
(2004) 07 PAT CK 0037

In the Patna High Court

Case No : Criminal Misc. No. 4222 of 2003

Md. Hashmatullah @ Mufti Md. Hashmatullah and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0037

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners and the learned Counsel for opposite party No. 2 as also the learned Counsel for the State.

2. The present application has been filed for quashing the entire proceeding in Complaint Case No. 864 of 2002 instituted under Sections 323, 302, 379, 304B, 307, 354, 504 and 498A of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act. The daughter of opposite party No. 2 was married on 11.5.1999 with one Maulvi Md. Amanatullah (not a petitioner in the present application) of village Dariyapur in the District of Sitamarhi. She was residing at Bombay with her husband when she died on 23rd March, 2002 in the hospital there. In pursuance of her death an FIR was lodged at Mumbai by the landlady where the deceased resided with her husband, registered under Sections 498A and 302 of the I.P.C. bearing C.R. No. 293 of 2002 at the Bandra Police Station.

3. It is not in dispute between the parties that this prosecution instituted at Bombay was only against the husband of the deceased was continuing, and that he has been released on bail therein by the order dated 4.10.2002 by the Court of Addl. Sessions Judge for Greater Mumbai in Bail Application No. 1565 of 2002.

4. On 14.8.2002 the present complaint case bearing No. 864 of 2002 came to be instituted by opposite party No. 2 father of the deceased, before the Court of C.J.M., Sitamarhi against the husband of the deceased as also other family members of the husband of the deceased. The husband who is being prosecuted at Mumbai as mentioned above, was also made an accused in the present

complaint case. By the order dated 14.8.2002 the learned Chief Judl. Magistrate in exercise of powers u/s 156(3), Cr.P.C., directed the complaint to be registered as a first information report and called upon the police to investigate and report. The present application u/s 482, Cr.P.C., then came to be filed challenging the institution of the complaint case at Sitamarhi with a misconceived prayer for quashing the order of cognizance date 14.8.2002.

5. The learned Counsel for the petitioners submits that even according to the averments made in the complaint no cause of action arises at Sitamarhi. The prosecution has been initiated at Sitamarhi only to harass the petitioners. The jurisdiction for any prosecution of the petitioners, if at all, would lie at Mumbai only and certainly not at Sitamarhi. The learned Counsel for the petitioners in support of his contention draws the attention of the Court towards the description of the cause title of the complaint and submits that the complainant himself was also residing at Jaipur and not in the District of Sitamarhi. It is thus his contention that merely because the parties were married at Sitamarhi and that at one stage allegedly a demand for dowry had been made in the district of Sitamarhi as claimed in the petition of complaint, could not be sufficient to clothe the Court at Sitamarhi with jurisdiction. He submits that there is prosecution u/s 498A also pending at Mumbai against the husband of the deceased, opposite party No. 1 in the present complaint. The learned Counsel refers to the petition of complaint and more particularly paragraph-8 of the same and submits that in a triangular situation of the parties at Mumbai, Jaipur and Sitamarhi, it is apparent from the petition of complaint itself that the opposite party No. 2 did approach the police authority at Mumbai for institution of a proper case after the death of his daughter at Mumbai in his presence. The recital in the complaint that lack of adequate response from the Mumbai police was sufficient justification for institution of the case at Sitamarhi cannot be accepted. The learned Counsel lastly submits that even according to the complaint itself the petitioners reside at Mumbai, He refers to paragraph 4 of the complaint in this regard. Summing up the argument the learned Counsel submitted that viewed from any angle, it would appear that there could be no justification for the petitioners to be subjected to the harassment of a prosecution at distant Sitamarhi. The opposite party has his remedies in law and he could avail the same.

6. The learned Counsel for opposite party 2 did not dispute the contention that the complaint came to be filed due to lack of adequate response from the Mumbai Police. It is not disputed that the opposite party No. 2 did not take any further steps at Mumbai by recourse to any Court of law. It is also not disputed by the opposite party that the accused also resided at Mumbai. The learned Counsel for opposite party No. 2 sought to justify the maintainability of the prosecution at Sitamarhi on the ground that the parties having been married in the District of Sitamarhi, the last demand for dowry having been made at Sitamarhi on 13.3.2002 by the accused person who had visited and stayed there for a week as mentioned in the complaint and the deceased having died on 23.3.2002 after the deceased left the District of Sitamarhi on 13.3.2002, the

prosecution u/s 304B of the I.P.C., at Sitamarhi was fully justified. He also does not dispute the position that he resides at Jaipur for his livelihood. It was submitted that the proximity of time with regard to demand for dowry at Sitamarhi on 13.3.2002 by the petitioners and the death of the deceased on 23.4.2002, albeit at Mumbai, would vest jurisdiction in the Court at Sitamarhi. It was lastly submitted that none of the petitioners in the present application were being prosecuted in the criminal prosecution at Mumbai. The husband had chosen not to question the proceedings at Sitamarhi.

7. Having considered the rival contentions of the Counsel for the parties it is apparent that in the present case the deceased was married in the district of Sitamarhi. According to the complaint certain demands for dowry were allegedly made at Sitamarhi by the petitioners in close proximity of the death of the deceased. Subsequently, the deceased and her husband shifted from Sitamarhi to Mumbai. While the complainant himself shifted to Jaipur. The demand for dowry allegedly originated at Sitamarhi but it appears to have continued at Mumbai leading to the death of the deceased. The prosecution at Mumbai has undoubtedly been initiated at the behest of the landlady only against the husband of the deceased under Sections 302 and 498A of the I.P.C. A statement has been made in the complaint that the opposite party approached the Mumbai Police, but having failed to elicit adequate response against the husband of the deceased and other accused who according to the complaint itself resided at Mumbai the opposite party No. 2 had no option but to institute the present case at Sitamarhi.

8. The present application seeks quashing of the entire proceeding in the complaint case as also what was erroneously referred to as the order of cognizance dated 14.8.2002. It is noteworthy that the order dated 14.8.2002 is not an order of cognizance. This order is under the provisions of Section 156(3) of the Code of Criminal Procedure. In pursuance of the same quite obviously an FIR under the provisions of the Code of Criminal Procedure was required to be registered and investigated in accordance with the provisions of the Code. The petitioners do not question the direction of the Magistrate to institute an FIR and to investigate the same. Quite rightly so. The powers of the police to investigate into a cognizable offence cannot be lightly interfered with in a proceeding u/s 482 of the Cr.P.C. Lack of territorial jurisdiction would hardly be a ground calling for interference with investigation by the police in what is a cognizance offence. The duty and right of the police to investigate into a criminal offence and the limitation for interference in the investigation by the Court stands laid down by the Supreme Court in a judgment reported, *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, The investigation of the offence falls in the domain of the Police Department. This power of investigation calls for no interference in proceedings u/s 482, Cr.P.C., except in grave cases. This Court does not find the present case to be of such nature so as to direct or restrain the investigation of the case by the police.

9. Reliance would usefully also be placed upon a judgment of the Supreme Court reported in *State of Andhra Pradesh Vs. Punati Ramulu and others*, Lack of territorial jurisdiction over the place of crime could not be a ground to refuse investigation. It was held therein that refusal to investigate on this ground would be a dereliction of duty. Nothing precludes that police after completing the investigation from forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed. To the same effect is the direction of the Supreme Court in IV (1999) CCR 58 :VIII (1999) SLT 137=1999 AIR SCW 3942, *Trisuns Chemical Industry v. Rajesh Agrawal and Ors.*. The Apex Court after considering the provisions with regard to the investigation provided in the Code in pursuance of a complaint case likewise held that jurisdictional aspect becomes relevant only at the stage of trial. The power of the Magistrate to take cognizance is not impaired by the territorial jurisdiction. After taking cognizance he may have to decide as to the Court which has jurisdiction to interfere into or try the offence. Such situation would reach only during the post-cognizance stage and not earlier. No doubt the facts of the latter judgment in 1999 AIR SCW 3492 arose out of a complaint case where the cause of action was said to have occurred in Indore while the complaint was filed at Gandhidham, Gujarat. But the analogy applicable would be the same. It would perhaps be useful to quote the relevant extract of a paragraph from the said judgment:

"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 inquiries and trials." That chapter contains provisions regarding the place where the inquiry and trial are to take place. Section 177 says that "every offence shall ordinarily be enquired 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 inquiry 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...."

10. Before concluding the discussion it would only be proper to refer to a judgment reported in IV (2000) CCR 144 : VII (2000) SLT 460: *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, relied upon by the Counsel for the petitioners dealing with issue of territorial jurisdiction and investigation. The Apex Court on consideration arrived at the conclusion that if an offence is disclosed in the FIR the Court would normally not interfere with an investigation into the case and will permit the same to be completed. If the FIR prima facie discloses the commission of an offence, it would amount to trenching upon the lawful power of the police to investigate into the offence if any directions to the contrary be issued by the Courts. This Court would, therefore, proceed primarily on the basis of the fact that an FIR having been registered, there must be an

extremely cogent and glaring grounds for this Court at this stage to interfere and restrain the investigation into the FIR. The averments as made in the complaint registered as an FIR, prima facie do disclose ingredients of a cognizable offence requiring investigation. In any event the petitioners have made no grievance against the direction for institution of an FIR and investigation into the same by the Court below.

11. Given the aforesaid fact and circumstances and in view of the discussions contained hereinabove this Court finds no merit in the present application and the same is accordingly dismissed.