

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12002 of 2013

Arising Out of PS.Case No. -1044 Year- 2010 Thana -VAISALI COMPLAINT CASE District- -

=====

Rajiv Kumar & Ors.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. M. Thakur

For the Opposite Party/s : Mr. Ram Sewak Chaudhary (App)

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

9 21-05-2015 Heard the learned counsel, Mr. Mahendra Thakur, on behalf of the petitioners and the learned counsel, Mr. Yashraj Wardhan, on behalf of the complainant opposite party No.2.

(2) This Cr. Misc. application under Section 482 Cr.P.C. has been filed by the accused petitioners for quashing the order dated 13.09.2010 passed by learned S.D.J.M., Hajipur (Vaishali) in Complaint Case No.C1-1044 of 2010 whereby the learned Court below took cognizance of the offence against the petitioners under Section 498A of the I.P.C. and Section 4 of Dowry Prohibition Act.

(3) The learned counsel for the petitioners submitted that the complainant opposite party No.2 in the complaint application filed at Hajipur alleged that she was being assaulted and tourchered in connection with demand of dowry by the accused person at

Jamshedpur. In the Complaint case, nowhere she alleged that any part of the offence alleged to have been committed is within the jurisdiction of the Court at Hajipur, therefore, the Court at Hajipur has no jurisdiction to try the offence alleged by the complainant opposite party No.2. In support of the contention, the learned counsel relied upon the decision :-

- (i) 2009 (2) Eastern Criminal case 419 Patna Ramesh Kumar Srivastava Vs. State of Bihar
- (ii) 2010 (1) Eastern Criminal cases 243 Patna Mumtaz Bano Aarjoo Vs. State of Bihar
- (iii) 2010 (1) Eastern Criminal cases 154 Jharkhand High Court Santosh Singh Vs. State of Jharkhand.
- (iv) AIR 2004 SC 4286 Y. Abraham Aziz Vs. Inspector of Police, Chennai
- (v) 2008 (3) PLJR 367 SC Bhura Ram Vs. State of Rajasthan and Ors.

(4) Secondly, the learned counsel submitted that there is no specific allegation against the petitioner in the complaint case. On these grounds, the learned counsel submitted that since the Court has no jurisdiction and that no case is made out against the petitioner the order taking cognizance is liable to be quashed.

(5) On the other hand, the learned counsel appearing on behalf of the opposite party No.2 complainant submitted that in the present case none of the decision relied upon by the learned counsel is applicable because in those cases Section 179 Cr.P.C. has not been considered. These decisions of the Supreme Court



relied upon by the petitioners has been considered by the Supreme Court subsequently and in the case of *Sunita Kumari Kashyap Vs. State of Bihar AIR 2011 SC 1674* has held that in case of continuing offences, the episode at Gaya was only a consequent of continuing offence of harassment of ill treatment meted out to the complainant, therefore, the Court at Gaya had also the jurisdiction to try the suit. The learned counsel further submitted that in the said decision, the complaint was filed at Gaya alleging that she was being assaulted and demanded dowry by the accused persons at Ranchi. The Supreme Court considering Section 179 of Cr.P.C. held that the Court at Gaya also has the jurisdiction to try the offences. The learned counsel further submitted that earlier the accused persons appeared before the trial Court and filed an application challenging the jurisdiction of the Court and the Court below by terms of order dated 9.8.2012 held that this Court has the jurisdiction to try the offence but the said order has not been challenged by the petitioner before any higher authority. Now, therefore, after taking cognizance, the petitioners are raising the same point in the application under Section 482 Cr.P.C. According to the learned counsel in the present case from the allegation made in the complaint, it is apparent that the husband of the petitioner also came to the house of the complainant's father at

Hajipur and on the pretext of compromise, assuring the parents and the complainant took the complainant to Jamshedpur and, therefore, according to Section 179, the Court at Hajipur has also the jurisdiction.

(6) Perused the decisions relied upon by learned counsels for the parties. Perused the order dated 9.8.2012 whereby the application filed by the petitioners raising the question of jurisdiction was rejected. It appears that this order passed by the trial Court has not been challenged by the petitioners. The trial Court has recorded the finding that the marriage was performed at Hajipur and at the time of marriage Rs.3 lakhs was demanded in cash and ornaments of Rs.2 lakhs and out of that 1,20,000/- was transferred from State Bank Account and the rest was paid in cash. From perusal of the complaint application also, it appears that this allegation is made in the complaint application. Now, therefore, admittedly a part of the offence, i.e., demand of dowry at the time of marriage was committed at the place of marriage and in fact from the State Bank account of the parent of complainant, money was transferred and cash was paid at Hajipur.

(7) From perusal of the decisions of the Hon'ble Supreme Court referred to above relied upon by the learned counsels for the petitioners, it appears that the facts in those cases are different.

(8) The Hon'ble Supreme Court in the case of *Sunita Kumari Vs. State of Bihar AIR 2011 SC 1674 at paragraph 11* has held that **'in view of Section 178 and 179 of the Cr. P.C., the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was the continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears that it is a continuing offence of ill-treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offences, on some occasion, all had taken part and on other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause (C) of Section 178 of the Code is clearly attracted.'** In the present case also the Court below has taken cognizance under Section 4 of the Dowry Prohibition Act. The demand of dowry was made at the time of marriage and Section 498A and also the offence under Section 4 are continuing offence and this was being demanded at both place,



i.e., at Hajipur and also at Jamshedpur as has been stated in the complaint case and the order passed by the trial Court rejecting the application filed by the petitioners. In this decision, the Hon'ble Supreme court has considered all the decisions of the Supreme Court relied upon by the learned counsel for the petitioners. Therefore, here it is not necessary to deal with those decisions elaborately, since I am relying on the decision of the Supreme Court, i.e., ***A.I.R. 2011 SC 367***. It is settled principle of law that the jurisdiction of the Courts is dependent on the facts of each case as has been mentioned in Section 177, 178, 179 of the Code of Criminal procedure. The fact will differ from cases to cases and the law laid down by the Supreme Court and the High Courts have to be applied considering the facts of the case. In the decisions relied upon by the learned counsels for the petitioners quoted above, the Courts found that all the offences were committed at another place, i.e., matrimonial house of the complainant whereas in the present case at our hand, part of the offence was committed at Hajipur and the part of the offence which are continuing offence was committed at Jamshedpur, therefore, in my opinion, the learned Court below has the jurisdiction to try this case.

(9) So far the other argument that there is no specific allegation is concerned, it may be mentioned here that from

perusal of the complaint application, I find that there are specific allegations and moreover it is admitted fact that the complainant is residing in the house of parents at Hajipur. At this stage, the evidences are not required to be examined meticulously. The settled principle of law is that the allegation made in the complaint case even if taken to be true then also it do not constitute any offence or that the allegations are so absurd that no prudent man can rely on it then the High Court can exercise jurisdiction under Section 482 Cr.P.C. as has been held by the Hon'ble Supreme Court in various decisions such as (i) **2009 (9) SCC 682** (ii) **2014 (7) SCC 215** and the other various decisions have been considered in these decisions by the Hon'ble Supreme court.

(11) In view of my above discussion, I find no reason to interfere with the order passed by the Court below which is impugned in this Cr. Misc. application.

(12) In the result, this Cr. Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--