

(2009) 08 KAR CK 0018

In the Karnataka High Court

Case No : Criminal Petition No. 2824 of 2009

Sri Ganesh Prasad Hedge, Sri Vishwanath Hegde and Smt.
Amitha Hegde

APPELLANT

Vs

Smt. Surekha Shetty

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 200
Penal Code, 1860 (IPC) — Section 403, 406

Citation : (2010) CriLJ 2186 : (2010) ILR (Kar) 916

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : S. Balan and Associates, for the Appellant; Aswin Prabhu S.D., for the Respondent

Final Decision : Dismissed

Judgement

Subhash, B.Adi, J.—Petitioners have sought for quashing of the proceedings in C.C. No. 8663/2009 pending on the file of IV Addl. C.M.M., Bangalore.

2. Respondent has filed a private complaint u/s 200 of Cr.P.C. for an offence punishable under Sections 403, 406 of IPC inter alia alleging that, her marriage took place on 3rd December 1998 at Mangalore and they were residing at Mumbai and during which period, there were several matrimonial incidents. However, she returned to Bangalore and she was living with her mother. When she was living with her mother, the accused came and stayed for some time in search of a job, however, he could not secure the job in Bangalore and left to Mumbai where he is now working. It is her case that, as "Streedhan", the accused had received Rs. 9 lakhs from the complainant's father and that amount was lying with the accused. Complainant demanded for payment of the said amount from Bangalore and same was refused by the accused. In view of the above allegation, complainant alleges that the accused has committed the criminal breach of trust and the complainant has filed the complaint before the

jurisdictional Magistrate at Bangalore.

3. Learned Magistrate after taking cognizance recorded the sworn statement and considering the material has issued the summons. At this stage, this petition has been filed by the petitioner.

4. Learned Counsel appearing for the petitioners mainly raised two contentions: (i) that the learned Magistrate at Bangalore has no territorial jurisdiction to try the offence, (ii) in the similar circumstances, another complaint was filed before the Bharathinagar Police and the Bharathinagar Police has submitted a "B" report.

5. In support of the first contention learned Counsel appearing for the petitioners relied on the averments made in the complaint and submitted that, marriage was solemnized at Mangalore on 3rd December 1998 and according to the complainant herself, she started living at Mumbai and an incident had taken place at Mumbai and it is only after the domestic incident and matrimonial problem, she returned to her mother's place at Bangalore and from where she had issued notice demanding money. He submitted that, no incident has taken place at Bangalore, all the incidents alleged in the complaint have taken place at Mumbai, even the alleged payment is also at Mumbai. If the entire complaint is read, it only gives cause of action before the jurisdictional Magistrate at Mumbai. He relied on the decision of the Apex Court reported in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, and submitted that, in case of offence punishable under Sections 498A and 406 IPC, the Apex Court considering the averments in the complaint held that the cause of action had not accrued to the complainant at Chennai and the complaint, which was dismissed, was confirmed by the Apex Court. He relied on para-19 of the said judgment, which reads as under:

19. When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No. 2 who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed.

6. To the contrary, learned Counsel appearing for the respondent submitted that, no doubt, marriage has taken place in Mangalore and parties lived at Mumbai, but after she returned, as per para-10 in the complaint, she started living with the mother where the husband also joined her and the husband, who could not secure employment at Bangalore, left again to Mumbai and he is now staying at Mumbai. As far as amount is concerned, it is an amount, which was paid as "Streedhan", by the father of the complainant and the accused has no right to retain it. The amount when it was demanded, was not returned to the complainant, and it constitutes a breach of trust, since the amount was deposited with the accused and if it is not refunded, it amounts to an offence and it is

submitted that, when that demand was refused, cause of action accrued at Mangalore and the same is perfectly in accordance with the provisions of Sections 177 and 178 of Cr.P.C. He also relied on Section 181(4) of Cr.P.C. to point out that, in case of misappropriation, the cause of action accrued either at the place where the offence is committed or where it was required to be returned.

7. The question of jurisdiction has to be determined from the averments in the complaint and cause of action accrued to the complainant. The allegation in this case is, the offence punishable under Sections 406 and 403 i.e., for misappropriation, criminal breach of trust. As far as the other incidents of domestic and matrimonial problem are concerned, no doubt, they might have taken place at Mumbai. Para-8 of the complaint categorically states that, after the domestic incident, she returned to Bangalore and started residing at Bangalore. Para-10 of the complaint shows that, the accused himself came and joined the complainant at Bangalore for some time, he stayed with her and thereafter, he left to Mumbai. There is no allegation in the complaint as regards to other incidents. Complaint is only in respect of criminal breach of trust and misappropriation in relation to "Streedhan", The allegation at para-4 of the complaint is that, the complainant's father had given Rs. 9 lakhs to the complainant, which was entrusted to the accused.

8. It is not in dispute that, the complainant had made a demand of that money by issuing legal notice from Bangalore and despite receipt of the said notice, amount was not refunded. It is at this stage, it is alleged that, there is a misappropriation and criminal breach of trust. u/s 181 Sub-section (4) of Cr.P.C, no doubt, the cause of action accrued for filing complaint at the place where the incident has taken place, nevertheless, even a place wherefrom the demand is made, it also confers the jurisdiction. Further, in the decision relied by the petitioners in the matter of Y. Abraham Ajith (supra) wherein an allegation of 498-A and 406 IPC was alleged and the entire complaint discloses only the incident at the place other than the place where the complaint is filed before the Magistrate and it is in these circumstances, the Apex Court has held that the Magistrate, who took cognizance, has no territorial jurisdiction. In the similar circumstances, the Apex Court in a judgment reported in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, has observed that, the Magistrate, who has no territorial jurisdiction, is not prevented from taking cognizance, thereafter he can make over the complaint to the jurisdictional Magistrate. However, such a case does not arise in this case, as the Magistrate gets the jurisdiction.

9. In the light of the averments made in the complaint and also in the light of the allegation that "Streedhan", which was not returned, that constitutes an offence punishable under Sections 403 and 406 IPC, as such, I do not find any merit in this petition.

Accordingly, the petition fails and same is dismissed. However, it is made clear that, any observations made in the course of the order are made only for the purpose of this case and the learned Magistrate is at liberty to deal with the

matter on its merits without being influenced by any of the observation made in the course of this order.