
(2016) 03 CAL CK 0062
In the Calcutta High Court

Case No : C.R.R. Nos. 3265, 1315 of 2013 and C.R.A.N. No. 1549 of 2013

Satyaki Sen and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 177, Section 177, Section 178, Section 178, Section 179, Section 180, Section 181, Section 182, Section 183, Section 184, Section 185, Section 186, Section 207, Section 437, Section 482

Citation : (2016) 03 CAL CK 0062

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Rajdeep Majumder and Prajnadeepta Roy, for the Appellant; Anand Keshri, for the Respondent

Final Decision : Dismissed

Judgement

Siddhartha Chattopadhyay, J.—In C.R.R. No. 3265 of 2013

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the accused petitioners for quashing of proceedings in C.G.R. Case No. 5010/12 (which arose out of Lake Police Station Case No. 360 dated 01.10.2012 under Sections 498A/406/34 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act, 1986), now pending before the Court of the Learned Chief Judicial Magistrate, Alipore, South-24 Parganas.

2. In the said application the petitioners have ventilated their grievances contending inter alia that the petitioner No. 1 is the husband of the defacto complainant of said case and the petitioner Nos. 2 and 3 are the parents of petitioner No. 1. The opposite party No. 2 (wife of the petitioner No. 1) lodged written complaint to the officer-in-charge of the Lake Police Station alleging that the petitioner had inflicted physical and mental torture upon the opposite party No. 1. Admittedly, the marriage took place at Ballygunge, Kolkata between the petitioner No. 1 and the opposite party No. 2 as per Hindu Rites and Ceremonies.

After the marriage she left for her matrimonial home at Noida.

3. It has been alleged in the F.I.R. that after the marriage she was subjected to torture both physically and mentally for demand of dowry by the accused petitioners. It was also the allegation of the opposite party No. 2 that the petitioner in order to satisfy his pervert intention used to force upon her to assist him to fulfil his abnormal sexual dreams. When she drew the attention of the petitioner Nos. 2 and 3, they supported their son. On 07.02.2012 she was finally driven out from her matrimonial house which is situated at Chittaranjan Park, New Delhi and subsequently on 25th March, 2012, she returned to Kolkata. Pursuant to the said allegation, F.I.R. was lodged at Lake Police Station bearing Case No. 360 of 2012 under Section 498A/406/34 of the Indian Penal Code read with Section 3 & 4 of Dowry Prohibition Act. Petitioner No. 1 was arrested on 03.10.2012 and got interim bail on 06.10.2012 which was confirmed on 16.10.2012. Initially another C.R.R. 4198 of 2012 was filed before this Court but that was withdrawn by the present petitioner accused. The petitioner further contended that on the basis of the prayer of the Investigating Officer, learned Court below issued a search warrant for the recovery of stridhan articles. Forwarding report speaks that those articles were kept in three separate lockers viz. No. 1st) locker at H.D.F.C. Bank at Goutam Buddha Nagar Branch at New Delhi in the name of accused petitioner Nos. 2 and 3, 2nd) locker at S.B.I., Sector-62 Noida Branch which stands in the name of the accused petitioner No. 1 and opposite party No. 2, and 3rd) locker at S.B.I. of same Branch which stood in the name of the accused petitioner No. 1, Investigating Officer came to the house of the petitioner. The petitioner was not present as there was no prior information of their coming on 24.01.2013. When the petitioner No. 1 went to his bank namely, S.B.I. Sector-62, Noida Branch, he came to know that as per direction of the Investigating Officer the single locker allotted to the petitioner along with the joint lockers have been freezed and made inoperative. On 2nd February, 2013, the opposite party No. 2 filed an application under Section 437 Clause 5 of Cr.P.C. for cancellation of bail and on 21.03.2013 in the absence of the petitioners and his conducting advocate, the learned Chief Judicial Magistrate, at Alipore cancelled the said bail against the petitioner No. 1 and was pleased to issue warrant of arrest against him. Challenging the said order dated 21.03.2013 the present petitioner accused No. 1 preferred an application being C.R.R. 1315 of 2013 and challenged the legality and propriety of the said order Dated 21.03.2013. This Court this time was pleased to stay the order 21.03.2013 and directed the accused petitioner No. 1 to surrender before the Court below. Subsequently, charge-sheet has been submitted in this case and the learned Court below has taken cognizance of the offence and copy was served upon the accused petitioners in terms of Section 207 of Cr.P.C.

4. According to the accused petitioner, the contents of the F.I.R. goes to show that the present petition is vexatious one and no offence is made out either under Section 498A or under Section 406 of the said Act. It is specifically averred that mere bald allegations does not constitute an offence under Section 498A of

Indian Penal Code. Since there was no indication of any torture or cruelty alleged to have perpetrated on the opposite party No. 2, the instant criminal case cannot proceed.

5. It has been specifically pleaded that entire cause of action arose at Noida and so the written complaint filed by the opposite party No. 2 has got no significance since all those alleged cause of action occurred in the jurisdiction of Noida. According to him, it is imperative on the part of the prosecution to prima facie establish that there was torture upon the victim which was caused by the accused petitioner and since there is no element of truth, the proceedings cannot go on. Learned Counsel submitted that the learned Court below had no jurisdiction and so the impugned order is liable to be set aside.

6. Learned Counsels appearing on behalf of the state as well as on behalf of the opposite party No. 2, contended that the learned Court below quite rightly took cognizance of the offence and since charge-sheet is submitted a prima facie case has been established. Therefore, at this stage there is no scope to entertain such an application.

7. At the time of hearing, learned Counsel appearing on behalf of the accused petitioner relied on some judgments reported in 1) 2004 SCC (Cri.) 814, (Biman Chatterje v. Sanchita Chatterjee & Anr.), 2) (2004) SCC (Criminal) 2134, (Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr.) 3) , (2009) 1 SCC (Cri.) 109, (Bhura Ram & Ors. v. State of Rajasthan & Ors.). Referring those judgments he argued that the proceedings should be quashed. On perusal of the judgment reported in 2004 SCC (Cri.) 814, I find that the said judgment was in connection with cancellation of bail by High Court on the ground that accused husband failed to keep his wife with him and others valid terms of compromise, which forms the basis of granting bail. I failed to understand how that judgment can help the present accused petitioner.

8. Learned Counsel appearing on behalf of the accused petitioner relied on the judgment reported in (2004) SCC (Criminal) 2134 wherein Hon"ble Apex Court held "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."

9. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support of his right or grievances to the judgment of the Court. In the said judgment, Hon"ble Apex Court at Para 8 observed "Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common-law rule referred to in Halbury's Laws of England (Vol. 9, para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several

exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which 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 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."

"All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in *Purushottamdas Dalmia v. State of West Bengal*, *L.N. Mukherjee v. State of Madras*, *Banwarilal Jhunjhunwala v. Union of India*, and *Mohan Baitha v. State of Bihar*, exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided for by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand."

10. Learned Counsel appearing on behalf of the opposite party No. 2 has referred to the decisions reported in , (2012) 10 SCC 741, (*Geeta Malhotra v. State of Uttar Pradesh*), , (2010) 12 SCC 485, (*Krishna Kumar Variar v. Share Shoppe*), , (1999) 8 SCC 686, (*Trisuns Chemical Industry v. Rajesh Agarwal & Ors.*), , (2008) 4 SCC 82, (*R. Rajeshwari v. H.N. Jagadish*), , (2008) 1 SCC 564, (*State of Punjab v. Raninder Singh & Anr.*), , (1997) 5 SCC 30, (*Smt. Sujata Mukherjee v. Prasant Kumar Mukherjee*), , (2011) 11 SCC 301, (*Sunita Kumari Kashyap v. State of Bihar & Anr.*), , (2013) 4 R.C.R. (Criminal) 5, (*Sher Mohd. Khan v. Madan Lal & Anr.*) referring those judgments learned Counsel appearing on behalf of the opposite party No. 2 contended that in the reported decision (*Sunita Kumari Kashyap & Ors. v. State of Bihar & Anr.*) Hon"ble Apex Court also considered the judgment reported in connection with (*Bhura Ram & Ors. v. State of Rajasthan & Ors*) and (*Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr.*). By distinguishing those decisions, Hon"ble Apex Court this time held that if the offence was continuing one and consequence of continuing offence of harassment and ill-treatment is meted out to the complainant, Clause (C) of Section 178 will be attracted. In this instant case, I find from the F.I.R. that the victim wife has mentioned "within a week, my in-laws started ridiculing continuously at the gifts and jewellery presented to me at the time of marriage.

My father-in-law and mother-in-law also publicly embarrassed and harassed me with abusive languages and tones and often abused my parents for demand of more dowry. My husband was no less and supported his parents instead of me for such dowry demands."

11. Thereafter, it is alleged "the degree of torture perpetrated by my husband and in-laws conjointly became so unbearable that on 7th February, 2012 out of fear of loss of my life, I was forced to leave my matrimonial house with single clothe and returned to my parent's said home at Chittaranjan Park, New Delhi and thereafter on 25.03.2012 came to my parent's house at Kolkata, where I have been lately residing with my father and mother.

12. She has mentioned in the F.I.R. that "all my stridhan articles including ornaments and jewelleries (a list of which is furnished in a separate Schedule annexed with this complaint), which were presented by my relatives at the time of my marriage have been withheld by my husband and my parents-in-law. I have asked many a time for return of those articles but without any result. Copies of few electronic mails exchanged between my father and father-in-law with copies marked to my husband are annexed hereto and marked as Annexure "E". All these emails have been received at Kolkata at my father's aforesaid residence and the same have been sent only to harass and cause mental torture to me and my parents."

13. She has mentioned in the F.I.R. "on 22nd April, 2012 my father and my mother along with two of their friends namely Mr. Debashish Choudhury and Mr. Subhendhu Mukherjee visited my marital home to take back my stridhan and belongings. However, instead of handing over the same, my husband along with my mother-in-law and father-in-law humiliated them and gave them choicest of abuses/slangs. My husband even went ahead and physically attacked and abused my father because of which my father got hurt also. My parents had to leave the said place with lot of humiliation by my husband and his parents.

14. In the backdrop of what has been canvassed in the foregoing paragraphs, it is most palpable and glaring that my husband accompanied with my father-in-law and mother-in-law have severely tortured me and have subjected me to extreme cruelty, both physically and mentally demanded dowry on several occasions and have also illegally retained my stridhan articles causing wrongful gain to themselves and wrongful loss to me and rendered themselves liable for punishment, inter alia, under Sections 498A/406 of the Indian Penal Code, 1860."

15. It was also mentioned in the F.I.R. "my said husband has tried to contact me through various means and methods only to scare me so that I leave Kolkata. He is sending unsolicited letters to my uncles/relatives at Kolkata to harass and cause mental torture to me. While I was at Delhi for the aforesaid Police enquiry, my husband used to abuse me outside the Police Station and demanded money from me and my parents and threatened that in case of non fulfilment of his demands, he would get me arrested in the said false cases at Ghaziabad, Uttar

Pradesh."

16. After going through the F.I.R. & statements recorded under Section 161 Cr.P.C., I find that the alleged torture was not only started at Noida but it also continued even after her departure to Kolkata. Sometimes it was by alleged emails and by unsolicited letters to her relatives, which caused mental torture upon her.

17. Learned Counsel appearing on behalf of the petitioners had contended that there is no prima facie case to go for trial and for that reason it will be an abuse of process of Court to allow the proceedings to go on. I am in respectful disagreement with him in view of the decisions reported in , (2012) 1 SCC (Cri.) 601, (Kushal Kumar Gupta v. Mala Gupta) wherein the Hon"ble Apex Court held that if the complaint itself makes out a prima facie case to go for trial in that case proceeding should not be quashed. I have already held in view of the decision by the Hon"ble Apex Court in , (2011) 11 SCC 301, (Sunita Kumari Kashyap v. State of Bihar & Anr.) if any offence is continuing offence, committed in more local areas than one, then the said offence may be tried by the Court having jurisdiction over any such local area. It has been held by Hon"ble Apex Court in connection with Onkar Nath Mishra & Ors. v. State (NCT of Delhi) reported in , (2008) 1 SCC (Cri.) 507 that if any material is there, that cannot be adjudicated at the initial stage. The Court has to form a presumptive opinion as to the extent of factual ingredients constituting the offence alleged. Considering all these aspects, it appears to me there is prima facie ingredients of Section 498A/406 of the Indian Penal Code and that is prima facie established and these being the situation, during the trial the accused petitioner will have to disapprove the complaint case.

18. It will not be out of place to mention that every decision is based on the facts of the case, which has been placed for judicial scrutiny. Decision of one case cannot be mechanically applied in other case, if there is different facts and circumstances. It is also needless to say that fact of a case differs from another. In such circumstances, the duty of the Court is to take into account every minutest details, principles laid down by the Hon"ble Apex Court as well as our parent High Court. Our main mission is to render justice to the litigant, otherwise existence of the last bulwark of the society will be at stake.

19. Since there are enough materials for trial, I have no hesitation to say that there is no ground for allowing the application under Section 482 of Criminal Procedure Code & interim order, if any stands, vacated. Accordingly, this revisional application merits rejection.

In C.R.R. No. 1315 of 2013 With C.R.A.N. No. 1549 of 2013

After hearing the learned Counsel on behalf of the parties it seem to me that the accused after obtaining bail had not done anything which could be a ground for cancellation of bail or for recalling the order of this Court dated 26.04.2013 passed in connection with C.R.R. No. 1315 of 2013. Accordingly, both the C.R.R.

No. 1315 of 2013 and C.R.A.N. No. 1549 of 2013 are hereby disposed of.

Let a copy of this order alongwith L.C.R. be sent to the learned Court below for his information and taking necessary action in accordance with law.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.