

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Petition No.16 of 2015

Shri Bhakta Majhi,
S/o Late Krishna Majhi,
Resident of Nehal Chandra Nagar,
P.O., P.S. & Sub-Division - Bishalgarh,
District - Sepahaijala, Tripura.

..... *Petitioner.*

– Vs –

1. The State of Tripura.
2. Smti Aparna Sutradhar,
W/o Late Chandan Majhi,
Daughter of Shri Annanda Sutradhar,
Resident of Village - East Ratacherra,
P.O., P.S & Sub-Division - Kumarghat,
District - Unokoti, Tripura.

..... *Respondents.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	:	Mr. S Lodh, Advocate.
For		
Respondent No.1	:	Mr. A Ghosh, Public Prosecutor.
Respondent No.2	:	Ms. R Purakayastha, Amicus Curiae.

Date of hearing	:	
and delivery of judgment	:	14.8.2015.

Whether fit for reporting	:	<table border="1"><tr><td>Yes</td><td>No</td></tr><tr><td>✓</td><td></td></tr></table>	Yes	No	✓	
Yes	No					
✓						

JUDGMENT & ORDER(ORAL)

By means of this petition, the petitioner herein has prayed for quashing of the order, dated 24th February, 2015 passed by the learned Chief Judicial Magistrate, Unokoti District, Kailashahar and for dropping/quashing the entire proceedings in criminal case No.C.R.11 of 2015.

2. Since the complainant(*respondent No.2*) was a poor lady unrepresented by counsel I had requested Ms. R Purkayastha to assist the Court as Amicus Curiae.

3. The complainant is one Aparna Sutradhar. She claims that she was married to Late Chandan Majhi about 10 years earlier. According to her, one daughter was born out of this wedlock. Her further submission is that her husband expired about 1 year prior to filing of the complaint. After the death of her husband she was driven away by the accused person Bhakta Majhi who is the father of Late Shri Chandan Majhi. She also complained that the accused person had kept the death certificate of her husband Chandan Majhi, a golden necklace worth Rs.50,000/-, bangles and ear rings worth Rs.20,000/-. Further, according to her, two months back she had demanded the death certificate but the same was not handed over to her. According to the complainant, on 28th December, 2014 she along with her mother Smt. Dipali Sutradhar went to the house of the accused person. There the accused person gave a fist blow upon her and tried to molest her. She was saved by her mother and thereafter came back. The complainant filed this complaint in the Court of the learned Chief Judicial Magistrate, Unakoti.

4. On 19th January, 2015 learned Chief Judicial Magistrate passed the following order on the complaint :

"19-01-2015.

Received a complainant petition from Smti Aparna Sutradhar U/S – 323/354 of IPC against Sri Bhakta Majhi.

Perused the complaint Petition.

Register it as a CR case in my file.

Fix 24-12-2015 for examination of complaint U/S – 200 Cr.P.C."

Thereafter on 24th February, 2015 the complainant was examined under Section 200 Cr.P.C. Cognizance of the offence was taken and process was issued to the accused person (*petitioner herein*). Order dated 24th February, 2015 reads as follows :

"24.02.2015

Complainant is present alongwith her engaged counsel.

Complainant is examined US 200 Cr.P.C.

From the statement of the complainant under oath and the material on record cognizance of offence is taken US 323/354/406 IPC.

Complainant side is directed to take step on or before 04-03-2015.

Issue summons if requisites are correct.

Fix 06-05-2015 for SR."

The petitioner here challenged this order mainly on the ground that the learned Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint or issue process.

5. Initially I had thought that this matter could be settled only on the death certificate being handed over to the complainant. At the instance of the Court the petitioner Chandan Majhi handed over the death certificate to the complainant in Court. It would also be pertinent to mention that even when the death certificate was handed over learned counsel on instructions received from the petitioner has stated that the marriage of the complainant with the deceased Chandan Majhi is not accepted by the accused petitioner and according to him, Chandan Majhi was already married to some other lady and had children out of the wedlock. Though the wife had died, according to the accused petitioner, his son had not married again.

6. This Court is not going into the merits of the case. As far as the written complaint is concerned, it does disclose the commission of an offence. At this stage, the Court is only to see whether the complaint itself discloses the commission of an offence. Whether the allegation is right or wrong will be decided during trial. However, what is also very clear is that throughout the body of the complaint is silent with regard to the place of occurrence. In the address of the accused person given in the complaint the address is shown as that of Bishalgarh. It is, therefore, urged by Mr. S Lodh that the Chief Judicial Magistrate at Unakoti had no jurisdiction to issue process in the matter.

7. It is not disputed before me that the alleged offence of keeping back the gold ornaments or even the alleged offence of beating and attempt to molest the complainant took place at Bishalgarh. They have not taken place within the territorial jurisdiction of the Court at Unakoti. The question that arises is, whether the Court at Unakoti had jurisdiction to take cognizance of the matter and even if he had jurisdiction to take cognizance of the matter, whether he had any jurisdiction to issue process in the matter and lastly, whether he has any jurisdiction to try the matter?

8. Chapter XIV of the Code of Criminal Procedure deals with the conditions requisite for initiation of proceedings which definitely includes taking cognizance of an offence. Section 190 which forms part of Chapter XIV reads as follows :

“Section 190 - Cognizance of offences by Magistrates –

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.”

The opening Clause of Section 190 makes it clear that this Clause is subject to the provisions of the Chapter. Any Magistrate of the first class and any Magistrate of the second class specifically empowered in that behalf can take cognizance of any offence either on a complaint or on a police report or upon information received from any person or even upon the own knowledge of the Magistrate.

9. Section 190 has to be read in contradistinction to Sections 177 and 178 of the Code of Criminal Procedure which form part of Chapter XIII and read 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.

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 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."

10. This Court need not elaborately go into this matter because this issue stands squarely covered by the judgment of the Apex Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, (1999) 8 SCC 686 wherein the Apex Court considering the aforesaid provisions held as follows :

"13. The only restriction contained in S. 190 is that the power to take cognizance is "subject to the provisions of this Chapter." There are 9 Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these : "Except as hereinafter provided." Those words are now replaced by "Subject to the provisions of this chapter." Therefore, when there is nothing in chapter XIV of the Code to impair the power of a judicial magistrate of first class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a magistrate of the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Any way that is a different matter.

14. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier."

11. It is thus clear that cognizance of an offence can be taken by any Magistrate of the first class even if he does not have territorial jurisdiction to try the offence. This power cannot, however, be exercised by the Magistrates of the second class unless they have been specifically empowered in this behalf. Magistrates of the second class can take cognizance only of those offences which they have been empowered to take cognizance of by the Chief Judicial Magistrate and which are within their competence to inquire and try. Therefore, Magistrates of the second class can only take cognizance of those matters which fall within their territorial jurisdiction.

12. Chapter XIV comprises only of 10 Sections i.e. Sections 190 to 199 regarding cognizance of offence by Magistrates. In case of a private complaint made to the Magistrate the complainant has to be examined in terms of Chapter XV under Section 200 and process is to be issued in terms of a Chapter XVI under Section 204. The opening Clause of Section 190 will only apply to taking cognizance of the offence but will not apply to recording the statement of the complaint or to issuing the process. Therefore, it appears to me that though the Magistrate not having the territorial jurisdiction to try the offence can take cognizance of the offence but in case of a private complaint if he feels that the examination of the accused is necessary then he cannot record her statement. He also cannot issue process and, therefore, the only thing which such a Magistrate dealing with a private complaint can do is to send the complaint to the Magistrate having the judicial

competence to try the offence. The law laid down by the Apex Court is absolutely clear in this regard.

13. Therefore, as far as the present petition is concerned, the CJM at Unakoti was competent to take cognizance of the offence but unfortunately, in this case what has happened is that he did not take cognizance of the offence on 19th January, 2015 because there is no application of judicial mind on 19th January, 2015 and he only directed that the complainant be examined on 24th February, 2015. As held by me above, he had no jurisdiction to record the statement of the complainant under Section 200 Cr.P.C. In this case the Magistrate has taken cognizance of the offence after recording the statement and he had in fact not taken any cognizance prior to the statement being recorded.

14. Be that as it may, I am clearly of the view that since cognizance has now been taken the only course open is to direct the transfer of the case from the Court of CJM, Unakoti to the Judicial Magistrate, first class, Bishalgarh. The said Court shall proceed from the stage of receipt of complaint. The statement recorded by the CJM at Unakoti is meaningless because he had no jurisdiction to record that statement. Therefore, after going through the complaint the Judicial Magistrate, first class, Bishalgarh can record the statement of the complainant and decide whether process should be issued against the petitioner accused or not. It is made clear that this Court has not

expressed any opinion on the merits of the case and this case has been decided only on the jurisdictional aspect.

15. The Chief Judicial Magistrate, Unakoti, is directed to summon the complainant, deliver a copy of the judgment passed in this revision to her and apprise her that her case has now been transferred to the Court of Judicial Magistrate, first class, Bishalgarh. Thereafter the file shall be transferred and then the Judicial Magistrate, first class, Bishalgarh shall issue notice to the complainant to appear before the said Court. She shall also be apprised of her right to get legal aid. The Judicial Magistrate at Bishalgarh then proceed in accordance with law.

16. The Court places its appreciation for the valuable assistance rendered by the Ms. R Purkayastha, learned Amicus Curiae as well as by Mr. S Lodh, learned counsel for the petitioner who have given valuable assistance in deciding the legal issue.

With these directions the criminal petition is disposed of.

CHIEF JUSTICE

Sukhendu