

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29315 of 2012

- =====
1. Chandramauli Mishra S/o Nagendra Prasad Mishra R/o Presently Residing B.N.S. School, Nariya Lanka, P.S. Lanka, Varanasi (U.P.)
 2. Chandrakala Devi W/o Nagendra Prasad Mishra R/o Presently Residing B.N.S. School, Nariya Lanka, P.S. Lanka, Varanasi (U.P.)
 3. Nagendra Prasad Mishra S/o Late Ram Vyas Mishra R/o Presently residing B.N.S. School, Nariya Lanka, P.S. Lanka, Varanasi (U.P.)
 4. Vandana Kumari D/o Nagendra Prasad Mishra R/o Presently Residing B.N.S. School, Nariya Lanka, P.S. Lanka, Varanasi (U.P.)
 5. Manmohan Mishra S/o Nagendra Prasad Mishra R/o Presently Residing B.N.S. School, Nariya Lanka, P.S. Lanka, Varanasi (U.P.)
 6. Ram Nagina Pandey S/o Jag Narayan Pandey R/o Village-Khajura, P.O. Karamnasa, P.S. Durgawati, District - Kaimur
 7. Narmadeshwar Mishra S/o Late Ram Vyas Mishra R/o Village - Sohasa, P.S. Kochas, District - Rohtas
 8. Brajendra Pathak S/o Late Sheopujan Pathak R/o Village- Karamchhata, P.S. Kochas, District - Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Indu D/o Dr. Gopal Mishra, W/o Chandramauli Mishra R/o village- Madarpur, P.S. Masarakh, District - Saran

.... Opposite Party/s

=====

Appearance:

For the Petitioner/s : Mr. Bajarangi Lal, Advocate
For the Opposite Party/s : Mr. P.K. Chaurasia (APP)
Mr. Shri Ganesh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 01-04-2015 Mr. Bajarangi Lal, learned counsel for the petitioners, learned counsel for the State and Mr. Shri Ganesh for the opposite party no. 2 are present.

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 8.5.2012 passed by the Sub Divisional Judicial Magistrate, Saran



at Chapra in Complaint Case No. 596 of 2011 whereby the court below has taken cognizance of the offence punishable under Sections 498A and 323 of the Indian Penal Code against the petitioners. The opposite party no. 2 charges all these petitioners collectively of not only raising dowry demands but also causing her such harassment which led the petitioner to return to her parental house at Sonepur in the district of Saran at Chapra in the State of Bihar.

Mr. Bajarangi Lal standing in support of the petitioners with reference to the complaint placed at Annexure-1 submits that in the entire complaint petition there is not even a whisper of any part of occurrence taking place within the jurisdiction of the court at Saran rather the complainant has admitted herself that the marriage between the complainant and the petitioner no. 1 took place on 5.6.2006 at Varanasi and whereafter she continued to stay in her in-law's house at Varanasi where she was subjected to torture and dowry demands.

It is the case of the complainant that a daughter was born from the wedlock and during her second pregnancy, the petitioner threatened her with dire consequences in case of birth of a girl child so much so that she was administered such medicines which led to her abortion. She also refers to a certificate given by a

Mukti Clinic at Varanasi where she had undergone treatment.

Mr. Lal referring to the allegations submits that the allegations are baseless and without any supporting evidence and in fact it is the complainant who did not want to reside with the petitioner no. 1 and returned back to her parent's house. He submits that repeated persuasions did not yield any results and which finally led to filing of a matrimonial case by the petitioner no. 1 bearing Matrimonial Case No. 24 of 2011 before the Family Court, Rohtas at Sasaram under Section 13 of the Hindu Marriage Act. He submits that the matrimonial case was filed on 2.2.2011 and it is thereafter that the present complaint has been filed as a retaliatory measure on 28.3.2011. Learned counsel for the petitioners with reference to the provisions underlying Section 177, 178 and 179 of the Code of Criminal Procedure submits that since as per the complaint itself the alleged harassment and torture took place at Varanasi with no part of the alleged occurrence happening at her parental house at Sonapur, the institution of the complaint case in the court at Saran suffers from manifest error of jurisdiction. He submits that there is nothing in the complaint which would render the allegation, a continuing offence to bring it within the jurisdiction at Saran. He further submits that there is no whisper of allegation against petitioner nos. 6 to 8.



The complainant has appeared through counsel Mr. Shri Ganesh who submits that it is not only the physical harassment faced by the petitioner at Varanasi rather even on telephone she was harassed by the petitioner no. 1 and which makes out a continuing offence.

I have heard learned counsel for the parties and I have perused the materials on record. Whether the statement of the complainant that the petitioner no. 1 abused her on telephone stands supported by evidence is a matter to be seen by the trial court who is in seisin of the matter and this Court would refrain to express any opinion at this stage. Again whether a court has a jurisdiction to hold trial in any matter is an issue of fact and which has to be addressed before the Court who is in seisin of the matter and is to be adjudicated by the trial court in the light of the provisions underlying Sections 177, 178 and 179 of the Code of Criminal Procedure, before the court proceeds to try the case.

However a jurisdiction to hold trial is distinct from a jurisdiction to take cognizance of the offences in any matter. A court may not have territorial jurisdiction to try a case but if he is competent to take cognizance of the offence complained then such cognizance order does not get infracted on issue of jurisdiction so long the court passing the order is competent to do so.



The opinion expressed by me stands supported by a judgment of the Supreme Court reported in **(1999) 8 SCC 686 (Trisuns Chemical Industry vs. Rajesh Agarwal and others)** and paragraph 14 of the judgment is an answer to the issue raised. The Supreme Court has held that the jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It has further held that if a Magistrate of the 1st Class is empowered to take cognizance then such power is not impaired by territorial restrictions.

In view of my discussions hereinabove, I am not persuaded to interfere with the order taking cognizance at this stage and this application is disposed of with liberty to the petitioners to raise the issue of jurisdiction before the trial court at the appropriate stage of the proceedings and which shall be considered and disposed of in accordance with law.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--