

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CrI.M.C.2469-72/2006

% Judgment delivered on :17th August, 2011

SUSHIL KUMAR & ORS. Petitioners
Through: Mr.K. Venkatraman,
Adv.

Versus

THE STATE & ANR Respondents
Through : Ms.Rajdipa Behura, APP
for R-1.
Mr.Baankey Bihari Sharma, Adv.
for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

SURESH KAIT, J. (Oral)

1. Vide instant petition petitioners have challenged the impugned order dated 28.01.2006 passed by Id. MM, Karkardooma Court, Delhi whereby the Id. Judge has dismissed the application under Section 177 Cr.P.C.

2. Ld. counsel for petitioners submits, on the complaint being filed by respondent No.2 Lata W/o Sushil Kumar before CAW Cell, East Delhi on 08.04.1997 in which she has alleged that marriage has taken place with the

petitioner No.1 at Kanpur and dowry articles also have entrusted by her parents at Kanpur and that her in-laws have tortured her for demand of dowry etc. at Kanpur.

3. Learned counsel for the petitioners further submits that, as per the complaint of respondent No.2 the cruelty as alleged by her has taken place at Kanpur and marriage has also taken place at Kanpur. Thereafter, she was brought back from Kanpur to Delhi by her parents, since then, she has been residing at Delhi.

4. By this petition, the petitioner has raised the issue that since, all the incidents took place at Kanpur therefore, Delhi court has no jurisdiction to entertain the alleged complaint filed by the respondent No.2.

5. The respondent No.2 has filed the reply to this petition and submits that the instant petition is not maintainable, in view of the provisions of Section 178 of Cr.P.C. The relevant provisions of said Section are reproduced hereinafter for ready reference.

“178. Place of inquiry or trial.

(a)

(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 area has one, or

*(d) Where it consists of several acts done in different local areas,
it may be inquired to or tried by a court having jurisdiction over any of such local areas."*

6. Learned counsel for the respondent No.2 submits that the respondent had filed the reply to the application under Section 177, being filed by the petitioners before the Id. trial court. In the reply, it was clearly stated that the cruelty was also committed at Delhi, well within the jurisdiction of Id. Trial court. Further, the petitioners and his sister Rano were also residing at Delhi, where, the complainant/respondent No.2 was subjected to cruelty.

7. Learned counsel for the respondent No.2 has also raised the preliminary objection that the instant petition is being filed at a belated stage. The Id. trial court has framed the charges against the petitioner including, accused Rano vide its order dated 26.08.2002.

8. Moreso, The prosecution witnesses has already been examined and then after a gap of 4 years i.e. on 11.03.2005, the impugned application under Section 177

Cr.P.C was filed, without disclosing as to how and in what manner petitioner was prejudiced.

9. Ld.counsel for respondent No.2 further submits that the instant petition is not maintainable because Section 462 Cr. P.C. prohibits the court, unless the condition as mentioned in the said Section is not fulfilled. The said Section is reproduced for ready reference;

“462. Proceedings in wrong place.

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

10. Learned counsel for the respondent No.2 submits that the nuptial celebrations were started by ‘Shagun’ held at Delhi and dowry was entrusted to petitioner no.1 in the marriage at Delhi. These facts have been concealed by the petitioner, whereas, he has wrongly mentioned that “dowry articles were entrusted by her parents at Kanpur”. Thus, the entrustment of dowry articles of petitioner No.1 took place at

Delhi and not at Kanpur and, therefore, complaint was filed well within the jurisdiction of Delhi.

11. Learned counsel for the respondent No.2 has pointed out that petitioner himself has relied upon wedding card (translation of which is annexure P5). It reveals as under :

“MARRIAGE PROGRAMME
Wednesday 5th October, 1994
Kirtan and engagement at 3.00 P.M.
at Residence 21/206-207, Kalyan Puri Delhi
Reception of Barat 7:00 P.M.
Dinner 9:00 P.M.”

12. The ceremony of marriage was initiated at Delhi and completed at Kanpur. The dowry items were entrusted at the above address which establishes cause of action under Section 406 Indian Penal Code, 1860, well within the jurisdiction of the learned trial court at Delhi.

13. The Id. counsel for the petitioner has relied upon the judgment of this Court in 121 (2005) Delhi Law Times 668 titled as ***Malkiat Singh & Anr. Vs. State & Anr.***

“7. So far as the offence u/s 406 of the Indian Penal Code is concerned, the entrustment as well as breach of trust both took place at Tanda or at

some place in Punjab. Admittedly the marriage did not take place in Delhi. Entrustment could have been made at the place of marriage or at the matrimonial home neither of which was in Delhi. On the allegations, the jurisdiction will lie with the police station having jurisdiction over the matrimonial home in Tanda or some other place where the respondent No.2 had lived along with her husband during the period in question which was admittedly not Delhi."

14. He has further relied upon another judgment of Hon'ble Supreme Court in a case of **Satvinder Kaur v. State (Govt. Of NCT of Delhi) & Anr.** reported as VIII (1999) SLT 392. The Hon'ble Supreme Court found the judgment of this Court erroneous because of the following reasons :

"(1) The S.H.O. has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an F.I.R. is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the Investigating Officer has no territorial jurisdiction.

(3) After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of

the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence."

15. I heard both the counsel. I am acquainted with the law settled by the Hon'ble Supreme Court in **Y. Abraham Ajith & Ors. Vs. Inspector of Police, Chennai & Anr. (2004) CCR 130 (SC)** as held as under :

"6. Section 177 of the Code 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."

7. Sections 177 to 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."

16. The main question in the instant petition is, whether, any part of the cause of action arose within the jurisdiction of the concerned court. In terms of Section 177 of the Cr. P. C., it is the place where offence was committed. In essence, it is the cause of action for initiation of the proceedings against the accused. There are three types of jurisdiction :

- (i) the pecuniary jurisdiction.
- (ii) the territorial jurisdiction.
- (iii) the subject matter jurisdiction.

17. In the present case the issue raised by the petitioners is on the territorial jurisdiction. In criminal law the territorial jurisdiction is not fatal, whereas, the subject matter jurisdiction is always fatal, which is not in issue.

18. After hearing both the counsel for the parties, and on perusal of the record before me, I note that the ceremony of 'Sagai' took place at Delhi and allegations made against the petitioners are of Delhi. Additionally, this case is hanging on in Delhi since 1997, when FIR No.590/1997 was lodged against the petitioners. The case has reached its advance stage before the trial court.

19. Therefore, I am of the opinion that there is no merit in the petition, the same is dismissed.

20. Accordingly, Crl.M.C.2469-72/2006 is dismissed.

21. No order as to costs.

SURESH KAIT, J

August 17th, 2011
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