

(2016) 08 OHC CK 0036
In the Orissa High Court
Case No : CRL MC No. 1320 of 2012

Riaz Ahmed Baig

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178(b), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 109, 304B, 498A

Citation : (2016) 166 AIC 693 : (2017) sup1 CutLTCriminal 169

Hon'ble Judges : Mr. S.K. Sahoo, J.

Bench : Single Bench

Advocate : Mr. Umesh Patnaik Sarwar and Ali Khan, Advocates, for the Petitioners; Mr. Jyoti Prakash Patra, Addl. Standing Counsel, for the Opposite Parties

Final Decision : Dismissed

Judgement

S.K. Sahoo, J.—In this application under section 482 Cr.P.C., the petitioners Riaz Ahmed Baig and Nadia Baig have prayed to quash the order dated 13.11.2002 passed by the learned S.D.J.M., Panposh, Rourkela in G.R. Case No. 1044 of 1998 in taking cognizance of offences under sections 498-A/304-B/109 of the Indian Penal Code and sections 3 & 4 of the Dowry Prohibition Act as well as the entire criminal proceeding against them. The said case arises out of Bisra P.S. Case No.49 of 1998. The petitioner no.1 is the brother-in-law of the husband of deceased Farjana Mujafer and petitioner no.2 is the wife of petitioner no.1.

2. As per the prosecution case, the marriage between the deceased Farjana Mujafer and Niyamutulla Khan was solemnized on 12.07.1998 at Asiana Colony, Bisra and the unnatural death of the deceased took place on 14.07.1998 in the house of Niyamutulla Khan at Visakhapatnam. F.I.R. was lodged on 19.07.1998 before the Officer in charge, Bisra Police station by one S. Tanvir Ahamad, the

brother of the deceased.

It is the further prosecution case that the deceased was subjected to physical and mental torture in connection with demand of dowry and she committed suicide at Visakhapatnam and the post-mortem report indicates that the cause of death was on account of asphyxia due to ante mortem hanging. After completion of Investigation, charge sheet was submitted on 04.10.2002 under sections 498-A/304-B/109 of the Indian Penal Code and sections 3 & 4 of the Dowry Prohibition Act against the petitioners and others.

3. The main ground taken by the petitioners in challenging the criminal proceeding is that the cause of action has arisen at Visakhapatnam and therefore, the police officials of Bisra police station have no jurisdiction to register the case and to take up investigation and similarly, the Court of learned S.D.J.M., Panposh, Rourkela lacks jurisdiction to take cognizance of offences and therefore, the impugned order is without jurisdiction and should be quashed.

It is contended by the learned counsel for the petitioners that in view of section 177 of the Cr.P.C., every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed and since the death has taken place at Visakhapatnam, Andhra Pradesh and not at Bisra, hence the F.I.R. at Bisra police station is not maintainable and therefore, the continuance of proceeding is not only vexatious but abuse of process of the Court.

4. The learned counsel for the State has produced the case diary and submitted that the materials available on record indicates that the father of the deceased namely Syed Ali Ahmed, the sister of the deceased namely Nausad Jasmin, cousin brother of the deceased namely syed Sahnaz Ahmed and neighbour of the deceased namely Mohd.Mumtaz have stated about the involvement of the petitioners in connection with demand of dowry which took place within the jurisdiction of Bisra police station.

Learned counsel for the State further submitted that in view of the statements available on record that the marriage was solemnized within the jurisdiction of Bisra police station and demand of dowry was also raised by the petitioners and others within the jurisdiction of Bisra police station, it cannot be said that the F.I.R. lodged at Bisra police station is not maintainable or the Bisra police station officials have no jurisdiction to investigate the matter or the learned S.D.J.M., Panposh, Rourkela lacks jurisdiction to take cognizance of offences.

5. Section 178 of Cr.P.C. reads as follows:-

"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".

Clause (c) of section 178 Cr.P.C. deals with a situation where an offence is a continuing one and continues to be committed in more local areas than one. In such case, the offence can be inquired into or tried by a Court having jurisdiction over any of such local areas. A "continuing offence" means if an act or omission on the part of the accused constitutes an offence and if that act or omission continues from day to day, then a fresh offence is committed every day on which the act or omission continues. Normally and in ordinary course, if an offence is committed from day to day, such offence can be described as "continuing offence".

6. Clause (b) of section 178 Cr.P.C. lays down that when an offence is committed partly in one local area and partly in another, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

7. In view of clause (b) of section 178 Cr.P.C., when the offence in the form of demand of dowry has been committed partly within the jurisdiction of Bisra Police Station which culminated with the unnatural death of the deceased on account of non-fulfilment of such demand of dowry within two days of marriage at Visakhapatnam, I am of the view no illegality has been committed by the Bisra police station officials in entertaining the First Information Report and investigating the case.

8. The contentions raised by the learned counsel for the petitioners would have certainly hold good if no part of the offence had been committed within the jurisdiction of Bisra police station or the learned S.D.J.M., Panposh. Since learned counsel for the State has pointed out from the case diary that there are materials to show that not only the marriage was solemnized but also the demand of dowry was made within the jurisdiction of Bisra Police Station and within two days of marriage, the unnatural death of the deceased took place which has got connection with the demand of dowry, I am of the view that there was no legal hurdle for the informant to lodge an F.I.R. at Bisra police station and Bisra police station officials were justified in entertaining such FIR and investigating the case and submitting charge sheet and in view of the prima facie materials available on record against the petitioners, the learned S.D.J.M., Panposh, Rourkela is also competent and justified in taking cognizance of the offences on such charge sheet and therefore, I do not find any merit in this application under section 482 Cr.P.C.

9. Accordingly, the CRLMC stands dismissed.