

(2014) 04 CAL CK 0060
In the Calcutta High Court
Case No : CRR No. 3644 of 2011

Saumya Ghosh and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 407
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 120B, 306, 406, 498A, 506

Citation : (2014) 04 CAL CK 0060

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Pushpal Satpathi and Mr. Suman Das Adhikary, Advocate for the Appellant; Pradip Kumar Roy, Mr. Debasish Karmakar, Ms. Sraboni Sarkar for the Opposite Party No. 2 and Ms. Rituparna De, Advocate for the Respondent

Judgement

R.K. Bag, J.—The petitioners have preferred this criminal revision for quashing the criminal proceeding being G.R. Case No. 1506 of 2009 arising out of Siliguri Police Station Case No. 487 of 2009 dated 13th October, 2009 u/s 498A of the Indian Penal Code pending before the Court of learned Judicial Magistrate, 1st Court, Siliguri. It appears from the materials on record that the opposite party no. 2 gave written information before the Inspector-in-Charge of Siliguri Police Station on 13th October, 2009, which was treated as Siliguri Police Station Case No. 487 of 2009 dated 13th October, 2009. The police investigated the case and submitted charge sheet against the petitioners on 30th March, 2010 u/s 498A of the Indian Penal Code. The petitioners have challenged the said criminal proceeding on the ground that learned Magistrate at Siliguri does not have territorial jurisdiction to try the said case.

2. Mr. Pushpal Satpathi, learned counsel for the petitioners submits that the facts constituting the offence reflected in the written complaint treated as FIR occurred within the territorial jurisdiction of Barrackpore and as such, learned Magistrate at Siliguri cannot try the case due to specific bar u/s 177 of the Code of Criminal

Procedure, 1973. Mr. Satpathi has relied on the case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, and in the case of Bhura Ram and Others Vs. State of Rajasthan and Another, and in the case of Sri Binod Kumar Sil and Others Vs. State of W.B. and Another to impress upon this Court that the proceeding may be quashed because learned Magistrate at Siliguri does not have territorial jurisdiction to try the case.

3. On perusal of the decision of the Hon''ble Supreme Court reported in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, , I find that the cause of action for starting the criminal proceeding under Sections 498A and 406 of the Indian Penal Code and u/s 4 of the Dowry Prohibition Act, 1961, took place at Nagercoil and the complaint was filed at Chennai and the Apex Court on consideration of the factual scenario disclosed in the petition of complaint, came to the conclusion that no part of cause of action for starting the criminal proceeding arose in Chennai and as such, learned Magistrate at Chennai had no territorial jurisdiction to try the case. Similarly, on perusal of the decision of the Apex Court reported in Bhura Ram and Others Vs. State of Rajasthan and Another, , it appears that on the basis of the factual scenario disclosed by the complainant in the petition of complaint, the inevitable conclusion is that no part of cause of action for starting the criminal proceeding under Sections 498A and 406 of the Indian Penal Code arose in Rajasthan and therefore, learned Magistrate at Rajasthan has no jurisdiction to deal with the matter. In the case of Sri Binod Kumar Sil and Others Vs. State of W.B. and Another the offences under Sections 498A and 406 and some other provisions of the Indian Penal Code were not committed wholly or partly within Durgapur, though the marriage between the husband and the wife was solemnised at Durgapur and that those offences took place at Halisahar. In view of the provisions of Section 177 of the Code of Criminal Procedure, 1973 stipulating that every offence should ordinarily be inquired into and tried by the Court within whose local jurisdiction it was committed, the criminal case instituted in the Court of learned Additional Chief Judicial Magistrate, Durgapur was transferred by this Court to the Court of learned Judicial Magistrate, Barrackpore for the interest of justice.

4. Ms. Rituparna De, learned counsel appearing on behalf of the State submits that the wife was subjected to cruelty by the husband and her in-laws and the offence u/s 498A of the Indian Penal Code is continuing offence. Relying on the decision in the case of Amardeep Sinha Vs. State of West Bengal and Another, , Ms. De submits that the facts constituting the offence u/s 498A of the Indian Penal Code in the instant case also took place in the house of parents of the opposite party wife at Siliguri and as such, the learned Magistrate at Siliguri has territorial jurisdiction to try the case. On perusal of the decision reported in Amardeep Sinha Vs. State of West Bengal and Another, , I find that in the said reported case criminal proceeding was started under Sections 498A/406/120B/506/306 of the Indian Penal Code. The Court held that the charge u/s 406 of the Indian Penal Code is clearly triable by the Court of the learned Magistrate in Calcutta and the said charge u/s 406 of the Indian Penal

Code is correlated to the charge u/s 498A of the Indian Penal Code and as such, our High Court held that learned Magistrate at Calcutta has the jurisdiction to try the offence. In the instant case, the contents of the written information treated as FIR do not disclose any offence u/s 406 of the Indian Penal Code. What transpires from the written information treated as FIR is the allegation of cruelty. On consideration of the written information treated as FIR, it is crystal clear that the facts constituting the offence u/s 498A of the Indian Penal Code occurred at Barrackpore in the matrimonial home of the opposite party no. 2. Since in the instant case, the cause of action arose at Barrackpore and since no offence u/s 406 of the Indian Penal Code can be made out from the written information treated as FIR, I am of the opinion that the ratio of the decision reported in *Amardeep Sinha Vs. State of West Bengal and Another*, is not applicable in the facts of the instant case.

5. Mr. Pradip Kumar Roy, learned counsel appearing on behalf of the opposite party no. 2 has relied on the decision of *Kushal Kumar Gupta and Another Vs. Mala Gupta*, to put forward the argument that part of cause of action arose at Siliguri and the issue of territorial jurisdiction for trial of the case is to be decided only in course of trial of the case. On perusal of the decision reported in *Kushal Kumar Gupta and Another Vs. Mala Gupta*, I find that in the said reported case, the part of cause of action for starting the criminal proceeding under Sections 406 and 498A of the Indian Penal Code arose within the jurisdiction of learned Magistrate at Patiala and as such, the Apex Court held that the concerned Magistrate has jurisdiction to try the case. I have already observed that the contents of the petition of complaint treated as FIR clearly point out that the cause of action for initiating the criminal proceeding by the opposite party no. 2 arose within the territorial jurisdiction of Barrackpore and no part of cause of action took place at Siliguri. Accordingly, the ratio of decision reported in *Kushal Kumar Gupta and Another Vs. Mala Gupta*, will also not be applicable in the facts of the instant case.

6. In view of my above findings, I can safely hold that the offence u/s 498A of the Indian Penal Code took place at Barrackpore as reflected from the written information treated as FIR and as such, the trial of the offence by learned Magistrate at Siliguri is barred u/s 177 of the Code of Criminal Procedure. By following the decision of our High Court reported in *Sri Binod Kumar Sil and Others Vs. State of W.B. and Another*, I am inclined to pass order for transfer of the case from the Court of learned Judicial Magistrate, 1st Court, Siliguri to the Court of learned Additional Chief Judicial Magistrate, Barrackpore by invoking the power u/s 407 of the Code of Criminal Procedure for ends of justice without quashing the proceeding as contended on behalf of the petitioners. Accordingly, the criminal proceeding being G.R. Case No. 1506 of 2009 arising out of Siliguri Police Station Case No. 487 of 2009 dated 13th October, 2009 u/s 498A of the Indian Penal Code pending before the Court of learned Judicial Magistrate, 1st Court, Siliguri stands transferred to the Court of learned Additional Chief Judicial Magistrate, Barrackpore. Learned Judicial Magistrate, 1st Court, Siliguri will

transfer the entire case record to the Court of learned Additional Chief Judicial Magistrate, Barrackpore within one month from the date of communication of this order. With this observation, the criminal revision is disposed of.

The department is directed to send down a copy of this judgment to the Court of learned Judicial Magistrate, 1st Court, Siliguri and also to the Court of learned Additional Chief Judicial Magistrate, Barrackpore for favour of information and necessary action.

Criminal Section is directed to supply urgent Photostat certified copies of this order to the parties, if applied for, after compliance with all necessary formalities.