

(2003) 04 OHC CK 0070

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 390 of 2002

Prema Kumar Nanda and Others

APPELLANT

Vs

Smt. Binita Kumari Nayak ' Nanda

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 34, 498(A), 506

Citation : (2003) 04 OHC CK 0070

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.K. Padhi, M. Padhi, D. Mohapatra, B.K. Sahoo, S.K. Mohapatra, D. Das and G. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the proceeding in I.C.C. No. 10 of 1999 as well as the order dated 25.7.2002 passed by the learned S.D.J.M., Balliguda in the said complaint case.

2. From the record it appears that the opposite party filed the complaint alleging commission of offences u/s 506/498-A/34 of the Penal Code read with Section 4 of the Dowry Prohibition Act against all the three Petitioners. Case of the complainant-opposite party is that she is legally married wife of Prema Kumar Nanda, Petitioner No. 1 before this Court and marriage was solemnised on 11.6.90 at Barakhama in the district of Kandhamal. The complainant along with her had taken golden ornaments, brass utensils, clothes etc. to her father-in-law house. Since the Petitioner No. 1 was having illicit relationship with Petitioner No. 2 (sister-in-law) both husband and wife were not pulling on well. It is also alleged in the complaint that the Petitioner No. 1 and other family members including the Petitioners 2 and 3 were demanding more dowry and due to non-

fulfilment of demand, she was being subjected to ill-treatment. In the year 1992 the Petitioners 1 and 2 started quarreling with the complainant and demanded dowry and assaulted and drove her out from the house. It is also alleged that the complainant along with her father and local gentlemen intervened in the matter and Petitioner No. 1 accepted the complainant and they led happy conjugal life for about one year. Thereafter again the complainant was assaulted and driven out from the house. A compromise was brought in for the second time in June, 1993 and thereafter, the complainant and the Petitioner No. 1 lived together till December, 1995. In December, 1995, the complainant was again driven out from the house and when in the month of March, 1996 an attempt was made to compromise the dispute, the Petitioner No. 1 refused to accept the complainant unless the dowry demanded are not fulfilled. However, with much persuasion the Petitioner No. 1 agreed to accept the complainant and they stayed together till January, 1997. The complainant had gone thereafter to her father's house and she was not invited back to her matrimonial house and nobody from the house of the Petitioner came to take her back. When the complainant along with father went to the house of the Petitioner No. 1 the Petitioner No. 1 refused to accept the complainant on the ground that he could not provide any food and clothes. This matter was brought to the notice of the Secretary, CNI, Church, Barakhama and letter was issued to the Petitioner No. 1 on 8.7.1998. However, that also brought no result. Having no other way the complainant had to file an application u/s 125 of the Code of Criminal Procedure for maintenance which is pending in the court of the learned S.D.J.M., Balliguda.

3. Learned Counsel for the Petitioners submitted that the learned S.D.J.M, Balliguda has no Jurisdiction to entertain the complaint as all the allegations with regard to demand of dowry and torture did not take place with territorial Jurisdiction of the learned magistrate Learned Counsel also submitted that so far as Petitioners 2 and 3 are concerned, there is absolutely no allegation whatsoever against them and, therefore, the learned Magistrate committed an error in taking cognizance of the offences so far as the Petitioners 2 and 3 are concerned. Inspite of notice none has appeared for the opposite party.

4. From the record it appears that the Petitioners had filed an application before the learned Magistrate to recall the order taking cognizance on the ground of lack of territorial jurisdiction. Said petition was rejected by the learned Magistrate on the ground that the offence is a continuous one and therefore offence having been committed when the complainant was in her father's house at Barakhama, S.D.J.M., Balliguda has jurisdiction to entertain the complaint. Reliance is placed by the learned Counsel for the Petitioner on a decision of this Court in the case of K.S. Vishwanath and Ors. v. State of Orissa and Anr, reported in (2001) 20 OCR 378. In the aforesaid reported case, FIR was lodged at Bhubaneswar giving rise to a G.R. Case in the court of the S.D.J.M., Bhubaneswar. On consideration of all materials available on record, this Court held that allegation of cruelty and torture took place at Bangalore and the Court at Bhubaneswar had no territorial jurisdiction to take cognizance of any such offence. This Court further held that

allegations of demand of dowry at Bhubaneswar was an after thought to bring the matter within the court's jurisdiction at Bhubaneswar. There is no dispute about such a proposition of law as Magistrate will not have jurisdiction to entertain a complaint unless the act alleged has taken place within the jurisdiction of the Magistrate. Question as to whether a particular Court has territorial jurisdiction to entertain complaint or not will depend on facts of each case. So far as the present case is concerned apart from allegations about demand of dowry made by the Petitioner No. 1 it is alleged in para-11 that on 12.2.1999 after 3 P.M. accused Petitioner No. 1 came to the house of the father of the complainant, assaulted the complainant and threatened her to take away her life unless she withdraws the case filed in the court of learned S.D.J.M., Balliguda claiming maintenance. The entire paragraph-11 is quoted below:

That the complainant stated that she moved before the Hon"ble Court of the S.D.J.M. vide M.C. No. 86/98 against the accused No. 1 or maintenance which is now subjudice. When the accused No. 1 came to know from a reliable sources that one M.C. case is filed against him by the complainant, on 12.2.99 after 3 P.M. he came to the house of father of the complainant and assaulted and also threatened to take away the life of the complainant unless she withdraw the case.""" Considering the nature of allegations made in the earlier paragraph stating that at least on three occasions the Petitioner had to leave matrimonial house on allegation of demand of dowry and torture and the matter had been compromised on the intervention of gentlemen, it cannot be said that the allegations contained in paragraph-11 is an afterthought. I am, therefore, of the view that the learned S.D.J.M., Balliguda has territorial jurisdiction to entertain the complaint. In this connection reference may be made to a decision of the Apex Court in the case of Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, . Therefore, there appears no force in the contention of the learned Counsel for the Petitioner that the learned S.D.J.M. has no jurisdiction to entertain the complaint.

5. So far as the second ground of attack is concerned, it is submitted by the learned Counsel for the Petitioner that there is absolutely no material on record to show that any allegation had been made against the Petitioners 2 and 3 and the order taking cognizance should be quashed so far as the Petitioners 2 and 3 are concerned. I also do not find any force in such argument as in paragraph 4 of the complaint it is specifically stated that not only the Petitioner No. 1 ill-treated the complainant but other accused persons joined hands with the Petitioner No. 1. The relevant paragraph is quoted below:

That the complainant further stated that the accused No. 1 and other family members like accused No. 2 and 3 have been demanding more dowry from the complainant. But she felt to comply with the demand of her in-laws expressing the inability of her parents due to poverty. For which, accused No. 1 started ill-treatment to the complainant and the other accused persons were also joined hands with the accused No. 1. They did not give her food and clothes.""" In view

of the above allegations, I do not find any merit in the contention of the learned Counsel for the Petitioner that there is no allegation of demand of dowry or torture at the hands of the Petitioners 2 and 3.

6. In view of the discussions made above, I do not find any merit in the application and the same stands dismissed.

7. Application dismissed.