
(2015) 07 JH CK 0057

In the Jharkhand High Court

Case No : Criminal M.P. No. 1329 of 2013

Prashant Kumar Tripathy and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 178, 179, 202
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2015) 07 JH CK 0057

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : J.S. Singh, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard learned counsel for the parties.

2. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with complaint case No. 1388 of 2011, including the order dated 17.10.2012 passed by learned Chief Judicial Magistrate, Ranchi, whereby and whereunder cognizance has been taken for the offence punishable under sections 498A/34 of the Indian Penal Code.

3. The prosecution story arising out of the complaint case filed by the O.P. No. 2 in brief is that the complainant was married to the accused No. 1 (petitioner No. 1) on 6.12.2008 as per Hindu rites and custom at Chhapra in the State of Bihar. It has been alleged that at the time of marriage, several articles including Rs. 2 lac in cash was given to her in-laws. After the marriage, the complainant arrived at her matrimonial home at Chhapra, where after some time for insufficient dowry, she was started being tortured mentally. It has been alleged that the husband of the complainant assaulted her and pressure was created upon her to bring Rs. 2 lacs as dowry and on refusal, torture was meted out to her. It has also been alleged in the complaint petition that brother of the complainant came

to Chhapra and took the complainant to Ranchi on 17.04.2009, where she remained for about one year but neither the accused persons took her back nor they spoke to her. On the assurance of the accused persons, the brother of the complainant brought the complainant to Chhapra in April, 2010 but after 15 days, torture again started, wherein the brother of the complainant again brought the complainant to Ranchi on 12.05.2010 from her matrimonial home, where the complainant had been treated. It has been alleged that the complaint was lodged at Pandra O.P., wherein a bond was executed by the husband (petitioner No. 1) and he took the complainant back to Chhapra, where the husband started living separately in a rented house but even then after some time the demand of dowry started and on account of assault for non fulfillment of the demand of dowry, she was forced to leave her matrimonial house.

4. After an inquiry was conducted under section 202 Cr.P.C. by examining the complainant on solemn affirmation as well as her witnesses, cognizance was taken for the offence punishable under section 498A/34 of the Indian Penal Code by the learned Chief Judicial Magistrate, Ranchi, vide order dated 17.10.2012.

5. Learned counsel for the petitioners has submitted at the outset that the entire allegations made in the complaint petition are false and concocted and that the learned Chief Judicial Magistrate, Ranchi did not have the territorial jurisdiction to take cognizance for the offence punishable under Section 498A of the Indian Penal Code as the complaint petition discloses that the entire allegations of demand of dowry and torture meted out to the complainant was at Chhapra and there being no cause of action at Ranchi, the entire criminal proceeding deserves to be quashed on that ground itself. To substantiate his argument, learned counsel for the petitioners has submitted that even the complainant on solemn affirmation has not stated about the cause of action, which had accrued in the District of Ranchi and similar is the statement of her witnesses. Learned counsel for the petitioners have also submitted that on 13.05.2010, an application was filed by the petitioner No. 1 against the complainant-O.P. No. 2 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. It has been submitted that in the counter affidavit filed by the opposite party No. 2 and in the P.R. Bond which has been executed by the petitioner No. 1, there is no mention of any torture or any demand of dowry. Continuing with his argument, learned counsel for the petitioners states that after the application under section 9 of the Hindu Marriage Act was filed by the petitioner No. 1, the present complaint has been filed on 25.08.2011 by way of a counter blast and on such score also, the entire criminal proceeding against the petitioners deserves to be quashed.

6. Learned counsel for the petitioners has also referred to the judgments reported in the case of Udai Shankar Awasthi Vs. State of U.P. and Another, (2013) 1 AD 537 : (2013) 1 Crimes 231 : (2013) 1 JCC 711 : (2013) 1 JT 539 : (2013) 2 RCR(Criminal) 503 : (2013) 1 SCALE 212 : (2013) 2 SCC 435 and in the case of National Bank of Oman Vs. Barakara Abdul Aziz and Another, (2012) 12 JT 432 : (2012) 12 SCALE 168 : (2013) 2 SCC 488 .

7. Learned counsel for opposite party No. 2, on the other hand, while placing reliance on the counter affidavit filed by her, has submitted that specific allegations have been levelled against the petitioners of demand of dowry and torture and in such circumstances the petitioners do not have any case so as to warrant any interference by this Court. It has been submitted that in the complaint petition itself, the allegations have been made at paragraphs 25 and 27, which would indicate that PR Bond was executed by the petitioner No. 1 in the district of Ranchi, pursuant to which, the complainant was taken back to her matrimonial house at Chhapra and that the complainant was also assaulted and she was left at Ranchi and in such circumstances, it cannot be said that territorial jurisdiction lies only in the district of Chhapra and not in the district of Ranchi. It has further been submitted that intention of the petitioners would be evident from the fact that on 12.05.2010, she was thrown out from her matrimonial house, whereas on 13.05.2010, the application under section 9 of Hindu Marriage Act was filed by the petitioner No. 1 and thereafter also, the PR Bond was executed by the petitioner No. 1 on 04.06.2010 and in such circumstances, the conduct of petitioner No. 1 is also to be looked into.

8. Learned counsel for O.P. No. 2 has also relied upon the judgments in the case of Sumanta Seth and Others Vs. The State of Jharkhand and Another , Sunit Kumar Kashyap v. State of Bihar and Anr., reported in 2011 2 East Cr.C. 217 (SC) , Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, AIR 1997 SC 2465 : (1997) CriLJ 2985 : (1997) 5 JT 478 : (1997) 4 SCALE 112 : (1997) 5 SCC 30 : (1997) 3 SCR 1127 : (1997) AIRSCW 2401 : (1997) 4 Supreme 448 and in the case of Jagdish Ram Vs. State of Rajasthan and Another, AIR 2004 SC 1734 : (2004) 3 JT 202 : (2004) 3 SCALE 49 : (2004) 4 SCC 432 : (2004) 2 SCR 846 : (2004) 2 UJ 1075 .

9. After hearing learned counsel for the parties and after going through the records, I find that sole thrust of the argument of learned counsel for the petitioners is that the entire allegations of torture and demand of dowry have taken place in the district of Chhapra and since no cause of action had arisen in the district of Ranchi, in such circumstances, the Court at Ranchi is precluded from taking cognizance in view of apparent bar on account of territorial jurisdiction. The complaint petition basically revolves around the incident of torture, which had been carried out in Chhapra. So far as paragraphs 25 and 27 of the complaint petition is concerned, upon which, much reliance has been placed by learned counsel for the opposite party No. 2, the same seems to be with respect to PR Bond executed by the petitioner No. 1 in Pandra O.P. on 4.6.2010 giving an undertaking that in future no cause of complaint will occur. It further appears from the said paragraphs that the complainant was assaulted and thereafter she was taken to her parental house at Ranchi. Both the acts do not disclose that the torture and the demand of dowry were meted out to the complainant at Ranchi. The undertaking given by the petitioner No. 1 by way of P.R. Bond was as a consequence of the complaint made by the complainant before the Pandra O.P., to which the petitioner No. 1 had given the undertaking

that no such happenings will be committed in future. Such undertaking would not mean that the cause of action accrued at Ranchi. So far the averments made by the complainant in paragraph 27 of the complaint petition is concerned to the effect that she was assaulted and thereafter she was left at her parental house at Ranchi does not also denote that the cause of action was at Ranchi for institution of the case. The allegations made with respect to paragraphs 25 and 27 of the complaint cannot be said to be as a consequence of the acts alleged against the petitioners at Chhapra so as to include the Court at Ranchi to be within the territorial jurisdiction.

10. In the case of Udai Shankar Awasthi (supra), while considering the amended provisions of Section 202 Cr.P.C. where the accused resides beyond the territorial jurisdiction of the Magistrate concerned, it was held as follows:--

"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases. (See also Shivjee Singh v. Nagendra Tiwary, SCC p. 584, para 11 and National Bank of Oman v. Barakara Abdul Aziz.)"

11. In the case of National Bank of Oman (supra), similar question fell for consideration before the Hon''ble Supreme Court and it was held as follows:--

"8. We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 Cr.P.C. before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 Cr.P.C. before issuing the process.

9. The duty of a Magistrate receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of

enquiry under Section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the court;
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
- (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

12. In the case of Sumanta Seth (*supra*), it was held that the offence committed under section 498A of the Indian Penal Code is a continuous offence and the Court in whose jurisdiction part of the cause of action arises would have jurisdiction to entertain the case.

13. In the case of Sunit Kumar Kashyap (*supra*), it was held that in view of sections 178 and 179 of the Code, the offence was a continuous one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya had the jurisdiction to proceed with the criminal case instituted therein.

14. In the case of Smt. Sujata Mukherjee (*supra*), it was held that the maltreatment and humiliation meted out to the appellants is a continuous offence as on some occasions all the respondents had taken part and on other occasion one of the respondents had taken part and, therefore, section 178 of the Code of Criminal Procedure is clearly attracted.

15. In the case of Jagdish Ram (*supra*), it was held that at the stage of cognizance, the Magistrate had only to decide whether a sufficient ground exists or not for further proceeding in the matter.

16. By referring to the aforesaid judgments, the learned counsel for the opposite party No. 2 has sought to project that the learned Chief Judicial Magistrate, Ranchi had the territorial jurisdiction to take cognizance under section 498A/34 of the Indian Penal Code.

17. Since the basic thrust of argument on behalf of both the sides apart from the contention made by learned counsel for the petitioners with reference to amended provisions of section 202 Cr.P.C. is that whether the offence committed by the accused persons do fall within the purview of a continuous offence or not. At this juncture, it would be apt to refer to the judgment delivered by the Hon'ble Supreme Court in the case of Amarendu Jyoti Vs. State of Chattisgarh, (2014) 9 SCALE 162 , wherein it was held as follows:--

"7. The core question thus is whether the allegations made in the FIR constitute a continuing offence. We find from the FIR that all the incidents alleged by the complainant in respect of the alleged cruelty are said to have occurred at Delhi. The cruel and humiliating words spoken to the second respondent, wife by her husband, elder brother-in-law and elder sister-in-law for bringing less dowry are

said to have been uttered at Delhi. Allegedly, arbitrary demands of lakhs of rupees in dowry have been made in Delhi. The incident of beating and dragging Respondent 2 and abusing her in filthy language also are said to have taken place at Delhi. Suffice it to say that all overt acts, which are said to have constituted cruelty have allegedly taken place at Delhi. The allegations as to what has happened at Ambikapur are as follows:

"No purposeful information has been received from the in-laws of Kiran even on contacting on telephone till today. They have been threatened and abused and two years have been elapsed and the in-laws have not shown any interest to call her to her matrimonial home and since then Kiran is making her both ends meet in her parental home. To get rid of the ill-treatment and harassment of the in-laws of Kiran, the complainant is praying for registration of an FIR and request for immediate legal action so that Kiran may get appropriate justice."

"8. We find that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. We do not agree with the High Court that in this case the mental cruelty inflicted upon Respondent 2 "continued unabated" on account of no effort having been made by the appellants to take her back to her matrimonial home, and the threats given by the appellants over the telephone. It might be noted incidentally that the High Court does not make reference to any particular piece of evidence regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, we are of the view that it cannot be held that the Court at Ambikapur has jurisdiction to try the offence since the appropriate Court at Delhi would have jurisdiction to try the said offence. Accordingly, the appeal is allowed".

18. Considering the entire facts in its totality, the entire allegations in the complaint petition reveal the alleged acts committed by the petitioners in Chhapra and merely because a PR bond was executed by the petitioner No. 1 in the District of Ranchi, the same act would not come within the purview of an alleged act of torture committed in the District of Ranchi so as to include the Court at Ranchi within the territorial jurisdiction. Moreover, as has been enumerated above, and in view of the judgement of the Hon'ble Supreme Court in the case of Amarendu Jyoti (supra), the subsequent actions on the part of the complainant as a resultant effect of the alleged torture upon her would not come within the zone of the same being a continuous offence. The entire facets of allegations are centered around Chhapra, which has the territorial jurisdiction to try the case. That being the position, this Court is of the view that the initiation of the complaint case in the District of Ranchi and its further continuance do merit interference on the ground of absence of territorial jurisdiction.

19. Accordingly, I find merit in this application, which is allowed and the entire criminal proceedings in connection with Complaint Case No. 1388/2011 including the order dated 17.10.2012, passed by learned C.J.M., Ranchi, by which cognizance has been taken for the offence punishable under sections 498A/34 of

the Indian Penal Code is hereby quashed.