
(2013) 07 MP CK 0139

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5847 of 2011

Jitendra and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 117, 177, 177, 178, 178
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2013) 07 MP CK 0139

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : V.K. Bhardwaj and Mr. Anvesh Jain, for the Appellant; P.S. Raghuwanshi, Panel Lawyer for Respondent No. 1/State and Shri R.K. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition u/s 482 of Cr.P.C. has been preferred for quashing the proceedings pending in the Court of JMFC, Gwalior, in MJC No. 4/2004, whereby cognizance for the offence punishable u/s 4 of the Dowry Prohibition Act has been taken against the petitioners. The brief facts of the case are that respondent No. 2 has filed a report at police Station, Padav, alleging that marriage of his daughter was settled with petitioner No. 1 and Teeka ceremony was performed on 2.8.2001. The marriage was fixed for 8.12.2001. Thereafter, the petitioners expressed that if Rs. five lacs alongwith gifts are not paid, marriage will not be performed as per schedule. On the aforesaid complaint, Crime No. 38/2002 for the offences punishable under Sections 420, 406/34 of IPC and Section 4 of the Dowry Prohibition Act has been registered. Thereafter, the matter was referred to the C.I.D. and the C.I.D. after investigation submitted the final report, upon which learned JMFC took cognizance of the offence u/s 4 of the Dowry Prohibition Act.

2. It is submitted by learned counsel for the petitioners that the order taking cognizance against the petitioners for the offence punishable u/s 4 of the Dowry Prohibition Act is bad in law. The justification of filing final report has to be adjudged from all the material placed on record by the police. In this case, the C.I.D. has thoroughly inquired into the matter and found that the offences alleged are not proved, but the learned Magistrate ignored this. It is further submitted that the alleged demand has been made at Ujjain, therefore, cognizance should not have been taken by the Court at Gwalior, even otherwise, there is no justifiable reason to take cognizance of the offence u/s 4 of the Dowry Prohibition Act after about 10 years when both petitioner No. 1 and Divya have entered into matrimonial ties with other spouses and are leading a peaceful married life. Thus, the order taking cognizance after such a long elapse of the time amounts to an abuse of the process of the Court, hence, the proceedings pending in the Court of JMFC, Gwalior, in MJC No. 4/2004 deserve to be quashed.

3. In reply, it is submitted by learned counsel for respondent No. 2 that learned trial Court has rightly took cognizance u/s 4 of the Dowry Prohibition Act against the petitioners. The C.I.D. on investigation found that the case u/s 4 of the Dowry Prohibition Act is made out against the petitioners, therefore, from the C.I.D. report also the order taking cognizance against the petitioners for the offence punishable u/s 4 of the Dowry Prohibition Act is correct. The marriage of petitioner No. 1 and Divya with other spouses does not affect the prosecution. It is prayed that petition be dismissed.

4. Learned Panel Lawyer for respondent No 1/State supported the order taking cognizance against the petitioners.

5. It is not disputed that marriage of daughter of respondent No. 2 with petitioner No. 1 was settled and on 2.8.2001 Teeka ceremony was performed which was followed by ring ceremony and Godbharai.

6. During C.I.D. inquiry statements of Gopinath Jaiswal, Divya, Manju Jaiswal, Shishir Jaiswal, Ruchi and Prem Jaiswal have been recorded. As per the statement of Gopinath Jaiswal, the marriage was fixed for 8.12.2001 at Ujjain. He has further stated that he had booked a Dharmshala on payment of advance of Rs. 2,600/- and also booked Shri Mukesh Kumar Khandelwal Caterers Catering. Before the marriage, he also gave Rs. 50,000/- to Jhandulal for making arrangements of decoration in the marriage function, but before the marriage Jitendra, Jhandulal and Durgawati demanded Rs. five lacs as dowry alongwith the gift items and other articles. His daughter Divya in her statement stated that after the date of marriage was settled, her father went to Ujjain and booked Dharmshala and caterer. Thereafter, Jitendra, Jhandulal and Durgawati demanded cash of Rs. five lacs and gift items. Manju Jaiswal, Shishir Jaiswal, Ruchi and Prem Jaiswal have also supported the statement of Gopinath Jaiswal.

7. During C.I.D. inquiry statements of Jitendra Kumar, Amit Shrivastava, Manish Gangrade and Narmda Prasad have also been recorded. From the perusal of

certified copy of C.I.D. report filed in Writ Petition No. 2235/2002, it appears that commission of offence under Sections 420 and 406/34 of IPC has not been found proved, however, offence punishable u/s 4 of the Dowry Prohibition Act has been prima facie found proved. Thus, the submission of learned counsel for the petitioners that on CID enquiry the offence against the petitioners were not proved, cannot be accepted because in the CID report it has clearly been mentioned that commission of offence under Sections 420, 406/34 of IPC is not found proved, however, offence u/s 4 of the Dowry Prohibition Act is proved against the petitioners.

8. The next submission of learned counsel for the petitioners is that the alleged demand has been made at Ujjain, therefore, learned JMFC, Gwalior, has no territorial jurisdiction to entertain the complaint. The learned counsel has placed reliance on the decisions rendered in *Rajesh Kumar and Another Vs. State of Rajasthan and Another*, ; *Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another*, ; *Manish Ratan and Others Vs. State of M.P. and Another*, and *Shakuntla Sharma (Smt.) v. State of M.P.*, 2005(II) MPWN 39. The learned counsel for respondent No. 2 submits that demand has also been made at Gwalior, therefore, learned JMFC, Gwalior, has jurisdiction.

9. Section 177 of the Code deals with the ordinary place of inquiry and trial, and reads as follows:-

Section 177: Ordinary place of Inquiry and trial: - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

10. Sections 177 to 186 deal with venue and place of trial. Section 117 reiterates the well-established common law rule referred to in Halsbury's Laws of England (Vol. 9 para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which read as follows:

Section 178: Place of inquiry or trial.-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

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

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Under section 177 of the Code the word "ordinarily" has been used which

indicates that the provision is a general one and must be read subject to the special provisions contained in the code.

11. In the instant case, the crucial question is whether any part of cause of action arose within the jurisdiction of the JMFC, Gwalior. 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.

12. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases.

13. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

14. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

15. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

16. In the instant case, as per the statement of Gopinath Jaiswal recorded by the JMFC, Gwalior, on 2.8.2001 the petitioners alongwith family members came to Gwalior, where Godbharai and ring ceremony was held and on this occasion, the date of marriage was fixed for 8.12.2001. Thereafter, he reached Ujjain and reserved a Dharmshala and booked caterer also. Before the date of marriage, accused persons repeatedly demanded cash of Rs. five lacs alongwith gift articles on telephone. He has further stated that he and his wife went to Hyderabad where Jitendra was working as a scientist. He told Jitendra regarding demand made by his parents. Jitendra also told that until the demand is fulfilled, he is not prepared to marry. Thereafter, he went to Ujjain and requested Jhandulal and

Durgawati, but they did not agree and told that until the cash of Rs. five lacs is paid, they will not perform the marriage of their son.

17. Thus, from the statement of Gopinath Jaiswal, it is crystal clear that demand has been made on telephone from Ujjain to Gwalior. Therefore, the submission of learned counsel for the petitioners that because the alleged demand has been made at Ujjain, therefore, JMFC, Gwalior, has no territorial jurisdiction is devoid of any merits.

18. The case laws referred by the learned counsel for the petitioners are distinguishable on facts of the instant case. In *Manish Ratan* (supra) the allegations were that the complainant's husband Manish, father-in-law, mother-in-law and sister-in-law ill-treated her so much that she left her house and saved her life by some means and reached at Bhopal. Thereafter, she came to her parents house at Datia. The alleged offence has been committed at Jabalpur, therefore, it was held that no part of cause of action arose within the jurisdiction of Datia, therefore, CJM, Datia, has no jurisdiction. In *Y. Abraham Ajith* (supra) the complainant herself left the house on 15.4.1997 on account of alleged dowry demand by the husband and his relations. Since the alleged offence as per the complaint took place at N, the Court at C did not have jurisdiction. In *Shakuntla Sharma* (supra) the incidence of demand of dowry and cruelty took place at Bhopal, therefore, it was held that only Court at Bhopal has got the territorial jurisdiction to try the offence. Similarly in *Rajesh Kumar* (supra) the alleged acts of cruelty and criminal breach of trust of not returning stridhan were committed at place D, therefore, only Courts at D had jurisdiction to inquire into and try the said case. The Court at place A where the complainant was residing after leaving her matrimonial home does not have territorial jurisdiction. Thus, the facts of the present case are distinguishable from the cases relied on by the learned counsel for the petitioners, therefore, they are of no help to the petitioners.

19. The next submission of learned counsel for the petitioners is that the alleged incident is said to be taken place in the year 2001, both the parties (petitioner No. 1 and Divya) have got married with other spouses and are living peaceful life, therefore, there is no justifiable reason to take cognizance of the offence. It is no doubt true that the alleged incident took place about 10 years ago and both the parties have married with other spouses, but this cannot be a ground to quash the proceeding.

20. The Apex Court in *Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another*, while opining that the High Court in exercise of its jurisdiction u/s 482 of the Code does not function either as a court of appeal or revision, held as under:-

7. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the

inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

21. In *Md. Malek Mondal Vs. Pranjal Bardalai and Another*, 1640, the Apex Court in para 8 held as under:-

8. Before parting, we may also note that wide extraordinary power of quashing vested in the High Court is to be exercised sparingly and with caution and not to stifle legitimate prosecution. Such a power is required to be exercised in a case where the complainant does not disclose any offence and it is frivolous, vexatious or oppressive. At that stage, there cannot be meticulous analysis of the case....

In view of the aforesaid analysis, in the facts and circumstances of the instant case I do not find any ground to exercise extraordinary powers of this Court to quash the proceedings. Consequently, the petition is dismissed.