
(2010) 08 AHC CK 0401
In the Allahabad High Court

Ravi Shankar Pal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 156(3), 177, 178, 189
Penal Code, 1860 (IPC) — Section 120B, 323, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 08 AHC CK 0401

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Family of Ram Autar Pal consisting of himself, his wife Malti Devi and two sons Ravi Shanker Pal and Shiv Shanker Pal all resident of Uttar Mohal, Quasba-Robertsganj, near Hanuman Mandir, P.S. Kotwali Robertsganj, District Sonbhadra have called in question charge sheet No. 5 of 2008 relating to crime No. 9 of 2008 for offenses under Sections 498-A, 323, 504, 506 I.P.C. and 3/4 D.P. Act, P.S. Mahila Mahanagar, District Varanasi as well as cognizance order dated 11.8.2008 by J.M.I st, Varanasi and subsequent registration of Criminal Case No. 1489/2008 (State v. Ravi Shanker Pal and Ors.) for the aforesaid offenses. All the proceedings mentioned herein above have been prayed to be quashed.

2. Background facts germinating this Crl. Misc. Application lies in a narrow compass. Smt. Soni Pal daughter of Ramchandra Pal resident of House No. C-9/167 A-6, Habibpura Nai Pokhari, P.S. Chetganj, District Varanasi, complainant-respondent No. 2 (R-2) was married with Ravi Shankar Pal (A-1), son of Ram Autar Pal (A-2) and Malti Devi (A-3). Shiv Shanker Pal (A-4) is brother of A-1. Marriage of spouses was solemnized at the parental house of R-2 in 2003 according to Hindu Customs and Rights, in which parents of R-2 had spent Rs. 13/14 lacs including the gifts. After the marriage, applicants along with

their sisters started building pressure on R-2 to bring a Tata Safari Car and when R-2 refused to oblige, her torture and harassment started by the applicants, who started assaulting and defaming her. R-2 continued to bear the temerity and fauxpas for the reason that with the passage of time, things will cool and settle down and if family feud becomes public, it will damage her parents reputation. R-2 meanwhile had become pregnant as well and, therefore, she also thought that after birth of the child her woes will subside. However, she aborted. Looking to her deteriorating condition, applicants brought R-2 to her parental house in district Varanasi and got her admitted in Marwari Hospital where she was treated in which, Rs. 20-25 thousands were spent. Subsequently thereto applicants did not care for R-2 for the reason of non-fulfillment of their demand regarding Tata Safari Car. On telephone, she was always threatened that A-1 will get re-married.

3. When harassment and torture became unbearable, R-2 claimed maintenance from A-1 by moving an application u/s 125 Cr.P.C. before Principal Judge, Family Court, Varanasi, which is still pending. All the ornaments and cash money of R-2 were seized by A-

4. When the applicants came to know about the case lodged by R-2, they started requesting for return of R-2 with them but the parent of R-2 were apprehensive in sending her back because of the attitude of the applicants sensing danger to her life. In this respect, a conclave was convened in district Varanasi and an accord was reached according to which, on 11.2.2008, R-2 joined the company of applicants and came to Robertsganj. She could hardly stay there for three days when her torture again started. Meanwhile when A-3 had gone to her parents house, in her absence, sisters of A-1 along with other relatives started harassing and assaulting R-2. On complaint being made by R-2 to her husband A-1, she was rebuffed as A-1 sided with his family members. On the pretext of celebrating Holy festival three or four days prior to that, some obnoxious substance was being administered to R-2 and when she was under delirium, she was being assaulted. Condition of R-2, therefore, started deteriorating rapidly. Sensing the gravity of situation, A-1 and A-4 brought R-2 to district Varanasi on 23.3.2008 and left her as destitute all alone at Dali Chauraha only in her worn cloths and there threatened her with life and thereafter returned back to Robertsganj. There being no other option, R-2 came back to her parents and she was given medical treatment, which was still continuing.

5. Since R-2 became confident that she had no other way out left for redressal of her miseries that she approached the Court by moving an application u/s 156(3) Cr.P.C. with the prayer that a FIR be registered against the applicants. On the application of the complainant, FIR of crime No. 9 of 2008 for offenses under Sections 498-A, 323, 504, 506 I.P.C. and ? D.P. Act was registered at P.S. Mahila Mahanagar, District Varanasi on 19.4.2008 at 5.10 P.M. mentioning date of incident as 23.3.2008.

6. Usual investigation continued and police charge sheeted the applicants on 1.5.2008 vide charge sheet No. 5 of 2008, which is under challenge in the instant

Crl. Misc. Application. However, it is mentioned here that three accused persons namely Ramme Pal, Suneeta Pal and Sonam, who were brother and sisters of A-1 were not charge sheeted by the police as against them no credible material could be collected during investigation nor any prosecutable evidence surfaced against them.

7. On the basis of aforesaid charge sheet vide Annexure No. A-2, J.M.-I, Varanasi took cognizance of the offenses and registered case No. 1489 of 2008 on 11.8.2008, which cognizance and registration of case is also under challenge in instant application.

8. Since applicants were charge sheeted, they have invoked inherent power of this Court by filing instant Crl. Misc. Application with a prayer, which has already been recorded in the opening paragraph of this judgment.

9. A counter affidavit has been filed by R-2. The matter was listed in the cause list and when it was taken up on 17.8.2010, both the parties argued the matter finally.

10. I have heard Sri Anil Kumar Mishra in support of this application and Sri Ajay Shankar, learned Counsel for respondent No. 2 as well as learned AGA for the State.

11. Learned Counsel for the applicants contended that no part of cause of action arose in district Varanasi and, therefore, investigation by Mahila Mahanagar police, charge sheet submitted by it, cognizance by J.M.-I, Varanasi and registration of case against the applicants on the basis of said charge sheet all are illegal and beyond their competence being outside the scope of their territorial jurisdiction. It was submitted that no part of cause of action arose in district Varanasi at all and, therefore, neither the police of district Varanasi had power to investigate the crime nor J.M.-I, Varanasi had territorial jurisdiction to take cognizance of the offence. In support of said contention, learned Counsel relied upon the recorded facts mentioned in the FIR, which is the sole document lodged by complainant-respondent No. 2 appended along with this application. Additionally, Ld. counsel for applicants relied upon judgments of Apex Court rendered in *Manish Ratan and Ors. v. State of M.P. and Anr.* 2007 (1) UP CrR 282, *Sri Rajendra Ramchandra kavalekar v. State of Maharashtra* and another 2009 (1) UP CrR 462 and *Y. Abaham Ajith v. Inspector of Police, Chennai* and Anr. 2004 (II) UP CrR 315. Concluding contention was that the entire prosecution of the applicants is illegal and, therefore, proceedings against the applicants be quashed along with charge sheet and summoning order.

12. Conversely, Sri Ajay Shankar, learned Counsel for R-2 and learned AGA contended that the perusal of FIR (Annexure-1) itself indicates that some parts of cause of action arose in district Varanasi on different occasions and, therefore, in-consonance with Section 178 of the Code, police of Mahila Mahanagar had full authority to investigate the crime, which it had done and the charge sheet submitted by it is neither illegal nor beyond its jurisdiction and, therefore, cannot

be quashed. For the same reasoning, it was additionally contended that J.M.-I, Varanasi had full authority to take cognizance on the basis of charge sheet submitted by the police and register the case, therefore, no fault can be found with such an act of J.M.-I, Varanasi, which was in consonance with the statutory provision. It was, therefore, submitted that instant Crl. Misc. Application sans merits and is liable to be dismissed.

13. I have heard arguments for both the sides and have considered the merits of the case and perused the record in the light of submissions advanced.

14. The question, which has been mooted for consideration in the instant application relates with the maiden contention regarding territorial jurisdiction of the police to investigate the offence vis a vis the allegations leveled by R-2 in her FIR. Before dwelling upon factual aspect, a search light on the statutory provision regarding jurisdiction is sketched below.

15. Chapter XIII of the Code deals with jurisdiction of criminal courts in enquiry and trials, which starts from Section 177 and concludes at Section 189. Sections which are relevant in the present controversy are Sections 177 and 178. Since rest of the Sections have no application, they are being eschewed from being discussed hereunder. Section 177 of the Code lays down a common law rule that the place of trial of an offence shall ordinarily be inquired into by a Court under whose territorial jurisdiction, the offence has been committed. This rule has got its cementing force in Halsbury's laws of England (Vol. IX para 83). Thus the ordinary venue for trial for an offence is the Court under whose territorial jurisdiction crime has been committed. This general rule, however, is subject to certain exceptions which are contained in Section 178 of the Code which ordains that where the local area regarding commission of offence is uncertain or where the offence is committed partly in one local area and in partly in other or where the offence is a continuing one and is committed in more than one local areas or where the offence consist of several acts and those acts were performed in different local areas then the Courts in all those local areas where any part of cause of action or any activity has been done will have the jurisdiction to try the accused. This has been so enacted to obliterate the dispute between different Courts in conducting trial of those offenses, which were committed under different local jurisdiction of various Courts or where offence is a continuing one. At this juncture it is pointed out that cause of action means every fact, which it will be necessary for the prosecution to prove to establish its allegations. This aspect of the matter has been considered in *Reed v. Brown* (1889) 22 QBD 128 and by the Privy Council in AIR 1949 78 (Privy Council)

16. The above two Sections of the Code 177 and 178 have come up for consideration before Hon'ble the Apex Court in various decisions, some of which have been relied upon by the applicants referred to above with few others. Perusal of those judgments indicate that if any part of cause of action has arisen within the territorial limits of a Court, then that Court shall have the power to try accused of that offence. In this respect, the decision of the Apex Court in *Smt.*

Sujata Mukherjee Vs. Prashant Kumar Mukherjee, is noticeable, wherein, it has been held as follows:

7. Despite service being effected on the private respondents, no one has appeared for any of the accused-respondents. We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of mal treatment and humiliation meted out to the appellant in the hands of all the accused-respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, Clause (c) of Section 178 of the Code of Criminal procedure is clearly attracted.

17. In view of above exposition of law by the Apex Court, now I delve upon the facts of the present case. Grievance of the applicants is that Mahila Mahanagar police had no right to register the FIR and investigate the offenses, which was committed, according to the applicants, in district Sonbhadra. Perusal of the FIR (Annexure No.-1), however, narrates a different story altogether. First and foremost, it is mentioned that prior to lodging of Annexure No.-1, wife R-2 had instituted a maintenance proceeding in the Court of Principal Judge, Family Court, Varanasi claiming maintenance. It has not been averred at all by the applicants that Principal Judge, Family Court, Varanasi had no jurisdiction to entertain the dispute between A-1 and R-2. In respect of maintenance proceedings, the applicants had acceded to the jurisdiction of Principal Judge, Family Court, Varanasi and thereby they have accepted the jurisdiction of Courts at Varanasi to settle the dispute between A-1 and R-2. Since the applicants have not objected to the jurisdiction of Principal Judge, Family Court, Varanasi, it now does not lie in their mouth to say that the Courts at Varanasi do not have the jurisdiction in somewhat reliable proceedings between the same parties under Sections 498-A, 323, 504, 506 I.P.C. and ? D.P. Act.

18. Another reason for not countenancing contention of the applicants is that according to the FIR, at three stages, part of cause of action did arise in Varanasi. First of all, when R-2 was pregnant, she was tortured, brought to Varanasi and was got aborted there and then she was left as destitute with her parents. Second is the threat calls given to R-2 on phone by the applicants coercing her to fulfill her demand of Tata Safari Car, third cause of action is the convened conclave in district Varanasi where the applicants and complainant-respondent No. 2 and her parents participated and where an accord was arrived that R-2 will join the company of A-1. This conclave without any doubt was in respect of demand of Tata Safari Car as dowry and torture meted out to R-2. Another cause of action was when under delirium, R-2 was brought by A-1 and A-4 to district Varanasi where she was alighted at Dali Chauraha and was threatened therewith life and warned not to return to Robertsganj and thereafter the applicants did not care to know her whereabouts. It is thus perceptibly clear that the torture, which was meted out to R-2 regarding non-fulfillment of dowry of Tata Safari Car was not restricted within the territorial limits of district

Sonbhadra only but had transgressed into district Varanasi as well. Some part of cause of action, recorded above, did occur in district Varanasi. The factual scenario in the present case unerringly without any ambiguity indicate that in district Varanasi also offenses under Sections 498-A, 323, 504, 506 I.P.C. and ? D.P. Act were committed. Moreover, I find that the applicants have no grievance in fighting a case of maintenance before Principal Judge, Family Court, Varanasi and, therefore, their grievance regarding lack of territorial jurisdiction raised in respect of offenses committed by them is nothing but a pretext to linger on the trial by raising untenable objections.

19. Reverting back to the judgments cited and relied upon by the counsel for the applicants, so far as the decision of Sri Rajendra Ramchandra Kavalekar (Supra) is concerned, it was rendered in altogether different facts and circumstances. That was a decision wherein question of commission of offenses under Sections 120-B, 420, 467, 468, 471 I.P.C. and Section 13 (2) read with Section 13(1)(d) of P.C. Act was under consideration before the Apex Court. That is not the situation herein in this Application. The dispute between close relatives and family members specially between husband and wife has got a different texture altogether than commission of offence under Prevention of Corruption Act. Both have got different areas of operation and have to be judged from different angles altogether. Applicants cannot be given any benefit from the aforesaid decisions, which has got no application on the facts and circumstances of the present case.

20. Coming to another decision of Manish Ratan (Supra), the said decision was also rendered in different facts and circumstances. The facts of the aforesaid decision as has been mentioned by the Apex Court whereas follows:

There is nothing in the complaint to show that any maltreatment was given to the complainant at Datia. The allegations, which I may repeat here, are that the mal-treatment was given within a specific period at Jabalpur. There is nothing to show that any mal-treatment was given by any of the petitioners at Datia and under these circumstances, the case of Sujata Mukherjee does not help the learned Counsel for the complainant in this case.

21. It was in the backdrop of aforesaid facts that the decision in Manish Ratan (Supra) was rendered by the Apex Court. Further in paragraph 6 of the aforesaid decision, Apex Court has observed as follows:

6. It is not denied or disputed that no part of cause of action arose within the territorial limits of the jurisdiction of the Datia Court. Section 177 of the Code ordains that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

21. Further distinguishing case of Sujata Mukherjee (Supra), it was observed by the Apex Court in paragraph 11 as follows:

11. In Sujata Mukherjee (Supra) this Court held the offence to be a continuing one as specific allegations had been made against the husband that he had also

gone to Raipur where the complaint was filed and had assaulted the appellant therein. It was in the aforementioned fact situation, this Court set aside the judgment of the High Court holding that the incident at Raipur was not an isolated event stating.

At the hearing of these appeals, Mr. Gambhir, the learned Counsel appearing for the appellant, has submitted that it will be evident from the complaint that the appellant has alleged that she had been subjected to cruel treatment persistently at Raigarh and also at Raipur and incident taking place at Raipur is not an isolated event, but consequential to the series of incidents taking place at Raigarh. Therefore, the High Court was wrong in appreciating the scope of the complaint and proceeding on the footing that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur. Hence, the criminal case filed in the Court of Chief Judicial Magistrate, Raipur, was only maintainable against the respondent husband against whom some overt act at Raipur was alleged. But such case was not maintainable against the other respondents.

22. It is thus perceptibly clear that the present case is one, which is covered with the decision of the Apex Court rendered in *Sujata Mukherjee* (Supra) and the decision of *Manish Ratan* (Supra) was rendered in altogether different facts scenario and, therefore, does not in any way countenance the contention raised by Ld. counsel for the applicants.

23. To the same effect is the decision of *Y. Abraham Ajith* (Supra). In paragraph 4 of the aforesaid decision, Apex Court has noted the facts as follows:

A bare reading of the complaint would go to show that no part of cause of action arose within the jurisdiction of the Court where the complaint was filed. Therefore, the entire proceedings had no foundation.

24. In that case, wife had left the house on her own volition and had not returned back and, therefore, no cause of action had arisen at the place where she was residing after renouncing her in-laws house. In paragraph 9 of the aforesaid decision, it has been observed by the Apex Court as follows:

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 offenses cannot be applied.

25. Here in the present case, the facts are entirely different. As pointed out herein above, wife, in state of delirium when she was very sick was brought to district Varanasi and was left at Dali Chauraha by A-1 and A-4 where she was threatened with her life by them as well besides other causes of action mentioned above and, therefore, it cannot be cogitated for any moment that no

part of cause of action arose in district Varanasi.

26. From the above discussion, I find no merit in this Application.

27. I wound up this judgment by concluding that the present Application is wholly merit less and hence is dismissed. Interim order dated 27.4.2009 stands vacated. Trial court is directed to expedite the trial and make an effort to conclude it expeditiously.