
(2008) 09 JH CK 0093
In the Jharkhand High Court

Kashi Nath Upadhyay

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2009) CriLJ 473 : (2009) 2 DMC 694 : (2008) 4 JCR 236

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner Kashi Nath Upadhyay has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the entire criminal proceeding arising out of Topchanchi P.S. Case No. 182 of 2005 corresponding to G.R No. 4835 of 2005 for the offence under Sections 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 pending in the Court of SDJM, Dhanbad wherein, cognizance of the offence was taken on 15.6.2006.

2. The prosecution story in short was that the informant Nipa Upadhyay presented a written report before the Of-ficer-in-charge of Gomo police station on 12.12.2005 narrating therein that she was married to one Tarkeshwar Upadhyay son of the petitioner Kashi Nath Upadhaya on 10th February, 2003. On the eve of her marriage, sufficient dowry as per demand in cash as well as in kind including Jewelleries, cloths and utensils were given. After her marriage she went to her matrimonial home at Burdwan where she lived peacefully with her husband and in-laws. The petitioner father-in-law was working in the Bengal police. It was alleged that after departure of the relations and guests from her matrimonial home, the behaviour of her in-laws and husband suddenly changed. Her father came on 24th March, 2003 and took her to Gomo after execution of

her bidayee. After about a month she returned to her matrimonial home where her in-laws placed demand of Rs. one lakh and for that they started perpetrating torture. Her father again came there and took her away. On 7th July, 2003 her Dewar Shashi Bhushan Upadhayay came and took her away to her matrimonial home where all the accused persons including her husband and specially her mother-in-law who put the demand of Rs. one lakh, so as to obtain a service for her husband. When she expressed inability of her parents, she was assaulted and segregated from her husband and that her husband also assaulted her at the instance of her mother-in-law. She was confined in a room there, however, taking advantage of wee hours, she come out and made telephone call to her father who immediately came to Burdwan. He was shocked to see her miseries. Her father and sister after informing the matter to the local office of the C.P.M. party took her to Gomo. Her father made contact with her in-laws on telephone but her mother-in-law threatened and cautioned that her entry would be permitted only when she would carry the demanded money. In the meantime, her father-in-law (petitioner) retired and returned back to village home at Bharathi in the district of Siwan (Bihar). On persuasion, she was taken to Bharathi on 6th May. 2005 by her dewar Shashi Bhushan Upadhayay. In the meantime the father of the informant being scared of the conduct of her in-laws filed informatory petition in the Court of C.J.M.. Dhanbad on 9.5.2005. She narrated having been tortured in various manner at Bharathi and was assaulted by her mother-in-law, sister-in-law and also by her husband. On the information received, her maternal uncle came to whom she narrated her miseries and torture sustained at the hands of her in-laws including husband who had been demanding Rs. One lakh and in this connection she alleged that her food was stopped, ultimately she was rescued by her second cousin who took her away to Gomo with him where she was leading a deserted life in the house of her poor parents.

3. The police after investigation submitted chargesheet for the offence u/s 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the father-in-law Kashi Nath Upadhayay (Petitioner), Shashi Bhushan Upadhayay (dewar) and the husband Tarkeshwar Upadhayay accordingly, cognizance of the offence was taken against them pending investigation against other accused persons.

4. The learned Counsel Mr. Shailesh submitted that no part of cause of action arose within the local jurisdiction of the Chief Judicial Magistrate, Dhanbad as the cognizance taken by him was hit by Section 177 of CrPC which clearly deals with place of enquiry and trial and according to the section, every offence shall be tried by a Court within whose local jurisdiction it was committed. Mr. Shailesh further submitted that expression "cause of action" has acquired a judicially settled meaning that the circumstances forming the infraction of right or the immediate occasion for taking action. Broadly speaking, maintenance of the proceeding includes not only the alleged infraction but also the infraction coupled with the right itself. The case was transferred to the Court of SDJM. Dhanbad

after cognizance of the offence was taken by the CJM and even the SDJM had no authority or jurisdiction under the law to proceed against the petitioners in the instant case. Counsel explained that after her marriage the informant went to Burdwan (in West Bengal) and again from Gomo to Siwan (in Bihar), as such, no part of cause of action arose either within the territorial jurisdiction of Dhanbad or to the State of Jharkhand as per allegation made in the FIR. Admittedly the informant made complaint before the Siwan police which resulted in a compromise. Finally counsel submitted that the continuation of the criminal proceeding against the petitioner by the informant without any specific attribution would amount to aberration and miscarriage of justice.

5. Mr. Shailesh relied upon several decisions of the Apex Court viz *Manish Ratan and Others Vs. State of M.P. and Another*, *Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another*, and *Ramesh v. State of T.N.*, reported in (2005) SCC 735.

6. The learned Counsel appearing on behalf of the O.P. No. 2 consistently submitted that the present one, under the facts and circumstances speaks about continuing offence as contained in Section 178(a)(b)(c)(d) of CrPC beginning from Burdwan (West Bengal) to Gomo (Jharkhand) and from Gomo to Siwan (Bihar) and some part of the occurrence took place at Gomo, where the informant suffered mental agony upon the threatening extended by her mother-in-law on telephone at Gomo where the informant is leading a life of deserted woman, being the place which comes within territorial jurisdiction of the C.J.M. and SDJM, Dhanbad. The learned Counsel asserted that the CJM, Dhanbad was within his competence and jurisdiction to take cognizance of the offence against the petitioner and others. Counsel for the opposite party No. 2 relied upon a decision of this Court in Cr MP No. 1296 of 2004 delivered on 15.6.2005 wherein it was observed:

It appears that the telephonic conversation between the parties i.e. opposite party No. 2 and the petitioners took place while opposite party No. 2 was at Bokaro, residing with her parents.

In the circumstances, prima facie, it appears that part of the alleged offence i.e. threatening and demand of dowry has taken place within the territory of Bokaro (State of Jharkhand), while opposite party No. 2 was staying with her parents and the petitioners are alleged to have demanded dowry and have given threatening on telephone.

In the circumstances, while this Court is not inclined to accept the submission of the petitioners, is not inclined to quash the proceeding of C.P. No. 163 of 2004, pending before the learned Sub-Divisional Judicial Magistrate, Bokaro. There being no merit, this Criminal Misc. petition is hereby dismissed.

7. The question which calls for determination in the instant case is whether on the given facts and circumstances of the case the Court of the CJM, Dhanbad had Jurisdiction to take cognizance of the offence. Sections 177, 178 and 179 of CrPC

have relevance in determining the issue. Section 177 of CrPC deals with the ordinary place of enquiry and trial which speaks:

(a) Every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed.

Section 178, CrPC deals with the place of inquiry or trial which speaks:

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 a continuing one, and continues 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.

Section 179 of CrPC deals with the offence triable where 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.

8. The cause of action in a broad sense speaks about an enforceable claim which is in a common legal parlance, the existence of such fact which gives a legal right to a party to seek judicial interference.

9. I find substance in the argument in respect of the provision of law referred to above that no part of the offence took place in relation to allegation of torture and demand of dowry from the informant within the local jurisdiction of the CJM or the SDJM, Dhanbad and therefore, neither the CJM was within his jurisdiction to take cognizance of the offence nor the SDJM, Dhanbad was within his competence to proceed against the petitioner. Therefore, cognizance of the offence and criminal proceeding against the petitioner cannot sustain.

In view of the above observation, this Criminal Miscellaneous Petition is allowed and the criminal proceeding of the petitioner including cognizance of offence is quashed in Topchanchi P.S. Case No. 182 of 2005 corresponding to G.R. No. 4835 of 2005. However, liberty is given to the informant Nipa Upadhyay in exercise of jurisdiction u/s 482 of Code of Criminal Procedure for redressal of her grievance a fresh before appropriate forum.