

(2005) 06 CHH CK 0017

In the Chhattisgarh High Court

Case No : Misc. Cr. Case No. 2208 of 2003

Pratap Chand Rathore and Others

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 482
Penal Code, 1860 (IPC) — Section 498A

Citation : (2006) 1 CGLJ 101 : (2006) 1 MPHT 14

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Advocate : Prafull Bharat, for the Appellant; J.D. Bajpai, Government Advocate for Non-applicant No. 1, for the Respondent

Final Decision : Allowed

Judgement

Dhirendra Mishra, J.—The present petition has been filed by the applicants u/s 482 of the Cr.PC praying for quashing of the criminal proceedings initiated against them on the basis of the FIR lodged by non-applicant No. 2 herein.

2. Brief facts necessary for adjudication of this petition are that the non-applicant No. 2 submitted a written report to the Station House Officer of Police Station, Jagdalpur on 15-1 -2001 and on the basis of which after conducting preliminary enquiry Crime No. 20/2001 was registered against the applicants and the husband of non-applicant No. 2, namely Jayantilal.

3. The allegations in the written report against the applicants are that the non-applicant No. 1 was married to Jayanti Lal Jain on 6-6-91. One month after the marriage the applicants started harassing non-applicant No. 2 demanding dowry. Non-applicant No. 2 gave birth to a daughter on 16-6-92 at Jagdalpur. After birth of the daughter husband of non-applicant No. 2 Jayantilal started business at Raipur and lived there for 5-6 years with his wife and daughter. Thereafter said Jayantilal became addict to liquor etc. and left Raipur for Bangalore in the year 1998 without informing his wife non-applicant No. 2. She tried to ascertain the

whereabouts of her husband from the present applicants but they never informed about his whereabouts and rather started torturing her mentally. She went to her matrimonial home in May, 1999 with her brother and lived there upto August, 1999. When her brother Suresh Parkh visited Bangalore, the applicants 1 and 3 abused him and demanded a sum of Rs. 3,00,000/- in the name of repayment of loan taken by husband of non-applicant No. 2. A report was lodged by the non-applicant No. 2 on 27-8-99 in Police Station, Alsur Gate, Traffic Zone, Bangalore. Thereupon non-applicant No. 2 and Jayantilal husband of non-applicant No. 2 were called by the police and there the; apologized for their fault if any and Jayantilal promised in writing that he will live with his wife and daughter at Jagdalpur and maintain them. However, when he did not come to Jagdalpur as promised, complainant/non-applicant No. 2 again visited Bangalore in February, 2000 and stayed at her sister's house. There she called her husband and applicant No. 1. However, they again demanded Rs. 3,00,000/- in the name of repayment of loan. After return from Bangalore the report mentioned above lodged. After registration of the offence, the police recorded the statements of brother of non-applicant No. 2 namely Manoj Parkh, Meghraj Parkh and Suresh Parkh and filed charge-sheet against the applicants and husband of non-applicant No. 2 namely, Jayantilal.

4. Learned Counsel for the applicants submits that the offence has been registered against the present applicants by the police and only on the basis of one sided and partisaned investigation the charge-sheet has been filed. Jayantilal, the husband of non-applicant No. 2 is living separately and a release deed has executed way back in December, 99 and in lieu of this deed a sum of Rs. 1,00,000/- was paid to Jayantilal by his father and it has been declared that both the parties shall not have any right, title or interest of any nature whatsoever, on each other.

5. The complainant and her husband resided at Raipur till 1998. They went to Bangalore and resided there together in a rented house. The lease deed between the landlord and the complainant has been filed as Document F along with English translation. Complainant has also moved an application of Document C before Women Police Station at Alsur Gate, Bangalore on 4-9-99 and by this application she informed that she was residing in her sister's house at Bangalore. She also mentioned in the report that her husband had some bad habits and therefore he had fled to M.P. apprehending arrest by the police. She further alleged that there were some petty quarrels with her husband and because of that she was residing with her elder sister at Nagarpeth, Bangalore along with her daughter. She also requested the police to summon her husband and advice him to set right her family whereupon Jayantilal was called upon in the police station and statements of complainant Sandhya and her husband Jayantilal were recorded by the police. In her statement she has stated that since her husband assured to lookafter her and their daughter the proceedings were requested to be dropped. Along with this petition number of letters written by the parents of the complainant have been filed to demonstrate that even after

filing of the complaint husband and wife both are living together peacefully at Bangalore.

6. Learned Counsel for the applicants submits that even if the allegations contained in the charge-sheet are taken to be true, police of Police Station, Kotwali, Bastar could not have taken cognizance of the same since the applicants harassed her when they were at Bangalore. Thus cause of action if any arose against the applicants within the territorial jurisdiction of Bangalore city as the demand of dowry, if any, was made by the present applicants at Bangalore and no part of cause of action arose within the jurisdiction of the Court at Jagdalpur in terms of Section 177 of the Cr.PC.

7. Relying on the judgment of the Apex Court in the matter of Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Ors., reported in 2004(3) Cri 227 (SC), learned Counsel for the applicants submit that the concerned Magistrate had no territorial jurisdiction to entertain the complaint as the crime, if any, is not committed within the territorial jurisdiction of the concerned Court because neither in the complaint nor in the statements there is any allegation that the applicants harassed her in the name of dowry within the territorial jurisdiction of the concerned Magistrate of Jagdalpur.

8. Referring extensively to the above judgment of the Supreme Court learned Counsel for the applicant submits that the offence alleged is not a continuing offence as the continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arise out of the failure to obey to comply with a rule or its requirement and which involves the penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs.

9. In the present case, general and omnibus allegations have been made by the complainant in her statement as also in the complaint that the applicants harassed her at Bangalore just after one month of marriage in the name of demand of dowry (Para 3 of the complaint) and subsequently in the year 1999 when the complainant again visited to Bangalore she was harassed in the name of demand of money at Bangalore.

10. On the other hand learned Counsel appearing respondent No. 1/State submits that from a bare perusal of the complaint and the diary statement of the complainant and her witness allegation of demand of dowry made by the applicants is established. It is further submitted that though the allegation is related to Bangalore but because of the harassment by the applicants and her husband Jayantilal the complainant is residing at Jagdalpur and thus the harassment is continuing as the complainant has been made to live at Jagdalpur because of the harassment of the applicants.

11. I have heard learned Counsel for the parties and gone through the charge-sheet filed against the present applicants as also the documents annexed with the petition. The complainant/non-applicant No. 2 has been duly served with the

notice of this petition which has been received by her brother Suresh Parkh at Jagdalpur even though she has chosen to remain absent. From the record it appears that in the year 1999 when the complainant lodged the complaint with the Women Police Station, Alsur Gate, Bangalore, the grievance of the complainant was directed only against her husband which she was somehow able to resolve on 4-9-99 which is evident from the statement which has been filed along with Document C at Page 30. The English translation of the original document in Kannada has duly been certified by the Research Officer, Directorate of Translations, Govt. of Karnataka, Bangalore. Apart from the above document, the applicants have also filed number of letters written by the relatives of complainant Sandhya to the complainant herself and Jayantilal jointly which shows that husband and wife both are living peacefully at 13-C, Third Cross, Manguntha Nagar, Magadi Road, Bangalore-23. All the allegations against the present applicants regarding harassment to the complainant relate to Bangalore and there is no allegation that the applicants harassed the complainant in the name of demand of dowry within the territorial jurisdiction of Chief Judicial Magistrate, Jagdalpur.

12. Thus even if the allegations contained in the charge- sheet are taken to be true the offence u/s 498A of the IPC if any committed by the present applicants has been committed within the territorial jurisdiction of the Bangalore Court and in view of the law laid down by the Apex Court in the matter of Y. Abraham (supra), the Court at Jagdalpur had no jurisdiction to deal with the matter as from the facts disclosed by the complainant in the complaint no part of cause of action against the applicants arose in Jagdalpur.

13. Thus, in view of the aforesaid discussion the proceedings arising out of Crime No. 20/2001 of Police Station, Kotwali, Jagdalpur pending before CJM, Jagdalpur, (State of C.G. v. Jayanti Lal and Ors.) so far as it relates to the present applicants are quashed. The complainant may file the complaint against the present applicant if she so desires, before the Appropriate Court which may be dealt in accordance with law.

Accordingly the application is allowed.