help of accused persons on the body of the complainant.

That not only this much, rather accused No. 1 picking from pipe gave a severe blow on the back of the complainant and the same led to blood vomiting from the mouth of the complainant in the night time as well as other accused persons also assaulted which is very much clear from the letter dated 5.8.1995.

That apprehending death of the complainant all the accused persons conspiring to each other transported the complainant in senseless condition to the house of her elder sister Sunaina Devi at Quarter No. 1/125, Karbala, B.K. Dutt Colony New Delhi by falsely alleging that the complainant has taken the sleeping pills.

That the complainant was shocked to find herself at her sister's house, when elder sister came to know about the reality and got the complainant treated at Delhi, thereafter, the complainant wrote a letter dated 5.8.1995 to her parents and after receiving the same at Patna the parents rushed to Delhi and contracted accused Nos. 8 and 9 but the complainant parents were shocked and surprised to hear the unwarranted demands of accused Nos. 8 and 9 who called rest other accused persons at their residence at Karbala just adjacent to the residence of elder sister and Bahnoi of the complainant who all started shouting and demanding the abovementioned Articles otherwise they are unable to keep the complainant.

That after coming to Patna the complainant remained under treatment to Dr. Binod Kumar and still the complainant's condition due to the assault committed on her persons like the use of heated substance her body as well as the severe blows given at the hands of accused persons have still compelled the complainant to remain under treatment for a long period.

5. It appears that after filing of the complaint petition learned Chief Judicial Magistrate transferred the case u/s 192 of the Code of Criminal Procedure for enquiry and disposal by order dated 27.9.1995. Learned court below before whom the case was transferred examined witnesses u/s 202 of the Code of Criminal Procedure and after hearing the argument passed an order on 27.1.1996 taking cognizance under Sections 323, 324, 120B, 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act and summon was issued to the petitioners.

6. Mr. Farooque Ahmad Khan, learned Counsel appearing on behalf of the petitioners assailed the impugned order taking cognizance and also the validity of the proceeding before the court below at Patna on two grounds. Firstly, learned Counsel challenged the proceeding and the impugned order on the ground of lack of territorial jurisdiction. Learned Counsel submitted that the entire occurrence allegedly have been taken place at New Delhi, the Patna Court had no jurisdiction to entertain the complaint and take cognizance. Learned Counsel submitted that provision of Section 179 of the Code of Criminal Procedure is not applicable at

all. Learned Counsel further submitted that even assuming that the petitioners committed those offences the same were completed at New Delhi and no overt-act was done at Patna and therefore, the entire proceeding is vitiated in law. Mr. Khan secondly, submitted that the complaint petition on the fact of it, is male fide and the allegations are vagued in nature and, therefore, the Court below has committed illegality in taking cognizance against the petitioners. In support of his submission learned Counsel put reliance on various decisions, namely in the case of Kashi Ram Mehta Vs. Emperor , in the case of Daulat Mansingh Aher Vs. C.R. Bansi and another, and in the case of Jagan Nath and Anr. v. State of Haryana 1983 Cri LJ 1574.

7. On the other hand, Mr. Kripa Nath Yadav, learned Counsel appearing on behalf of the opposite party No. 2 submitted that at this stage the court has to go by the allegations made in the complaint and learned court below rightly took cognizance on the basis of materials available on record. Learned Counsel then submitted that the Court at patna is fully competent to entertain the complaint and take cognizance and Section 179 of the Code of Criminal Procedure is fully applicable in the facts and circumstances of the case.

8. Before appreciating the rival contention of the parties it is necessary to look in the provision of Section 179 of the Code which reads as under:

Section 179. Offence triable when 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.

9. It is well settled that other offences shall be inquired into and tried by the court within whose local jurisdiction, it was committed but Section 279 is an exception to the general rule. It provides that an act is an offence by reason of any consequences which has ensued therefrom, the offence may be inquired into or tried by a Court within whose local jurisdiction the act was committed or the consequence has ensued. In the light of the well settled law, from perusal of the allegations made in the complaint petition it appears that all the accused persons started creating troubles by disturbing complainant in providing kerosene oil mixed food as well as depriving her from the daily use Articles, not only that the complainant was subjected to physical as well as mental tortured by the illegal demand of dowry and also putting heated substance on her hand which resulted, in so many burning injuries to her person. It was also given a server blow on her back which led to blood vomitting and further the petitioners sent the complaint in senseless condition to the house of her elder sister at Delhi. It was further alleged that the complainant was ultimately brought to Patna by her parents in the same condition and she remained in conditions medical treatment at Patna. From the allegations made in the complaint there can be no doubt that the act committed by the petitioner and the consequences are inter linked inasmuch as it was a case of the act of the petitioner the complainant was forced to leave her

husband's house at Delhi and came to Patna where she remained in medical treatment. If the act of cruelty had not been committed there would have been no occasion for the complainant to leave the house. It was also alleged in the complaint petition that as consequence of acts of the petitioners (accused persons) she has been suffering mental pain and agony living at Patna.

10. A similar question arose in a case of Arun Khanna Vs. State of Bihar and Another : In that case cognizance was taken on the complaint filed by the wife alleging, inter alia, that after her marriage solemnised at Amritsar, she was ill-treated by accused persons as her father would not satisfy the demand of dowry. As a result of cruelty, torture and harassment meted out to her, she was forced to leave her matrimonial home and live with her parents at Dhanbad where she lodged a complaint. The said order was challenged on the ground of lack of territorial jurisdiction. A Bench of this Court rejecting the submission held as under;-

In the instant case, the complainant has alleged that by reason of the conduct of the accused persons, she was forced to leave her matrimonial home. If the act of cruelty had not been committed and there was no danger to her life and health, there perhaps would have been no occasion for her to leave the house. She has also alleged that as a consequence of the acts of the accused persons she is suffering mental agony at Dhanbad. In other words, the wrong or the offence is still continuing. In my opinion, the term "cruelty" in Section 498A has to be given an extended meaning. If the woman continues to suffer the mental agony or torture as a result of the acts done to her by the husband or his relatives forcing her to leave the matrimonial home, it must be said that the cruelty is continuing. While construing the question of jurisdiction with respect of offence u/s 498A one should not forget the social background and the object for which the said offence has been created. This new penal provision is intended to provide benefit and relief to the females who constitute the weaker section of the society, the destitutes who have been turned out of the husband's home. If they are to be compelled to file the complaint only at the place where the act was committed. That is, at the place where the husband-in-laws reside, she may not be able to prosecute the complaint properly which will not serve the desired object. A learned Single Judge of this Court in the case of Sardar Harpal Singh (supra) relied upon by Mr. M.M. Banerjee, on behalf of the opposite (sic), has taken the same view and I find myself in respectful agreement with the same.

11. Mr. Farooque Ahmad Khan, learned Counsel submitted that this Court in Arun Khanna v. The State of Bihar and Anr. (supra) did not consider the view of the Full Bench of the Apex Court in Kashi Ram Mehta Vs. Emperor . In the case before the Full Bench of the Allahabad High Court the fact of the case was that a complaint was filed u/s 403 of the Penal Code against the proprietor, General Trading Company, Dehra Dun and the Manager of the Indian National Bank of Industries Ltd., Dehra Dun in the Court of the Sub-divisional Magistrate at Chakrata. The allegations in the complaint were that one Shamsuddin drew a

cheque in favour of Abdul Aziz on the Imperial Bank of India. Abdul Aziz endorsed the cheque to Mohan Lai who paid cash to Abdul Aziz. Mohan Lai had to send some money to the General Matches Agency, Dehra Dun and the said cheque was sent after due endorsement. The cheque some show fell into the hands of Jai Singh, the proprietor of the General Trading Company who cashed the cheque through Kashi Ram, the Manager of the India National Bank of Industries Ltd. Dehra Dun. Since both the accused Jai Singh and Kashi Ram were residents of Dehra Dun and misappropriation took place at Dehra Dun, a plea was taken on behalf of the accused that the chaykrata court had no jurisdiction in the matter inasmuch as the offence u/s 403, Penal Code must be deemed to have been committed at Dehra Dun. In the facts and circumstances of the case their Lordships had held as under:-

But the main question for our consideration is not whether if Section 179 applies, it has been override by Section 181 Sub-section (1), but whether Section 179 at all applies to this case. The expression "of any consequence which has ensued" in that section obviously means "by reasons of any consequence etc." The repetition of the word "of leaves no doubt that the propositional phrase "by reason of" governs consequence" as well. In this view the section can have only one meaning, namely, that the commission of the offence must be "by reason of anything which has been done and by reason of any consequence which has ensued." Another noteworthy fact is that the word "and" has been used instead of the word "or". Indeed if the doing of anything were in itself sufficient to constitute the offence contemplated in this section there would have been no occasion to use the expression "of any consequence which has ensued" at the place at which it occurs; it would have been quite sufficient to mention it at the end of the section where it is already mentioned. If therefore that act done and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that Section 179 be applicable. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for the completion of the offence, then Section 179 would not be applicable. The illustrations to the section also make it clear that the consequence contemplated in the section is a consequence which coupled with the act done constitutes the offence. But if the two can be separated and the act itself is sufficient to constitute the offence, it would make the section inapplicable.

12. I am of the definite view that the ratio decided by the Full Bench is of no help to the petitioners. As noticed above, in the instant case, the acts done by the petitioners and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against and the consequence is necessary ingredient of the offence committed by the petitioners. It is because of the torture and cruelty committed by the petitioners by committing the act and putting the complainant into the house of her elder sister, she was forced to leave the house of the petitioner No. 9 and came to

Patna in that condition. I am, therefore, of the view that the act and its consequence are so inter linked that the consequence is the direct result of the act. In the case of Daulat Mansingh Aher Vs. C.R. Bansi and another, , a complaint was filed in Bombay for an offence u/s 4 of the Dowry Prohibition Act. The complainant alleged that the accused who was residing at Bombay wrote a letter from that place demanding dowry, the letter was sent to his brother at Agartala who in turn forwarded the same to the complainant at Andheri Bombay where the complainant resided., The application of the accused challenging the territorial jurisdiction of the Metropolitan Magistrate's Court at Dadar, Bombay to entertain the complaint was dismissed by that Court. Since the fact of that case is not similar to the fact of the same case. I am of the opinion that the decision aforesaid is not applicable in this case. In the case of Jagan Nath and Anr. v. State of Haryana reported in 1983 Cri LJ 1574, a question arose as to whether kidnapping within the jurisdiction of one Court and raping of the girl within the jurisdiction of another Court Section 179 would be attracted. A Bench of Punjab and Haryana High Court had held that the facts of case are not covered by Section 179 of the Code of Criminal Procedure. It was further held that the offence of kidnapping is complete as soon as the person is kidnapped. That being so, u/s 179 of the Code of Criminal Procedure the offence of rape committed at Delhi cannot be enquired into to tried by the Court at Ambala and only the offence of kidnapping could be tried by the Court at Ambala and the offence of rape had to be tried by the Courts at Delhi. With due respect, I am of the opinion that the ratio laid down by the Court is not at all applicable in the facts and circumstances of the present case.

13. Having regard to the facts of the instant case, I am of the opinion that the submission made by learned Counsel for the petitioners with regard to want to territorial jurisdiction of the Court at Patna has no leg to stand inasmuch as Section 179 of the Code is fully attracted in this case and the Patna High Court has jurisdiction to try the petitioners and other accused persons.

14. The next question that arises for consideration is as to whether the order of cognizance will be quashed on the ground of mala fide and vagueness as submitted by learned Counsel appearing on behalf of the petitioners. As noticed above, the allegations made in the complaint and evidence of the witnesses was sufficient for the court below to take cognizance u/s 123, 324, 120B, 498A of the Indian Penal Code.

15. The jurisdiction of the High Court u/s 482 of the Code of Criminal Procedure in interfering has been well settled by the Apex Court in a catena of decisions some of which are referred to hereinbelow. In the case of State of Bihar v. Murad Ali Khan reported in 1988 4 SCC 555 the Apex Court held as under:

It is trite that jurisdiction u/s 482, which saves the inherent power of the High Court, to make such order as may be necessary to prevent abuse of the process of Court, has to be exercised sparingly and with circumspection. In exercising of that jurisdiction High Court, should not embark upon an enquiry whether

allegation in the complaint are likely to be established by evidence or not. That is the function of trial Magistrate when the evidence comes before him. Though it is neither possible nor admissible to lay down any inflexible rule to regulate such jurisdiction. When the High Court is called upon to exercise its jurisdiction to quash a proceeding at the stage of Magistrate taking cognizance of an offence, the High Court is guided by the allegations, whether those allegations set out in the complaint or the chargesheet, do not in law constitute or spell out any offence and that resort to criminal proceeding would, in the circumstances, amount to an abuse of process of the Court or not.

16. In the case of *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, it was held that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of process of Court. In a proceeding instituted on complaint exercise of inherent power to quash the proceeding is called for only in cases where the complaint does not disclose any offence or is frivolous or vexatious. It is not, however, necessary that there should be meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of allegations, in the light of the statement on oath of the complainant, the ingredients of offence are disclosed and there is no material to show that the complaint is mala fide or frivolous, in that event there would be no justification for interference by the High Court.

17. Recently in the case of *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, their Lordships of the Apex Court had held as under:

We are constrained to say that in making the above observations the High Court has flagrantly disregarded unwittingly we presume the settled principle of law that at the stage of quashing of FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability of genuineness of the allegation made therein. Of course as has been pointed out in *Bhajan Lal's* case an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court u/s 482 of the Code of Criminal Procedure.

18. In the case of *State of Bihar Vs. Rajendra Agrawalla*, the apex Court reiterated its view and held as under:-

It has been held by this Court in several cases that the inherent power of the court u/s 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be

manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In a recent judgment of this Court to which one of us (Hon'ble K. Ramaswamy, J.) was a member it has been held, following the earlier decision in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* :

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses of on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rare case of mala fide initiation of the proceedings to wreak, private vengeance, issue of process under Criminal Procedure Code is availed of. A reading of a complaint or FIR itself does not disclose at all any cognizable offence the court may embark upon consideration thereof and exercise the power.

When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available. When the court exercises its inherent power u/s 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When the investigation officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short circuited by resorting to exercise of inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.

19. In the case of Ganesh Narayan Hegde Vs. S. Bangarappa and Others, , the Apex Court after referring various decisions held as under:-

With respect to the contention of the learned Counsel for the respondents that after a period of twelve years the matter should not be allowed to be proceeded with we must say that the complainant is certainly not responsible for this delay. The learned Counsel did not even make such a suggestion. Moreover this contention does not appear to have been raised before the High Court. (The judgment of the High Court is dated 16.6.1992). We do not know who is responsible for this delay. As observed by Krishna Iyer, J. in Special Courts Bill, 1978, Re at P. 442 (SCC para 15).

It is common knowledge that currently in our country criminal courts excel in show motion. The procedure is dilatory, the dockets are heavy, even the service of process is delay and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions baffling and baulking speedy termination of prosecution....

The slow motion becomes such slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made and if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest-the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot accede to the said contention.

20. In the tight of the consisting view of the Apex Court, I am of the opinion that the impugned order did not warrant any interference by this Court is exercise of power u/s 482 of the Code of Criminal Procedure. As I have noticed above that the allegation made in the complaint together with the evidence of the witnesses taking on oath, prima facie, constitute an offence and, therefore, the court below has not committed any illegality in taking cognizance against the petitioners.

21. For the reasons aforesaid, there is no merit in this application which is accordingly, dismissed.