

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. No. 841 of 2013 & CrI.M.A. No. 13239/2013**

Date of decision: 3rd January, 2014

SURENDER KUMAR ARORA & ANR. Petitioners
Through: Mr.Yashish Chandra & Mr.J.S.
Malik, Advs.

versus

STATE & ANR. Respondents
Through: Mr.Mukesh Gupta, APP for the
State.
ASI Dharamvir Singh, PS CWC
Nanakpura.
Mr.Jayant K. Sud & Mr.Chirag
Khurana, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) for quashing of FIR No.90/2012 under Section 498A/406/34 IPC, P.S. Nanakpura, Delhi by father-in-law and mother-in-law of respondent No.2/complainant.

2. The case of the petitioners is that the complainant got married with the son of the petitioners, Ankit Arora in Delhi in the year 2011. The son of the petitioners is a British National and a permanent resident of London. After marriage in Delhi, the complainant and her husband stayed with the petitioners for four days only and thereafter they never stayed with the petitioners. Subsequently, some differences arose between the complainant /respondent No.2 and her husband. The husband of respondent No.2 filed a petition for dissolution of marriage in the Court at London on 23.2.2012. A certificate of

entitlement decree was passed by the U.K. Court at U.K. on 9.5.2012 which was followed by a decree nisi dated 19.6.2012 and the same was finally made absolute on 6.9.2012. In order to wreck vengeance against the petitioners, the complainant lodged FIR under Sections 498A/406/34 IPC on 23.7.2012.

3. It has been submitted by learned counsel for the petitioners that even if the averments made by the complainant in the complaint are taken on their face value, even then the entire cause of action has arisen at U.K., that being so, the police station at Delhi had no jurisdiction to register the case. Counsel for the petitioners placed reliance on **L.N. Mukherjee v. State of Madras AIR 1961 SC 1589** and **Mohan Baitha & Ors. v. State of Bihar and Anr. (2001) 4 SCC 350**. It is also submitted that the complainant/respondent No.2 filed a list before U.K. Court for financial settlement and CAW Cell in India. There is huge discrepancy between both the lists. The allegations against the petitioners are quite vague.

4. The application has been resisted on behalf of the respondents. Counsel for respondent No.2 pointed out that the petitioners moved an application for anticipatory bail which was dismissed by learned District and Sessions Judge, Delhi on 8.11.2012. Thereafter, the petitioners moved an application for anticipatory bail before this court, bearing Bail Application No.1656/2012, which was dismissed on 6.2.2013. Aggrieved by the said order the petitioners filed an SLP(Crl.) No.1523/2013 which was also dismissed by Hon'ble Supreme Court of India on 20.2.2013. The petitioners are absconding and have not joined the investigation. It is also submitted that there are specific allegations against the petitioners regarding demand of dowry and harassment in India. The complainant lodged a complaint before CAW Cell, Nanakpura on 22.3.2012 and on the basis of the said

complaint FIR was registered on 23.7.2012 and the divorce took place on 6.9.2012 i.e. after lodging the complaint by the complainant.

5. Before going through the rival contentions of learned counsel for the parties, it will be in the fitness of things to have a glance on the complaint made by the complainant which led to registration of FIR No.90/2012 at P.S. Nanakpura, Delhi.

6. In the complaint the complainant has alleged that she was married with Ankit Arora on 22.2.2011 according to Hindu rites and ceremonies at Parkland Retreat, New Delhi. Though, the marriage was consummated, no issue was born from the said wedlock. Right from the time of engagement, Ankit and his family members treated her extremely shabbily. She was subjected to physical torture, ill-treatment and continuous harassment at the hands of Ankit and his parents. On 5.3.2011, the complainant and her husband were supposed to leave for Delhi for marriage registration and then to fly for London on the next date from Delhi itself. The complainant then asked for her jewellery but her in-laws refused by saying that they have put the jewellery in their bank locker and they did not even put this fact into her knowledge and started yelling at her and started saying nasty things about her family members for not bringing sufficient dowry. Her husband continued to harass her in the following months even after reaching London. Her husband even hit hard on her back. Her father-in-law and mother-in-law took all possible steps so that her husband and she would not be able to spend time together and, therefore, in marriage of eight months, they had spent only six days alone. In the month of June, when her husband got his driving license in London, he started fighting with her to ask her parents to give a car to him and his sister in London. He even gave slaps to her for refusing the same. One day when she returned

after buying some vegetables, she found the door of the house locked and then she called her father in India and told him everything. The petitioners then called the police and got respondent No.2 and her sister arrested on 25.11.2011. Since then she has been living with her brother in London and she cannot even come to India as she was on a spouse visa.

7. The main contention of learned counsel for the petitioners is that no part of alleged offence was committed within the jurisdiction of Delhi, as such, even if all the allegations made in the FIR are accepted on its face value, the Delhi Police had no jurisdiction to register and investigate the matter.

8. Chapter XIII of the Cr.P.C. deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 Cr.P.C. are relevant which are as follow:

“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.

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 a 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.

179. Offence triable where act is done or consequence ensues- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a

Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

9. From the above provisions, it is clear that normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more than one local areas and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local area is competent to inquire into and try the offence. Section 179 of the Cr.P.C. makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by court within whose local jurisdiction such thing has been done or such consequence has ensued.

10. The crucial question is whether any part of cause of action arose within the jurisdiction of the courts at Delhi. In terms of Section 177 of the Cr.P.C., it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

11. While in civil cases, normally the expression ‘cause of action’ is used, in criminal cases, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression ‘cause of action’ is, therefore, not a stranger to criminal cases.

12. As held in **Bloom Dekor Ltd. vs. Subhash Himat Lal Desai** (1994) 6 SCC 322, by ‘cause of action’ it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to

support his right to a judgment of the court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.

13. In a generic and wide sense, (as in Section 20 of the Code of Civil Procedure, 1908), 'cause of action' means every fact which it is necessary to establish to support a right to obtain a judgment. As held in **M/s South East Asia Shipping Co. V. Nav. Bharat Enterprises (P) Ltd. (1996) 3 SCC 443**, cause of action' consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts which taken with law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.

14. Applying aforesaid legal principles, to the factual scenario as disclosed by the complainant in the complaint, it is to be seen whether no part of cause of action arose in Delhi so as to oust the jurisdiction of the concerned Magistrate to deal with the matter.

15. The averments made in the complaint by the complainant which led to the registration of FIR against the petitioners reflects that she had levelled allegations of ill treatment and cruelty at the hands of the petitioners. As such, part of cause of action arose at Delhi. Moreover, in view of Section 178 and 179 of the Cr.P.C. the offence in this case was continuing one, having been committed in more local areas and one of the local area being Delhi, the FIR was registered at Delhi.

16. Relying upon **Preeti Gutpa & Anr. V. State of Jharkhan AIR 2010 SC 3363** and **Neera Singh vs. State of Delhi & Ors. AIR 1996 SC 67**, learned counsel for the petitioners urges that the Supreme Court has recognised that in recent years there is a tendency to humiliate the

husband's relatives by levelling false allegations against them and that is why the Supreme Court suggested for the amendment in the law so that the persons not concerned with the dispute between husband and wife are not unnecessarily harassed.

17. The law regarding proceedings under Section 482 Cr.P.C. was considered by the Hon'ble Supreme Court of India in **Padal Venkata Rama Reddy alias Ramu vs. Kovvuri Satnarayana Reddy and Others**, (2011) 12 SCC 437 and it was held that :-

“11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The court can always take note of any miscarriage of

justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita v. State* and *B.S.Joshi v. State of Haryana*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.”

18. In another case of this Court in **Vishnu Dutt Sharma and Ors. Vs. State**, (1994) *III AD Delhi* it was held that the proceedings cannot be thrown out on the basis of Section 188 of the Code of Criminal Procedure.

19. The authorities relied upon by the learned counsel for the petitioner has no application to the facts of the case in hand inasmuch as in those cases, on peculiar facts and circumstances of those cases, it was found that court concerned had no territorial jurisdiction to try the case.

20. It may be that the petitioners were not the beneficiaries of the dowry given or demanded. Yet all these facts have to be gone into by the trial court at the time of framing of the charges. The appreciation of evidence cannot be done by the High Court in proceeding under Section 482 of the Cr.P.C. Similarly the probability of the allegations made in the FIR and the defence raised by the persons accused of the

offence cannot be gone into in the proceedings under Section 482 of the Code.

21. In view of the above discussion, since part of 'cause of action' arose at Delhi and the offence is continuing one, as such, the courts at Delhi has jurisdiction to deal with the matter. That being so, the petition and all the pending applications are accordingly dismissed.

22. It is made clear that nothing has been expressed on merits of claims of both the parties. The conclusion is confined to the territorial jurisdiction of the Court at Delhi.

(VED PRAKASH VAISH)
JUDGE

January 3, 2014
gm/aj