
(2017) 09 PAT CK 0037

In the Patna High Court

Case No : Criminal Miscellaneous No. 37156 Of 2016

Ram Swarth Sah And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 06-09-2017

Acts Referred:

Code Of Criminal Procedure, 1973 (CrPC) — Section 156(3), 177, 178, 178(c), 179, 204, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Indian Penal Code 1860, (IPC) — Section 34, 147, 323, 404, 406, 498(A), 506

Citation : (2018) 2 PLJR 815

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Jitendra Singh, Uday Chand Prasad, Jharkhandi Upadhyay, Pankaj Kumar Jha

Final Decision : Allowed

Judgement

1. In the present application preferred under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C."), the petitioners have challenged

the order dated 21.07.2016 passed by the learned Sessions Judge, Darbhanga in Cr. Revision No. 193 of 2016 whereby the revision petition preferred

by the petitioners against the order dated 11.03.2016 passed by the learned Sub-Divisional Judicial Magistrate, Benipur in Complaint Case No. 231 of

2015 corresponding to Trial No. 587 of 2016 has been dismissed and the impugned order passed by the learned Sub-Divisional Judicial Magistrate has been upheld.

2. By the aforesaid order dated 11.03.2016, the learned Sub-Divisional Judicial Magistrate, Benipur had summoned the petitioners in exercise of

powers conferred under Section 204 of the Cr.P.C. after taking cognizance of the

offences punishable under Section 498-A of the Indian Penal Code

(for short â??IPC?) and Sections 3 and 4 of the Dowry Prohibition Act, 1986.

3. The challenge to the order passed by the learned Sub-Divisional Judicial Magistrate in the revision petition was mainly based on the ground that

having regard to the allegations made in the complaint, since no part of cause of action had arisen within the territorial jurisdiction of the learned Sub-

Divisional Judicial Magistrate, Benipur he had no jurisdiction either to inquire into the matter or to summon the petitioners to hold trial for the offences

under Section 498-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.

4. Heard Mr. Jitendra Singh, learned Senior Advocate for the petitioners, Mr. Pankaj Kumar Jha, learned Advocate for the opposite party no.2 and

Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.

5. Mr. Jitendra Singh, learned Senior Advocate appearing for the petitioners has submitted that as per the complaint petition the offence alleged took

place either in Sitamarhi district or at the working place of the petitioner no.3 in the district of Purnea. He has submitted that no part of cause of action

took place within the territory of Darbhanga district. He has contended that in view of the allegations made in the complaint, the learned Sub-

Divisional Judicial Magistrate had no jurisdiction to entertain the complaint and proceed with the same. In support of his submission, he has placed

reliance on the judgments of the Apex Court rendered in the case of Bhura Ram and Ors. Vs. State of Rajasthan & Anr [(2008) 11 SCC 103,] Y.

Abraham Ajith & Ors vs Inspector Of Police, Chennai & Anr [(2004) 8 SCC 100]and Amarendu Jyoti & Ors. Vs. State of Chhatisgarh & Ors.

[(2014) 12 SCC 362].

6. Per contra, Mr. Pankaj Kumar Jha, learned Advocate for the complainant-opposite party no.2 submits that the opposite party no.2 has been

subjected to cruelty by her husband and his relatives and in order to save her life she was forced to come to the house of her parents at Darbhanga.

7. He submits that Section 498-A of the IPC is a continuing offence. Therefore, the fact that she was driven out of her matrimonial house because of

cruelty meted out to her and had to take shelter at the house of parents at Darbhanga, the learned Sub-Divisional Judicial Magistrate, Benipur,

Darbhanga was competent to entertain the complaint in exercise of powers conferred under Section 178(c) of the Cr.P.C. In support of his

submission, he has placed reliance on the judgment of the Supreme Court in Sunita Kumari Kashyap Vs. State Of Bihar And Anr [(2011) 11 SCC 301].

8. Mr. Jha submits that Section 498-A of the IPC has been inserted by Criminal Law (Second Amendment) Act, 1983 and came into force with effect

from 26.12.1983. The Section is the outcome of pressing need of the society to stop all sorts of cruelty towards married woman, which had become a

problem of the society. He contends that the sole object of Section 498-A of the IPC is to protect the women from cruelty by her husband or in-laws.

He submits that the complainant was forced to live at her parents' house at Darbhanga, as a result of cruelty meted out to her in her matrimonial

house. Hence, Section 179 of the Cr.P.C. is applicable. Thus also, the court at Darbhanga has jurisdiction to entertain the complaint and hold inquiry

and try the case.

9. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State adopts the submissions advanced by the learned Advocate for the

opposite party no.2.

10. I have heard learned counsel for the parties and perused the materials available on record.

11. Some of the provisions of Cr.P.C., which have bearing on the matter that is being dealt with herein, may be taken note of. Sections 177, 178 and

179 of the Cr.P.C. read as under:-

177. Ordinary place of inquiry and trial. "Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local

areas.

179. Offence triable where act is done or consequence ensues.â?"When an act is an offence by reason of anything which has been done and of a

consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such

consequence has ensued.â??"

12. A cursory look at the aforesaid provisions makes it clear that every offence shall ordinarily be inquired into and tried by a court within whose local

jurisdiction it was committed. However, certain exceptions have been carved out. Where an offence is continuing one, and continues to be committed

in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas. Further, a person accused of

commission of any offence is triable by a court within whose local limits the act amounting to the offence was committed or the consequence of that

act had ensued.

13. These are basic rules with regard to jurisdiction of criminal courts in inquiries and trials in Chapter XIII of the Cr.P.C.

14. In the complaint petition, it is stated that the marriage ceremony of the complainant with the petitioner no.3 was performed on 29.11.2012 at Navin

Hotel situated in Darbhanga as per Hindu rites and customs. After marriage she went to her sasural at Sursand, Sitamarhi where the accused persons,

namely, Ram Dulari Devi, Ram Swarth Sah and Anil Kumar demanded Swift car as dowry. The complainant told them that the financial condition of

her father was not good and he is unable to fulfill their demand. Thereafter, she was subjected to immense torture by the accused persons. In the

meantime, her husband was appointed as an Assistant Professor-cum-Junior Scientist in Bhola Paswan Shastri Agriculture College, Purnea. It is

stated that in April, 2013 she went with her father to Purnea. On her arrival at Purnea, her husband, father-in-law, mother-in-law and brother-in-law

(Devar) again started demanding Swift car as dowry. They confined her in a room and she was not being provided food and water for days together.

Lastly, on 30.12.2013, all the accused persons ousted her from the house after retaining all her jewellery. At that time she was pregnant.

15. It is further stated in the complaint that she came back to Darbhanga. She was blessed with a baby girl on 04.09.2014 in the Nursing Home of Dr.

Mina Mahaseth at Darbhanga. It is stated that the delay caused in filing the complaint was because her father was trying to resolve the differences amicably.

16. From a perusal of the complaint petition, it would be manifest that all alleged acts of demand of dowry or torture had taken place in the complainant's matrimonial house at Sursand, Sitamarhi or at Purnea where her husband was posted as an Assistant Professor-cum-Junior Engineer in the College and not at Darbhanga where she was living together with her parents. There is no allegation in the complaint that she had been forcibly taken by the accused persons to her parental house at Darbhanga or while she was residing at Darbhanga, any demand of dowry was made by the accused persons or the accused persons came to Darbhanga and subjected her to cruelty.

17. Having regard to the allegations made in the complaint, it is to be seen that whether the offence is continuing one or the "cause of action" ever arose within the territorial jurisdiction of the Sub-Divisional Judicial Magistrate, Benipur, Darbhanga in the light of Sections 178 and 179 of the Cr.P.C.

18. In State of Bihar Vs. Deokaran Nenshi [(1972) 2 SCC 890,] it was observed by the Supreme Court that a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance, occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission, which constitutes an offence once and for all and an act or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

19. The Supreme Court had considered the meaning of the expression "cause of action" in Y. Abraham Ajith & Ors vs Inspector Of Police,

Chennai (Supra) as under :-

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is

to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The

expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other

words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the

opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances

forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance

of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means

every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the

Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in

"cause of action".

16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute

either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of

material facts.

17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a

court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy

in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable

claim; the phrase comprises every fact, which, if traversed, the plaintiff must

prove in order to obtain judgment. In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18. In Halsbury Laws of England (4th Edn.) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

20. The Supreme Court in Y. Abraham Ajith & Ors (Supra) observed thus :-

"11. A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee (Smt.) Vs. Prashant Kumar Mukherjee

[(1997) 5 SCC 30]. There the allegations related to commission of alleged offences punishable under Section 498A, 506 and 323 IPC. On the factual

background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was

residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the

factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the

husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an

offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied."

21. The Supreme Court observed further:-

"19. When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable

conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned magistrate had no jurisdiction to deal with the matter. The

proceedings are quashed. The complaint be returned to respondent No.2 who, if she so chooses, may file the same in the appropriate Court to be dealt

with in accordance with law. The appeal is accordingly allowed.â??

22. In *Manish Ratan & Ors. Vs. State of M.P. & Anr.* [(2007) 1 SCC 262,] the Supreme Court held that the offence under Section 498-A of the IPC

cannot be held to be continuing one only because the complainant was forced to leave her matrimonial home. It allowed the appeal against the order

passed by the Madhya Pradesh High Court in a criminal revision petition whereby the revision petition questioning the jurisdiction of court of Chief

Judicial Magistrate, Datia on the touchstone of Sections 177 and 178 of the Cr.P.C. was dismissed.

23. In *Ramesh Vs. State of T.N.* [(2005) 3 SCC 507,] the Supreme Court transferred the original case under Section 498-A and 404 IPC from

Tiruchirapalli to Chennai observing as under :-

â??11. In the view we are taking, it is not necessary for us to delve into the question of territorial jurisdiction of the Court at Trichy in detail. Suffice it

to say that on looking at the complaint at its face value, the offences alleged cannot be said to have been committed wholly or partly within the local

jurisdiction of the Magistrate's Court at Trichy. Prima facie, none of the ingredients constituting the offence can be said to have occurred within the

local jurisdiction of that Court. Almost all the allegations pertain to acts of cruelty for the purpose of extracting additional property as dowry while she

was in the matrimonial home at Mumbai and the alleged acts of misappropriation of her movable property at Mumbai, However, there is one allegation

relevant to Section 498-A from which it could be inferred that one of the acts giving rise to the offence under the said Section had taken place in

Chennai. It is alleged that when the relations of the informant met her in-laws at a hotel in Chennai where they were staying on 13.10.1998, there was

again a demand for dowry and a threat to torture her in case she was sent back to Mumbai without the money and articles demanded.

12. Thus the alleged acts which according to the petitioner constitute the offences under Section 498-A and 406 were done by the accused mostly in

Mumbai and partly in Chennai. Prima facie, there is nothing in the entire complaint which goes to show that any acts constituting the alleged offences

were at all committed at Trichy.â??

24. In *Bhura Ram and Ors. Vs. State Of Rajasthan (Supra)*, the case of the complainant was that she left the place where she was residing with her husband and in-laws and came to the city of Sri Ganganagar, State of Rajasthan and that all the alleged acts, as per the complaint, had taken place in the State of Punjab. The complainant had lodged the complaint before the learned Additional Chief Judicial Magistrate, Sri Ganga Nagar against the appellants. The complaint was sent to the Police Station Sadar Sri Ganga Nagar for investigation under Section 156(3) of the Cr.P.C. pursuant to which FIR was registered against the appellants for the offences under Sections 498-A, 406 and 147 of the IPC and charge sheet was filed against the appellants in the court of Additional Chief Judicial Magistrate, Sri Ganga Nagar. The learned Additional Chief Judicial Magistrate framed charges against the appellants for offences under Sections 498-A and 406 of the IPC. The appellants made a prayer before the Court that the Court of Additional Chief Judicial Magistrate had no jurisdiction to try the offences as the cause of action accrued within the jurisdiction of the other court. The application was rejected. The Revision Petition before the learned Sessions Judge, Sri Ganga Nagar was also rejected. The High Court also dismissed the application filed before it against the revisional order. However, the appeal against the order passed by the High Court succeeded before the Supreme Court. The Supreme Court held that since all the alleged acts, as per the complaint had taken place in the State of Punjab and, therefore, the court of Sri Ganga Nagar did not have any jurisdiction to deal with the matter and consequently quashed the proceeding pending before the court of Additional Chief Judicial Magistrate, Sri Ganga Nagar.

25. In *Amarendu Jyoti & Ors. Vs. State of Chhatisgarh & Ors. (Supra)*, the appellants had challenged the order passed by the High Court of Chhatisgarh dismissing their application under Section 482 of the Cr.P.C. and holding that the FIR for the offence under Section 498-A of the IPC was liable to be tried by the court at Ambikapur, which had jurisdiction to try the offence. The main contention of the appellants was that the incident of cruelty alleged by the complainant had taken place only at Delhi, where the couple resided after which the complainant went to stay with her parents at Ambikapur in the State of Chhattisgarh, therefore, the Court at Ambikapur had no jurisdiction to try the offence where no incident was

alleged to have taken place. This argument did not find favour with the High Court, which dismissed the application under Section 482 of the Cr.P.C.

The High Court held that after the complainant had left the appellants society at Delhi and gone to Ambikapur to reside with her father, the acts of

cruelty continued and, therefore, the offence of cruelty was a continuing offence.

26. Aggrieved by the rejection of the application by the High Court, when an appeal was preferred before the Supreme Court, the main contention on

behalf of the appellants was that the FIR did not disclose a continuing offence. While examining the question whether the allegations made in the FIR

constituted a continuing offence, the Supreme Court observed as under :-

9. We find from the F.I.R. 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 2nd 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 the respondent no. 2 and abusing her in filthy language also is 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.

10. The allegations as to what has happened at Ambikapur are as follows:

â??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.â??

11. 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 â??continued unabatedâ? 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.â??

27. Thus, it would be manifest from the aforesaid decisions of the Supreme Court that simply because the victim is compelled to leave her matrimonial

house and she takes shelter in her parental home located in a different city, there would be no applicability of Sections 178 and 179 of the Cr.P.C. if

no part of â??cause of actionâ?? has accrued in that city.

28. So far as the decisions of the Supreme Court relied upon by the learned counsel for the complainant in Sunita Kumari Kashyap Vs. State Of Bihar

and Anr (Supra) is concerned, the brief facts of the said case were to the effect that the appellant Sunita Kumari Kashyap was married to one Sanjay

Kumar Saini on 16.04.2000 as per the Hindu rites and ceremonies at Gaya. At the time of marriage, her father gifted all the household utensils,

Almirah, Double Bed, Dining Table, Fridge, Television and an amount of Rs. 2,50,000/- in cash. However, she was harassed and tortured immediately

after the marriage and an additional demand of 4 lakhs was made and when she was in family way, she was forcibly taken out of her matrimonial

home at Ranchi and brought to her parental home at Gaya where she gave birth to a girl child which worsened her plight. Her husband came up with

a new demand that unless her father gave his house at Gaya to him she will not be taken back to her matrimonial home at Ranchi.

29. On these allegations, she had lodged the FIR under Sections 498A and 406 read with Section 34 of the IPC and Sections 3 and 4 of the Dowry

Prohibition Act at Magadh Medical College Police Station, Gaya. After investigation of the case was over and on perusal of the materials the Chief

Judicial Magistrate took cognizance under Sections 498-A and 406 read with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition

Act, the accused husband raised objection that the court at Gaya had no territorial jurisdiction. The learned Chief Judicial Magistrate, Gaya rejected

the objection. Against the said order an application under Section 482 of the Cr.P.C. was filed before the High Court and the High Court took a view

that the proceedings at Gaya were not maintainable for lack of jurisdiction.

30. On challenge in appeal, the Supreme Court reversed the order of the High Court holding that there was assertion by the appellant about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, the offence being continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya will have jurisdiction to try the case instituted therein.

31. Having considered the facts of the case in Sunita Kumari Kashyap (Supra), when I look to the facts of the present case, I find that there is no similarity between the two. In that case the allegation was that the victim was taken by the husband from Ranchi to Gaya and was threatened with dire consequences for non-fulfillment of demand of dowry. There is no such allegation in the present case. Neither the complainant nor any witness has whispered that the accused persons took her to Darbhanga or ill-treated her in any manner at Darbhanga or made any demand of dowry at Darbhanga.

32. As noted above, on perusal of the complaint, it is manifest that all the alleged acts of cruelty had taken place in the matrimonial house of the complainant at Sursand, Sitamarhi or at the place of posting of her husband at Purnea where she had come to reside with him.

33. In view of the discussions made hereinabove as also in view of the ratio laid down by the Supreme Court in Bhura Ram and Ors. Vs. State of Rajasthan (Supra), Y. Abraham Ajith & Ors Vs. Inspector Of Police, Chennai & Anr (Supra) and Amarendu Jyoti & Ors. Vs. State of Chhatisgarh & Ors. (Supra), I am of the opinion that on the facts and in the circumstances of the case, there would be no applicability of the provisions prescribed under Section 178(c) or Section 179 of the Cr.P.C. in the present case.

34. Resultantly, the impugned order dated 21.07.2016 passed by the learned Sessions Judge, Darbhanga in Cr. Revision No. 193 of 2016 and the order dated 11.03.2016 passed by the learned Sub-Divisional Judicial Magistrate, Benipur in Complaint Case No. 231 of 2015 corresponding to Trial No. 587 of 2016 are set aside.

35. The application stands allowed.

36. Let the complaint be returned to the complainant and if she so wishes, she may file the same before the appropriate court to be dealt with in

accordance with law. In case of such filing within two months from today before the appropriate court, it would not be open to the petitioners to

challenge the order of cognizance on the point of lapse of the period of limitation.