

(2015) 03 JH CK 0109
In the Jharkhand High Court
Case No : Criminal M.P. No. 604 of 2010

Rajkishori Devi and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

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

Citation : (2015) 3 JLJR 293

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Pratiush Lala, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J—Heard the learned counsel for the parties. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Complaint Case No. 348 of 2004 including the order dated 2.9.2004 passed by the learned Sub-Divisional Judicial Magistrate, Dhanbad, whereby and whereunder, cognizance has been taken for the offence punishable u/s. 498-A of the Indian Penal Code (IPC) as also u/s. 3/4 of the Dowry Prohibition Act (D.P. Act).

2. A complaint petition was instituted by the complainant/opposite party No. 2 wherein it was stated that the marriage of the complainant was solemnized with the accused No. 1 (petitioner No. 3) and at the time of marriage several gifts in the form of cash and kind were given to the accused persons. It has been alleged that after sometime the accused persons started demanding Rs. 50,000/- and one Hero Honda Motorcycle and on account of non-fulfillment of the said demand, the complainant was subjected to physical and mental torture. It has also been alleged that when the father and the brother of the complainant tried to meet her the same was refused by the accused persons, which led to

lodgement of a complaint before the Lok Adalat at Gopalganj. It has also been alleged that on 19.11.2003, the accused persons had taken all her gold ornaments and had driven her out from the matrimonial home and ultimately the complainant having no alternative filed a complaint case being Complaint Case No. 348 of 2004.

3. After the complainant was examined on S.A. and her witnesses, the learned Sub-Divisional Judicial Magistrate, Dhanbad was pleased to take cognizance for the offence punishable u/s. 498-A IPC as also u/s. 3/4 of the D.P. Act.

4. It has been submitted by the learned counsel for the petitioners that the complaint petition specifically reveals that the entire allegations against the accused persons of committing torture upon the complainant on account of non-fulfillment of dowry had taken place in Gopalganj in the State of Bihar and no cause of action has arisen at Dhanbad so as to institute the complaint case at Dhanbad. He therefore submits that in view of the fact that Dhanbad Court does not have any territorial jurisdiction to try the offence as alleged by the complainant, the learned Sub-Divisional Judicial Magistrate, Dhanbad committed an illegality in taking cognizance for the offences punishable u/s. 498-A IPC as also u/s. 3/4 of the D.P. Act. In this context he has referred to the judgment of the Hon'ble Supreme Court reported in the case of Manish Ratan and Others Vs. State of M.P. and Another, (2007) 1 DMC 41 : (2006) 9 JT 630 : (2007) 148 PLR 67 : (2006) 11 SCALE 34 : (2007) 1 SCC 262 : (2006) 8 SCR 226 Supp and the case of Amarendu Jyoti Vs. State of Chattisgarh, (2014) 9 SCALE 162 .

5. The learned counsel for the State on the other hand has submitted that since the complaint petition itself discloses vagueness about the actual place of occurrence and as such it cannot be said that Dhanbad Court does not have jurisdiction to try the case filed by the complainant. It has also been submitted that at this stage it cannot be verified that as to whether the incident had taken place at Gopalganj or at Dhanbad since on being turned out from her matrimonial home, the complainant started living at Dhanbad and the mental torture being suffered by her due to the actions on the part of the accused persons, the offence can be said to be of a continuous nature and in such circumstances, the Court at Dhanbad does have jurisdiction to entertain the criminal complaint.

6. After hearing the learned counsel for the parties and after going through the records, I find that in the complaint petition, the entire occurrence is alleged to have taken place at Gopalganj and only after the occurrence when she was driven out from the matrimonial home, the complaint case has been instituted at Dhanbad, therefore, in no circumstance from the perusal of the complaint petition it can be deduced that Dhanbad Court had the territorial jurisdiction to try the offence as alleged by the complainant. In the solemn affirmation also, the complainant narrated about the torture meted out to her by the accused persons, but admittedly, the said torture took place in Gopalganj and it has further been admitted by the complainant that on account of being turned out from the

matrimonial home on 19.11.2003, she started residing at her parental house. In the case of *Amarendu Jyoti Vs. State of Chattisgarh*, (2014) 9 SCALE 162 while taking into consideration the provisions of Sections 178 and 179 of the Code of Criminal Procedure it was held as follows:--

"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 the respondent No. 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."

7. Thus, it is a settled law that merely because the complainant had been turned out from her matrimonial home, the mental torture allegedly inflicted upon her cannot be termed as a continuing offence even though she is residing at her parental house as an outcome of the alleged actions on the part of the accused persons. Admittedly, jurisdiction in terms of the allegations made in the complaint petition filed by the complainant/opposite party No. 2 lies within the Court at Gopalganj as no part of the offence is said to have been taken place within the territorial jurisdiction of the Court at Dhanbad. In such circumstances, the criminal proceedings at Dhanbad Court cannot be allowed to be continued on the ground of there being no territorial jurisdiction to continue the same. Accordingly, in view of what has been discussed above, this application is hereby allowed and the entire criminal proceeding in connection with Complaint Case No. 348 of 2004 Including the order dated 2.9.2004 passed by the learned Sub-Divisional Judicial Magistrate, Dhanbad, whereby and whereunder, cognizance has been taken for the offence punishable u/s. 498-A of the Indian Penal Code as also u/s. 3/4 of the Dowry Prohibition Act is quashed.