(2017) 02 BOM CK 0170

In the Bombay High Court

Case No : 772 of 2016

Razia Khatoon Rizvi & Anr. APPELLANT

Vs

The State of Maharashtra & Anr. RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 188 - Saving of inherent powers of High Court - Offence committed outside India
Indian Penal Code, 1860, <a href=

Citation : (2017) 02 BOM CK 0170

Hon'ble Judges : A.S. Oka, Anuja Prabhudessai

Bench : DIVISON BENCH

Advocate : Ketan Gupta, S.V. Sonwane, Fazil Hussain Shaikh

Judgement

1. The submissions of the learned counsel appearing for the Applicants and the learned counsel appearing for the second Respondent were fully heard on 10th February, 2017.

2. Notice for final disposal was already issued. Accordingly, submissions in detail were heard. The present Applicants are admittedly citizens of United Kingdom. The prayer in this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short ''Cr.P.C.'') is for quashing the First Information Report registered at the instance of the second Respondent for the offences punishable under Sections 498A, 406, 323, 504, 506 and 120 B read with 34 of the Indian Penal Code (for short ''IPC''). The second Respondent is the wife of one Mr. Syed Mohammed Reza Rizvi. The first Applicant in the mother of the husband of the second Respondent and the second Applicant is his sister. The main submission canvassed across the Bar is that the entire cause of action as against the Applicants has arisen in United Kingdom. Reliance was placed on section 4 of IPC and section 188 of the Cr.P.C. Reliance was also placed on a decision of the Apex Court in Fatma Bibi Ahmed Patel Vs. State of Gujarat and Anr., AIR 2008 SC 2392

3. The submission of the learned counsel for the Applicants is that as all the incidents narrated in the First Information Report have taken place in United Kingdom, the present Applicants cannot be prosecuted for the offences under IPC as the provisions thereof will not apply to the present Applicants.

4. The learned counsel for the second Respondent relied upon several decisions. His submission is that a part of the cause of action has arisen in India. He has submitted that in any case, the Applicants are persons of Indian origin. Today, he has placed on record a document having the caption "how to address issues related to marriages of Indian Women to NRI /PIO". However, on a query being made by the Court, he candidly states that the Applicants are not citizens of India. Relying upon various decisions including the decision of the Apex court in the case of Lee Kun Hee & Ors Vs. State of U.P. & Others, Criminal Appeal No.304 of 2012 decided on 1st February, 2012. he has submitted that the offence against the Applicants can be tried in India. The learned APP also supported the impugned First Information Report.

5. We have carefully considered the submissions. As stated earlier, it is undisputed that at the relevant time when alleged offence were committed, the Applicants were the resident of United Kingdom and they were the citizens of United Kingdom. They continue to be the citizens and the residents of United Kingdom. It is an admitted position that on the date when the alleged offences were committed, the Applicants were not the citizens of India and even today they are not citizens of India. We have perused the statement of the second Respondent on the basis of the First Information Report registered. She has stated that her marriage was solemnised in Mumbai on 15th April, 2012. She has stated that the entire family of her husband consisting of her husband, her brotherinlaw, sisters of the husband, parents of the husband is the resident of London in United Kingdom. She has stated that one year after the marriage was solemnised, she received VISA of United Kingdom. She has stated that when she reached United Kingdom, her family was residing at the address mentioned in her statement. She stated that the sisters of her husband started harassing her. Thereafter, she has narrated an incident of August, 2014. She alleged that in the night, her husband assaulted her and abused her. She stated that the abuses were heard by her motherinlaw and her husband''s sister. It is further alleged that she noticed that there were messages exchanged by her husband with another woman. All these incidents, even according to the case of the second Respondent have taken place in United Kingdom.

6. She has further alleged that the sister of the husband''s mother met her parents in India and demanded a sum of Rs.10 lakhs and house in Mumbai. It is alleged that thereafter she was subjected to cruelty in England. It is further stated by her that subsequently she came back to India. Her husband did not respond to her messages thereafter. She has stated that her husband, her motherinlaw and her husband''s sisters who continue to reside in England continued to defame her by alleging that the second Respondent had a

relationship with a stranger.

7. Assuming that the statements of the second Respondent on the basis of which the impugned First Information Report was registered are correct, it is obvious that all the alleged incidents with which the Applicants are allegedly associated have taken place in United Kingdom. In fact, all the alleged acts of cruelty on the part of the Applicants have taken place after the date on which the second Respondent reached United Kingdom and till the date she came back to India.

8. We are proceeding on the footing that what is alleged by the second Respondent in her statement is correct. At this stage, it will be necessary to advert to Section 4 of IPC, which reads thus :

4. Extension of Code to extraterritorial offencesThe provisions of this Code apply also to any offence committed by

[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be;]

[(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

9. In view of Section 4, if any citizen of India in any place without or beyond India commits any offence under IPC, the provisions of IPC will apply to such offence. If a person who is not a citizen of India on any ship or aircraft is registered in India wherever it may be commits an offence under IPC, the provisions of IPC will apply to the said offences. Thus, a person who is not a citizen of India commits an offence in a foreign country while he is not on any ship or aircraft registered in India, the provisions of IPC will not apply to him unless he has committed an offence targeting a computer resource in India.

10. Section 188 of the Cr.P.C. reads thus :

188. Offence committed outside IndiaWhen an offence is committed outside India

(a) by a citizen of India, whether on the high seas or eleswhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

Section 188 provides that when an offence is committed by a citizen of India outside India or anywhere on the high seas or elsewhere, or by a person not being Indian citizen on any ship or aircraft registered in India, may be dealt with in respect of such offence as if it has been committed at any place within India at which he may be found.

11. At this stage, it will be necessary to consider the decision of the Apex Court in Fatma Bibi (supra). This was a case where the Appellant before the Apex Court was the mother of the husband, who was admittedly a citizen of Mauritius. Admittedly, the son of the Appellant had married to the complainant. Her son and daughterinlaw at all material times were residing in Kuwait. A complaint was filed by her daughterinlaw in the Court of Chief Judicial Magistrate, Navsari alleging torture by Appellant''s son. The Appellant filed an application before the concerned Court raising a contention that as she was a foreign national and the entire cause of action took place at Kuwait, the order of taking cognizance is bad in law. The learned Trial Judge rejected the said contention. However, the revision application preferred by the Appellant was allowed. The order of the revisional Court was set aside by the High Court and thus, the Appellant was before the Apex Court. The Apex Court in paragraph No.4 held thus :

" There are materials before us to show that the appellant is a citizen of Mauritius. She has been visiting India on Visas issued by India. She, thus, indisputably is not a citizen of India. She might have been staying in India with her relatives as has been contended by the complainant, but it has not been denied and disputed that she is not a citizen of India. If she is not a citizen of India having regard to the provisions contained in Section 4 of the Indian Penal Code and Section 188 of the Code of Criminal Procedure, the order taking cognizance must be held to be illegal.

In terms of Section 4 of the Indian Penal Code, the Indian courts will have jurisdiction to try an accused only if the accused is a citizen of India even if the offence was committed outside India or by any person on any ship or aircraft registered in India wherever it may be. Neither of the aforementioned contingencies is attracted in the instant case. Section 188 of the Code of Criminal Procedure also deals with offences committed outside India. Clause (a) brings within its sweep a citizen of India, whether on the high seas or elsewhere, or by a Person, although not citizen of India when the offence is committed on any ship or aircraft registered in India.

In view of the fact that the offence is said to have been committed in Kuwait, the provisions of the Indian Penal Code or the Code of Criminal Procedure cannot be said to have any application."

This aspect of the matter has been considered by this Court in Central Bank of India vs. Ram Narain [supra], wherein it was clear held:

"The learned AttorneyGeneral contended that Ram Narain was at the time when sanction for his prosecution was given by the East Punjab Government, a citizen of India residing in Hodel and that being so, he could be tried in India being a citizen of India at that moment, and having committed offences outside India, and that the provisions of Section 4, I.P.C. and Section 188, Cr.P.C. were fully attracted to the case.

In our opinion, this contention is not well founded. The language of the sections plainly means that if at the time of the commission of the offence, the person committing it is a citizen of India, then even if the offence is committed outside India he is subject to the jurisdiction of the courts in India. The rule enunciated in the sections is based on the principle that qua citizens the jurisdiction of courts is not lost by reason of the venue of the offence. If, however, at the time of the commission of the offence the accused person is not a citizen of India, then the provisions of these sections have to application whatsoever."

(underlines supplied)

12. In the present case, as narrated earlier, at all the relevant time, the Applicants were the citizens and residents of United Kingdom. Under section 4 of IPC, the Courts in India will have jurisdiction to punish an accused even if the crime is committed outside of India provided the accused is a citizen of India on the date of the commission of the offence. The Indian Courts will have jurisdiction to try an accused who not a citizen of India only if he is on any ship or aircraft registered in India wherever it may be at the time of the commission of the offence. In the present case, all the three contingencies covered under section 4 of IPC are not at all applicable. Therefore, the provisions of IPC are not applicable to the offences alleged against present Applicants.

13. We have perused the decisions cited by the learned counsel for the second Respondent. As far as the decision of the Apex Court in the case of Lee Kun Hee & Ors. Vs. State of U.P. & Ors. (supra) is concerned, the factual situation is completely different. In the complaint filed in a Court in India it was asserted that the goods were supplied by JCE Consultancy from Ghaziabad, Delhi. It was alleged that the factum of supply of goods from Ghaziabad to Dubai was an essential component of the offence allegedly committed by the accused. It was held that this factual position was sufficient to vest the jurisdiction in the competent criminal Court at Ghaziabad. Reliance was placed on a judgment of Delhi High Court in the case of Jasbir Kaur & Ors. Vs. State and Ors., CRL.M.C.1096/2011 decided on 29th November, 2012. In the said case, the Delhi High Court accepted that as a consequences of the alleged acts of cruelty abroad, the complainant has been medically treated at Delhi. The accused in the case were not foreign citizens.

14. In the case of Gyan Singh vs. State of Rajasthan, I(2000)DMC 634 it was found that the victim was subjected to cruelty by the Petitioner at Raisingh Nagar in India. We have also perused the decision of the Madras High Court in Dr. Harihar Narasimha Iyer vs State of Tamilnadu Cr.OP. No.14656 of 2012 decided on 4th September, 2012. In paragraph No.12 it is stated that the husband started committing the acts constituting the offence immediately after the marriage in Chennai and the acts continued in USA till return of the wife to India. In the case of Ajay Agarwal versus Union of India and others, 1993 AIR SC 1637 the Court was dealing with a case where a part of conspiracy was hatched in Chandigarh. None of the judgments relied upon by the learned counsel for the

second Respondent have any application to the facts of the present case where there is no allegation of conspiracy. Moreover, all the acts or omissions alleged by the second Respondent against the Applicants had taken place in United Kingdom and the Applicants are admittedly the citizens of United Kingdom.

15. Hence, the Applicants must succeed. Accordingly, we pass following order:

(I) the First Information Report No.359 of 2013 registered with Khar Police Station, stands quashed and set aside as far as the Applicants are concerned;

(II) We make it clear that no adjudication is made as regards the other accused shown in the First Information Report;

(III) Rule is made absolute on above terms;

(IV) All concerned to act upon an authenticated copy of this judgment and order.