
(2007) 02 JH CK 0006
In the Jharkhand High Court

Rashmi Verma and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 156, 177, 178, 179
Penal Code, 1860 (IPC) — Section 323, 498A, 506

Citation : (2007) 3 EastCric 566 : (2007) EastCric 2 504 : (2007) 2 JLJR 58 :
AIR 2007 Jhar 390 : (2007) 56 AllIndCas 450 : (2007) CriLJ 4671

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—Heard Mr. K.P. Deo, learned Counsel for the petitioners, Shri N.N. Singh, learned Counsel for the O.P. No. 2 and Shri R. Mukhopadhyay, A.P.P. for the State.

2. The petitioners have preferred this petition u/s 482 Cr.P.C. for quashment of the entire criminal proceeding including the order impugned dated 21.2.06 passed by S.D.J.M., Ranchi taking the cognizance of the offence against them u/s 498A I.P.C. in Complaint Case No. 821/05.

3. The prosecution story in Complaint Case No. 821/05 in short is that the Opposite Party No. 2 complainant was married to the petitioner No. 4 Rupesh Kumar on 22.11.2000 at Patna and on the eve of marriage Rs. 1.5 lakh in cash with T.V., Fridge & Washing machine etc. were given. After the marriage the complainant went to her matrimonial home at Darbhanga and from there she was taken to Bangalore by her husband to his place of posting. The petitioner No. 1 Rashmi Verma is her Nanad, the petitioner No. 2 Ritesh Kumar is the younger brother of her husband and the petitioner No. 3 Smt. Anpurna Verma is the mother-in-law. Her father-in-law Bimal Kishore Prasad Verma was also impleaded as an accused in the complaint case but he died after some time.

4. It is alleged in the complaint case that her husband was posted at Bangalore and was working as software engineer but against her will and wishes she was

taken to Delhi on 27.4.2002 and left alone at railway station and thereafter her husband disappeared. After great difficulty she could manage to return back to her brother. She further alleged that soon after her marriage she was subjected to mental torture by the petitioners, as according to them, her father had not given sufficient dowry in marriage and that she was an unattractive woman with no physical appeal. She bore the above indignities silently in Bangalore with the hope that situation would change in future but of no avail. It is alleged further that it was the petitioner No. 3 (Mother-in-law) who was from the very beginning was instrumental in perpetrating torture for dowry to her. It was discovered by the complainant during her stay in Bangalore that her husband had pre-marital relation with a Keralian girl named Seena who was also working in the company of her husband and his pre-marital relations converted into extra marital relations. She found her husband profligate and promiscuous by nature. Whenever she raised protest about his extra marital relations he used to brutalize her and in such atmosphere she gave birth to a child in December, 2004. On the arrival of the other petitioners when she narrated her agonies it was asked by them either to bear with the situation or to get out from her matrimonial home to which she received it with great shock. On her information when her elder brother came to Bangalore and tried to pacify the matter by requesting them to mend themselves but all of no avail. Again in the month of April, 2005 her cousin Akhilesh came to Bangalore but his attempt to pacify the situation turned futile and the situation worsen. Finally when her elder brother Kumar Sashi Bhushan came on receiving telephonic call from the neighbours to intervene the alarming situation, he and the complainant both were assaulted and finding no way out he rescued his sister (complainant) and took her to Parimal Hospital where she was treated and from there she was taken to Ranchi and since then she was living with his brother and parents at Ranchi.

5. Mr. K.P. Deo, learned Counsel submitted that the allegation is false and the occurrence did not take place in the manner presented by the complainant. She has not come up with clean hands and has suppressed the material facts by not disclosing that the petitioner No. 1 Rashmi Verma is her own sister-in-law i.e. wife of the brother of the complainant Kumar Chandra Bhushan and in this manner both the marriages were in Golat form. He clarified that brother of the complainant was married to the sister of her husband and therefore, question of demand of dowry did not arise from either side. As a matter of fact the complainant did not incline to live with her husband at Bangalore.

6. The complainant had earlier also initiated a proceeding u/s 125 Cr.P.C. before the Principal Judge, Family Court, Ranchi and that her father had filed a complaint case No. 820/05 before the C.J.M, Ranchi against the petitioner-husband and others only with a view to harass them without any cause.

7. By putting a question mark on the propriety Mr. Deo submitted that neither the C.J.M. nor the S.D.J.M., Ranchi has territorial jurisdiction either to take cognizance of the offence or to try the instant case as no part of cause of action

arose within the territorial limits of the above courts.

8. Finally Mr. Deo submitted that the allegations against the petitioners are general and omnibus without specific attribution of any kind and therefore, the entire prosecution against the petitioners may be quashed.

9. Mr. K.P. Deo submitted that similar situation fell for consideration before the Apex Court, reported in 2004 S.C.C. 2134. The Apex Court in "Y Abraham Ajith and Ors. v. Inspector of Police Chennai and Anr. observed:

A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee v. Prashant Kumar Mukherjee. There the allegations related to commission of alleged offences punishable under Sections 498A, 506 and 323 I.P.C. 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 the 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.

10. Mr. N.N. Singh, learned Counsel appearing for the complainant/O.P. No. 2 submitted that in catena of decisions the Hon"ble Courts have found the view erroneous that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the cases. But Section 179 Coe of Criminal Procedure envisages that when an act is an offence by reason of anything, which has been done and of a consequence which has ensued, the place of enquiry and trial in a court within whose local jurisdiction such thing has been done or such consequence has ensued. Such provisions cannot trammel the powers of any Court to take cognizance of the offence.

11. Mr. N.N. Singh further submitted that on the jurisdictional aspect of a judicial magistrate first class, a similar situation fell for consideration before the Apex Court reported in AIR 1999 S.C.W. 3492. In Trisuns Chemical Industries v. Rajesh Agarwal and Ors. the court observed:

The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier. The High Court, without considering any of the aforesaid legal aspects rushed to the erroneous conclusion that the " judicial magistrate of first class,

Gandhidham has no power to take cognizance of the offences alleged" merely because such offences could have been committed outside the territorial limits of the State of Gujarat.

12. The short questions for consideration in the present case is as to whether, under the facts and circumstances of the case, the cognizance taken by the C.J.M., Ranchi for the offence u/s 498A I.P.C. against the petitioners is sustainable or not.

13. Admittedly the present complaint case was instituted otherwise than on a police report and upon being satisfied with the prima facie allegations in the complaint, took the cognizance of the offence under the provisions Section 190 of the Cr.P.C. and transfer the case record u/s 192 Code of Criminal Procedure for enquiry u/s 202 of the said code.

14. Chapter 13 of the Code of Criminal Procedure prescribes the jurisdiction of the criminal courts in so far as it relates to enquires and trials. There is no absolute prohibition in the code that the offence committed beyond the local territorial jurisdiction cannot be enquired or tried with reference to Section 177 to 188 of the Code of Criminal Procedure.

15. Section 177 Cr.P.C. speaks about ordinary place of enquiry and trial;

Every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed.

Section 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 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.

16. I find substance in the argument of the learned Counsel for the O.P. No. 2 with reference to the decision reported in AIR 1999 S.C.W. 3492 wherein, the Apex Court in Trisuns Chemical Industry v. Rajesh Agarwal and Ors., observed that the jurisdictional aspect becomes relevant only when the question of enquiry or trial arises but in the instant case being a complaint case in nature, Section 200 contained in Chapter XV of the Code of Criminal Procedure is relevant which speaks about examination of complainant:

A Magistrate taking cognizance of an offence on complaints was examined upon oath the complainant and the witnesses present, if any and the substance of such examination shall be reduced to writing and shall be signed by the

complainant and the witnesses and also by the Magistrate;

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) If the Magistrate makes over the case for enquiry or trial to another Magistrate u/s 192

17. Section 201 of the Code of Criminal Procedure is relevant to the present context which lays down the procedure by Magistrate not competent to take cognizance of the offence which speaks,- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall-

(a) If the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect,

(b) If the complaint is not in writing, direct the complainant to the proper court.

18. Incompetence of a Magistrate to take cognizance may arise for want of power to receive complaint, or of local jurisdiction or incompetency to try under Schedule 1 column 6 of the Cr.P.C. In such a case the Magistrate is to return the complaint for presentation to the proper court with an endorsement. It is settled that if at any stage of the case the Magistrate thinks that the offence committed cannot be tried by him, he should return the complaint.

19. On the factual matrix and on plain reading of the complaint petition filed by the complainant Opposite Party No. 2, I find that no part of the occurrence took place within the territorial jurisdiction of either C.J.M., Ranchi or the S.D.J.M., Ranchi and therefore, the examination of the complainant u/s 200 and initiation of the enquiry u/s 202 were not within the competence of the S.D.J.M., Ranchi, the cognizance of the offence taken by the C.J.M., Ranchi is sustainable in view of the provisions of Sections 190(1)(a) of the Code of Criminal Procedure. The expression, "cognizance" has not been defined anywhere in the Code. However, when the Magistrate on receiving a complaint applies his judicial mind for proceeding under Sections 200 to 203, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If he takes action of some other kind, such as issuing a search warrant or ordering investigation by the police u/s 156(3) of the Code of Criminal Procedure, he cannot be said to have taken cognizance of any offence. Cognizance is usually taken upon complaint either oral or in writing. Taking cognizance does not involve any formal action or action of any kind, but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence and not against a person. In the instant case I do not find any illegality or irregularity therein, and the order passed by the C.J.M., Ranchi taking cognizance of the offences in the complaint case No. 821/05 is within his competence u/s 190(1)(a) of the Code of Criminal Procedure. But in so far as examination of the complainant u/s 200 and initiation

of enquiry u/s 202 are concerned, I am of the firm view that the same is not within the competence of the S.D.J.M., Ranchi to proceed against the accused persons and appropriate order is required to be passed in accordance with law u/s 201 of the Code of Criminal Procedure.

20. With this observation this petition filed u/s 482 Cr.P.C. is disposed of.