

**(2012) 05 PAT CK 0047**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 10147 of 2006

Md. Ahsan and Others

APPELLANT

Vs

The State of Bihar and Bibi Sanjida Khatoon

RESPONDENT

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**Date of Decision :** 10-05-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 202, 482  
Dowry Prohibition Act, 1961 — Section 3, 4  
Penal Code, 1860 (IPC) — Section 498A

**Citation :** (2012) 05 PAT CK 0047

**Hon'ble Judges :** Rajendra Kumar Mishra, J

**Bench :** Single Bench

**Advocate :** Sadaquat Hussain and Chandra Mauli Prasad Singh, for the Appellant; M. Haque, Assistant Public Prosecutor for the State and None for O.P. No. 2, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Honourable Mr. Justice Rajendra Kumar Mishra

1. The petitioners have approached this Court u/s 482 of the Code of Criminal Procedure to quash the order dated 13.9.2005 passed by the Sub Divisional Judicial Magistrate, Banka, in Complaint Case No. 684(C) of 2004, summoning the accused-petitioners, on enquiry u/s 202 of the Code of Criminal Procedure, finding prima facie case u/s 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. In brief, the case is that the opposite party No. 2, Bibi Sanjida Khatoon, filed the Complaint Case No. 684(C) of 2004 in the court of the Chief Judicial Magistrate, Banka, against the petitioners alleging therein that her marriage was performed with the petitioner No. 1, Md. Ahsan, according to Muslim customs five years back and she went to her Sasural and started to lead her conjugal life. While she lived properly for about two years but, thereafter, all the accused-petitioners started to torture her through various modes for demand of colour television and cash of Rs. 20,000/-. While she made protest saying that

her parents are no more and brother is poor but in spite of that she was being tortured through various modes by the accused-petitioners and several times she was removed from her Sasural house. A Panchayti was also held but the accused-petitioners were adamant on the demand as made by them. It has also been alleged by the opposite party No. 2 that before one month, all the accused-petitioners causing assault removed her from the Sasural house saying to come again with the money and at that time, all the petitioners also snatched her clothes and ornaments and, presently, she is residing in village-Baliyas at the house of her brother.

2. After filing of the aforesaid complaint case by the opposite party No. 2, Bibi Sanjida Khatoon, on enquiry u/s 202 of the Code of Criminal Procedure, the Sub Divisional Judicial Magistrate, Banka, summoned the accused-petitioners, finding prima facie case u/s 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act through the impugned order dated 13.9.2005, which is impugned in the present application.

3. The sole argument as advanced by the learned counsel for the petitioners is that from the complaint petition, it is apparent that the entire occurrence, as alleged, took place in village-Agarpur, P.S. Lodhipur (Goradih), District-Bhagalpur, the Sasural house of the complainant-opposite party No. 2 but the opposite party No. 2 filed the Complaint Case No. 684(C) of 2004 in the court of the Chief Judicial Magistrate, Banka. As such, the impugned order is without jurisdiction and placed reliance on the decision of the Hon'ble Apex Court in the case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, .

On the other hand, learned A.P.P. for the State submitted that the offence u/s 498A of the Indian Penal Code is continuing in nature and, therefore, the court of District- Banka, had jurisdiction to summon the accused-petitioners as the opposite party No. 2, after removal from her Sasural house situated in the District of Bhagalpur, started to reside at the residence of her brother situated in the district of Banka.

4. As in the present case, the issue is confined only to territorial jurisdiction about the criminal proceedings initiated by the complainant-opposite party No. 2, hence, there is no need to go into other factual aspects. Since the Sub Divisional Judicial Magistrate, Banka, on perusal of the complaint petition, solemn affirmation of the complainant-opposite party No. 2 and the statements of the witnesses, as examined in course of inquiry, arrived at the conclusion that prima facie the case u/s 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act is made out against the accused-petitioners, it is desirable to refer to the provision of Section 498A of the Indian Penal Code relating to cruelty at the hands of the husband or relatives of the husband of a women and also Sections 177-179 of Chapter-XIII of the Code of Criminal Procedure, which deal with the jurisdiction of the criminal courts in inquiries and trials.

Section 498A of the Indian Penal Code is read as under:

498-A. 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 wilful 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.

Sections 177-179 of Chapter XIII of the Code of Criminal Procedure are read as under:

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.

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.

179. 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.

5. It is clear from the above provisions of Sections 177-179 of Chapter XIII of the Code of Criminal Procedure that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. When it is uncertain in which of several local areas an offence was committed or where an offence was committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more than one local areas or the offence consist of several acts done in different local areas, as per Section 178 the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if

anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence had ensued.

6. In the present case, the opposite party No. 2 has filed the complaint petition in the court of the Chief Judicial Magistrate, Banka, narrating that her marriage was performed about five years back with the accused-petitioner No. 1, Md. Ahsan and she went to her sasural village-Agarpur, P.S. Lodhipur (Goradih), District-Bhagalpur. While she lived there properly about two years but, thereafter, all the accused-petitioners started to torture and assault her through various modes for demand of colour television and cash of Rs. 20,000/-. Ultimately, she was removed by the accused-petitioners from her sasural house situated in the District of Bhagalpur, snatching her clothes and ornaments and, thereafter, she started to reside at the residence of her brother situated at village-Baliyas, P.S. Dhuraiya, District-Banka.

7. On going through the provision of Section 498A of the Indian Penal Code referred to above, it is clear that harassment and cruelty at the hands of the husband or relatives of the husband of a woman is punishable with imprisonment for a term which may extend to three years and also with fine. In explanation appended to Section 498A of the Indian Penal Code, not only the physical but the mental cruelty has also been included as an act of the offence.

8. In the case of Y. Abraham Ajith (Supra), on which the learned counsel for the petitioners has placed reliance, the Hon''ble Apex Court quashed the proceeding holding that the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter.

9. In the case of Sunita Kumari Kashyap Vs. State of Bihar & Anr. {2011(2) PLJR 191 (SC)} similar issue was considered by the Hon''ble Apex Court. In the said case, Sunita Kumari Kashyap, was the appellant before the Hon''ble Apex Court, who had lodged the F.I.R. bearing No. 66 of 2007 at Magadh Medical College Police Station, Gaya, under Sections 498A and 406/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act in which on submission of the chargesheet, the Chief Judicial Magistrate, Gaya, took the cognizance of the offence under the aforesaid Sections and transferred the record to the court of the Sub Divisional Judicial Magistrate, Gaya, where an objection was raised by the husband and in-laws, who were accused in that case, about the territorial jurisdiction of the court at district-Gaya, but the same was rejected. Thereafter, Criminal Misc. Nos.42478 of 2009 and 45153 of 2009 were filed by the in-laws and husband respectively of Sunita Kumari Kashyap before this Court, which were allowed by different Benches of this Court vide order dated 19.3.2010 and 29.4.2010 respectively, holding the lack of territorial jurisdiction. The aforesaid orders, i.e., the order dated 19.3.2010 passed in Criminal Misc. No. 42478 of 2009 and the order dated 29.4.2010 passed in Criminal Misc. No. 45153 of 2009, were set aside by the Hon''ble Apex Court. The Hon''ble Apex Court while setting

aside the aforesaid orders, in its decision, in the case of Sunita Kumari Kashyap (Supra), held in paragraphs-10 and 11, as under:

10. Mr. Sanyal also relied on a decision of this Court in Bhura Ram and Others Vs. State of Rajasthan and Another, wherein following the decision in Y. Abraham Ajith and Others (supra), this Court held that "cause of action" having arisen within the jurisdiction of the court where the offence was committed, could not be tried by the court where no part of offence was committed. For the same reasons, as mentioned in the earlier paragraph, while there is no dispute as to the proposition in view of the fact that in the case on hand, the offence was a continuing one and the episode at Gaya was only a consequence at the continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. In view of the above reason, both the decisions are not applicable to the facts of this case and we are unable to accept the stand taken by Mr. Sanyal.

10. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offence, on some occasion all had taken part and on other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.

11. From the aforesaid facts and the circumstances of the case, it is no doubt that the harassment and cruelty as alleged was caused to the complainant-opposite party No. 2 at the hands of the accused-petitioners at her sasural situated in the district of Bhagalpur and she was driven out from her Sasural by snatching her clothes and ornaments and she came at the residence of her brother situated in the district of Banka, where she is residing. As such, while the cause arose at Bhagalpur, but the effect of the cause was ensued and was continuing in the district of Banka, due to the mental cruelty suffered continuously by the opposite party No. 2 in view of the provisions of Sections 178 (c) and 179 of Chapter-XIII of the Code of Criminal Procedure. As such, I find no illegality in the impugned order dated 13.9.2005 passed by the Sub Divisional Judicial Magistrate, Banka, in Complaint Case No. 684(C) of 2004,

amounting to abuse of the process of the Court. In the result, this application, being devoid of merit, is dismissed.