
(2008) 11 MP CK 0050
In the Madhya Pradesh High Court

Smt. Kamla Bai and Others	Vs	APPELLANT
State of M.P. and Another		RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178(c), 407
Penal Code, 1860 (IPC) — Section 498A, 506B

Citation : (2009) ILR (MP) 3 : (2009) 2 MPHT 135 : (2009) 1 MPJR 45 : (2009) 2 MPLJ 154

Hon'ble Judges : Indrani Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indrani Datta, J.

Petitioners have filed this petition u/s 407 of Cr.PC for transfer of the Cr. Case No. 602 of 2008 pending in the Court of JMFC, Ashoknagar, Guna to any other Competent Criminal Court at Guna.

As per petitioners, the facts stated in brief are that respondent No. 2 Smt. Premlata is wife of petitioner No. 3. One matrimonial case bearing Case No. 17-Aof 1991 instituted by petitioner No. 3 under Hindu Marriage Act for divorce, was pending in the Court of District Judge, Shivpuri. In that case, parties arrived at compromise and started living together. Respondent No. 2 gave birth to three children thereafter. Then again there was internal fraction between petitioners and respondent No. 2 and respondent No. 2 started living separately. Another suit for divorce was filed by petitioner No. 3 bearing No. 42 of 2006, which is pending in the Court of Additional District Judge, Shivpuri. One more case bearing No. 1 of 2008 under provisions of Guardian and Wards Act is pending in the Court of Additional District Judge, Shivpuri. After filing of case of divorce by petitioner No. 3, respondent No. 2 lodged a report against petitioners at Thana Piprai on which, Crime No. 208 of 2005 was registered for committing offence punishable under Sections 498-A and 506-B of Indian Penal Code against the

petitioners and charge-sheet has been filed and now the case is pending in the Court of JMFC, Ashoknagar. Judicial Magistrate, First Class Ashoknagar has no jurisdiction to try the case as demand of dowry is alleged to be made at Shivpuri as per First Information Report (Annexure P-1) and statement of respondent and witnesses, viz., Annexure P-2 to Annexure P-4. Two cases are allegedly pending in the Court of 1st Additional Distt. Judge, Shivpuri. Hence, it is prayed that this third case pending in the Court of JMFC, Ashoknagar be transferred in any Competent Court at Shivpuri.

For this purpose, it would be relevant to go through the provisions of Section 177 of Cr.PC as it deals with the ordinary place of inquiry and trial, and reads as follows:

Section 177. Ordinary place of inquiry and trial.-

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Sections 177 and 186 deal with venue and place of trial. Section 177 reiterates the well-established common law rule referred to in Halsbury's Laws of England (Vol. IX 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 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 read as follows:

Section 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.

In case of Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. 2004 (2) Supreme (Cr.) 135, it is held by the Hon"ble Apex Court that ordinary venue for trial of a crime is the area of jurisdiction in which, on evidence, facts occur and which alleged to constitute the crime. Continuing offence as distinguishable to one which is committed once for all.

In that case, there was no allegation of demand or commission of any act constituting offence at Chennai where wife was residing. All acts of demand of dowry were alleged to be made at Nagercoil. It was held that no part of cause of

action arose in Chennai and therefore, concerned Magistrate had no jurisdiction to deal the matter and proceedings were quashed.

In the present case, the respondent No. 2 has stated in her statement recorded u/s 161 of Cr.PC and in First Information Report lodged by her that all alleged demands of dowry were made by applicant at Shivpuri. There is no whisper of allegations about any demand of dowry or commission of any act of cruelty at Ashoknagar. That being so, the logic of Section 178(c) of Code relating to continuance of offence" cannot be applied.

Considering the facts of the case, this petition is allowed and the case bearing Cr. Case No. 602 of 2008 pending in the Court of Sanjay Kashtwar Judicial Magistrate First Class, Ashoknagar Distt. Guna is transferred from that Court to the Court of Chief Judicial Magistrate, Shivpuri.

The parties shall appear in the Court of Chief Judicial Magistrate, Shivpuri on the date fixed by Judicial Magistrate, First Class, Ashoknagar.