
(2001) 04 AP CK 0002

In the Andhra Pradesh High Court

Case No : Criminal Petition No"s. 669 and 1139 of 2001

K. Ramakrishna Reddy and Others

APPELLANT

Vs

V.K. Padmavathi and Another

RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 179, 182(2), 190, 190(1)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 109, 34, 409, 494, 498A

Citation : (2001) 2 ALD(Cri) 263 : (2001) 1 APLJ 499 : (2001) CriLJ 3424

Hon'ble Judges : R. Ramanujam, J

Bench : Single Bench

Advocate : NP Anjana Devi and O. Manohar Reddy, for the Appellant; M.N. Narasimha Reddy, for No. 1 and Public Prosecutor for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R. Ramanujam, J.—A common question.-

Whether a criminal proceeding in which a particular offence was taken cognizance by a Judicial Magistrate of I Class, who has power under the Code of Criminal Procedure to take cognizance of that offence, can be quashed on the ground that he lacks territorial jurisdiction to try the same?

arises for consideration in these two Criminal Petitions filed u/s 482, Cr.P.C. Hence, they are being disposed of by this common order.

2. Criminal Petition No. 669 of 2001 Is filed by all the accused in Calendar Case No. 1089 of 2000 pending on the file of the Judicial Magistrate of I Class, Jammalamadugu, Cuddapah District. They are facing trial for an offence punishable under Sections 494, 109 r/w 34 IPC. The wife of the 1st petitioner herein is the defacto complainant in the said case, who is figuring as 1st respondent in the present petition.

3. The main ground on which the proceedings are sought to be quashed is that

the Court of the Judicial Magistrate of I Class, Jammalamadugu, who has taken cognizance of the offence, has no territorial jurisdiction to try the same, which was alleged to have been committed at Viduraswartham, Goribidulur taluk, Kolar District, Karnataka State.

4. The case of the petitioners voiced through their learned counsel, Sri O. Manohar Reddy, is that the 1st respondent is a resident of D. Pappur village, which is outside the territorial jurisdiction of the said Magistrate's Court. He further submits that the 1st respondent has mentioned in her complaint that she is a resident of K. Sankepalli village of Cuddapah District only to harass the petitioners herein.

5. On the other hand, Sri M. N. Narasimha Reddy, counsel for the 1st respondent, relying upon a copy of the Voters' list of 2001, submits that the 1st respondent is now residing, after the offence has been committed by the petitioners herein, in K. Sankepalli village of Cuddapah District, which is within the territorial jurisdiction of the Judicial Magistrate of I Class, Jammalamadugu and the said Court has Jurisdiction to try the said case in view of Sub-section (2) of Section 182, Cr.P.C.

6. Criminal Petition No. 1139 of 2001 is filed by the accused in Calendar Case No. 11 of 2000, pending on the file of the Judicial Magistrate of I Class, Asifabad. The said proceedings were initiated on the complaint given by the wife of the 1st petitioner herein to the Police. The accused-petitioners are facing trial for the offence punishable u/s 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act. They filed the present petition seeking quashing of the proceedings in the said Calendar Case mainly on the ground that the Judicial Magistrate of I Class, Asifabad, who has taken cognizance of the offence, has no territorial jurisdiction to try the same. Their case is that all of them are residents of M. Nagulapalli village, Dwaraka Tirumala Mandal, West Godavari District, that no incident relating to the alleged offences involving them as accused has taken place within the territorial jurisdiction of the said Court and that, therefore, the proceedings are liable to be quashed.

7. The learned Public Prosecutor, however, submits that A. I. (1st petitioner herein) has visited Rebbana Village of Adilabad District, where the parents of the 2nd respondent-defacto complainant reside, he, at the instance of the other accused, quarrelled with the 2nd respondent and her parents and demanded additional dowry as precondition for living with her and that, therefore, the Judicial Magistrate of I Class, Asifabad has territorial jurisdiction to try the said case.

8. From the facts narrated hereinabove it is clear that the parties are at issue only on the question of territorial jurisdiction of the respective Courts. There is no dispute regarding the power of the Magistrate; under the Code, to take cognizance of the offences.

Dealing with similar fact situation the Supreme Court in Trisuns Chemical

Industry Vs. Rajesh Agarwal and others, held thus (Paras 9, 10, 11 and 12) :-

11. It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal Courts in enquiries and trials. That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that "Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. But Section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a Court "within whose local jurisdiction such thing has been done or such consequence has ensued. It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. Power of the Court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) and (2) read thus :

(i) Subject to the provisions of this Chapter, any Magistrate of the First Class and any Magistrate of the Second Class specifically empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(ii) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

12. Section 193 imposes a restriction on the Court of Session to take cognizance of any offence as a Court of original jurisdiction. But "any" Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not.

13. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this Chapter". There are 9 Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provisions in the old Code of Criminal Procedure (1898) the commencing words were like these. "Except as hereinafter provided". Those words are now replaced by "Subject to the provisions of this Chapter". Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence - of course, in certain special enactments special provisions are incorporated for restricting the power of taking

cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Anyway that is a different matter.

14. The jurisdiction aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

9. From the afore mentioned legal position it is clear that a Magistrate, after taking cognizance of the offences, can decide the question of territorial jurisdiction. Ultimately, if the Magistrate finds that he has no territorial jurisdiction, he can only return the complaint or the charge sheet, as the case may be, for presenting to a proper Court, which has territorial jurisdiction. From this it follows that the criminal proceedings cannot be quashed on the ground of lack of territorial jurisdiction of the Magistrate of First Class, which has taken cognizance of the offence.

10. In this view of the matter, the proceedings in Calendar Case No. 1089 of 2000 on the file of the Judicial Magistrate of I Class, Jammalamadugu and Calendar Case No. 11 of 2000 on the file of the Judicial Magistrate of I Class, Asifabad, cannot be quashed. Both the Criminal Petitions, therefore, fail and are accordingly dismissed.