

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. M. P. No. 858 of 2015

1. Satyaprakash Mishra S/o Shri Hirendra Mishra, aged about 33 years
 2. Hirendra Mishra S/o Late Shri Satyanarayan Mishra, aged about 62 years
 3. Smt. Archana Shukla W/o Shri Ajay Narayan Shukla, aged about 34 years
 4. Ajay Narayan Shukla S/o Shri Dinesh Shukla, aged about 35 years
 5. Smt. Shashibala Mishra W/o Shri Hirendra Mishra, aged about 61 years
- All R/o Village Ramchandrapur, Khushi Nagar, Police Station Tarya-Sajan (U.P.)

... Petitioners

Versus

1. State of Chhattisgarh, through the Station House Officer, Mahila Thana, Raipur (C.G.)
2. Smt. Vandana Mishra D/o Shri Santosh Pandey, aged about 28 years, R/o New Shanti Nagar, Street No.6, Nandadeep Chowk, Police Station Civil Lines, Raipur (C.G.)

... Respondents

For Petitioners	:	Mr. Kishore Bhaduri and Mr. Pawan Kesharwani, Advocates.
For Respondent No.1	:	Mr. O.P. Sahu, Dy. Govt. Advocate.
For Respondent No.2	:	Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 09/08/2016

Delivered on : 22/08/2016

1. The present petition under Section 482 CrPC has been filed challenging the order dated 26.6.2015 passed by the Judicial Magistrate First Class, Raipur in Criminal Case No.218 of 2013, whereby the application preferred by the Petitioners under Section 177 CrPC has been rejected.
2. Factual matrix of the case required for the adjudication of the present dispute is that Respondent No.2, Smt. Vandana Mishra, was married to Petitioner No.1, Satyaprakash Mishra, on 21.11.2011 at Raipur

as per the Hindu rites and rituals. All the Petitioners are residents of Allahabad in the State of Uttar Pradesh. Initially, after the marriage the Respondent No.2 is said to have gone to Allahabad and resided at the resident of Petitioner No.1. However, some time later the relations between Petitioner No.1 and Respondent No.2 got strained and finally a complaint was lodged by Respondent No.2 on 19.11.2012 at Mahila Police Station, Raipur which was registered as Crime No. 62 of 2012 on the basis of which offence under Section 498-A/34 was registered by the police authorities against the Petitioners. After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Raipur on 2.7.2013.

3. The Petitioners-accused persons before the Trial Court had moved an application under Section 177 CrPC on 30.3.2015. It was alleged in the said application that no part of cause of action had arisen within the territorial jurisdiction of the Court at Raipur and that all the allegations levelled by Respondent No.2/Complainant took place at Allahabad and therefore, for all practical purposes the Court at Raipur does not have territorial jurisdiction to hear the dispute and thus prayed for rejection of the complaint.

4. The Court below after hearing the parties vide impugned order dated 26.6.2015 rejected the said application filed under Section 177 CrPC and ordered for proceeding further with the prosecution evidence to be recorded. It is this order which is under challenge in the instant petition.

5. Learned Counsel for the Petitioners submits that a plain reading of the entire contents in the charge-sheet would by itself disclose that there is no material whatsoever by which it could be said that the cause of action to have taken place within the territorial jurisdiction of the Court at Raipur. According to the Counsel for the Petitioners, immediately after the

marriage between Petitioner No.1 and Respondent No.2/Complainant, on 21.11.2011 they had shifted to Allahabad and Respondent No.2 was staying with the Petitioners. Counsel for the Petitioners further submits that the allegation of demand of dowry if at all is made out that has been made at or from Allahabad which itself is a strong point to establish that no part of cause of action took place within the territories of Raipur District for the Court at Raipur to have jurisdiction. It was further contended by the Counsel for the Petitioners that the complaint has been malafidely filed at Raipur only with an intention to harass the Petitioners who have to travel all the way from Allahabad to Raipur for attending the case. He further submits that only for the purpose of filing of the complaint case at Raipur, bald and omnibus allegations have been made by the Complainant in the complaint alleging that the Petitioners were making telephonic conversations with Respondent No.2 at Raipur demanding dowry.

6. According to the counsel for the petitioners, the broad allegations which have been made against the petitioners are in respect of demand of an Inova car and five lakh rupees in cash when the complainant respondent no.2 was staying with her husband at Allahabad. According to the counsel for the petitioners, the allegations regarding telephonic conversations and the messages which were sent to the complainant and her father are all cooked up stories only with an oblique intention of the complaint case to be entertainable at Raipur, otherwise no part of cause of action whatsoever has taken place within the territory of Raipur for the Court at Raipur to have jurisdiction. Counsel for the petitioners submitted that there is no direct or indirect evidence to substantiate the contention of the telephonic conversations and the messages which have been sent and further to establish that these telephonic conversations were made from Allahabad to Raipur and the messages were also sent to the complainant

at Raipur from Allahabad. Counsel for the petitioners relied upon the decisions of the Supreme Court rendered in (2004) 8 SCC 100 (Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another).

7. Per contra, counsel appearing for the State as well as the complainant submitted that it is a case where the complaint itself gives sufficient indication of the offence having been committed at Raipur, therefore, the Court at Raipur would have jurisdiction to entertain the same. Counsel for the respondents referring to the complaint submitted that the telephonic calls made by the petitioners to the father of the complainant who resides at Raipur to whom messages were also sent could establish the cruelty on the part of the accused persons. According to the counsel for the respondents, the allegations against the petitioners under Section 498A of IPC and that demand of dowry are not the only ingredients which have to be established for making out a case under Section 498A but it is also subjecting the complainant to cruelty which would be a necessary ingredient for bringing home the charge under Section 498A IPC. According to the counsel for the respondents, the very fact that even on the date of marriage the petitioners had created a scene at the place of marriage on account of demand of dowry and it was only after great persuasion, the petitioners agreed for further proceedings of the marriage. Thus, from the initial stage itself the complainant wife was subjected to cruelty bringing home the charge under Section 498A of IPC. According to the counsel for the respondents, a willful conduct on the part of the accused persons which can drive a woman to commit suicide or grave injury and even harassment to a woman with a view to coercing her or any other persons to meet any unlawful demand for any property or valuable security would fall within the ambit of cruelty. In the instant case, the conduct of the accused persons as is reflected from reading of the

complaint and the manner of treatment in which the respondent no.2 was subjected at her matrimonial home speak volumes of harassment and cruelty. Counsel for the respondents submitted that even after the complainant had come back to her parental home on 26th March, 2012, repeated telephonic calls and messages were sent to the father of the complainant at Raipur and ultimately when all the conciliation failed, the complainant had no other option but to lodge a complaint against the accused persons for the offence under Section 498A IPC. According to the counsel for the respondents, the first conflict with respect to the demand of dowry took place at Raipur on the date of marriage itself. Subsequently, the demand of dowry was made by telephonic conversations with the father of the complainant at Raipur and the messages which have been sent to the father further give sufficient evidence of the offence having been committed within the territories of the Court at Raipur where the complaint case has been registered. Thus, counsel for the respondents prayed for rejection of the present CrMP.

8. Having heard the submissions put forth by the counsel on either side so far as the jurisdiction of the criminal Court is concerned, it would be necessary to refer the provisions of Section 177 and 178 of CrPC which for ready reference are being reproduced hereunder:

“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.”

9. A plain reading of these two provisions clearly hold that ordinarily the complaint and the trial would be by the Court within whose local jurisdiction the offence is said to have been committed. If the offence has been committed partly in one local area and partly in another area where the offence is continuing one, and continues to be committed in more than one local areas, it may be tried by a court having jurisdiction of either of such local areas. It would also be relevant at this juncture to refer the law in this regard as laid down by the Supreme Court in the case of Y. Abraham (Supra) wherein in paragraphs 12 to 18 it has been held as under:

“12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code 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.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, 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.

14. It is settled law that cause of action consists of 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 the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be

proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18. In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

10. If we consider the ratio laid down by the supreme Court in the afore-referred judgment what is culled out is that so far as the bringing home the jurisdiction of Raipur Court to have the power to entertain the trial is concerned, it must be reflected from the complaint itself of some acts to have been done within the territories of the Court at Raipur. Keeping this in mind if we consider the nature of allegations levelled by the complainant- respondent no.2 against the petitioners, it clearly reflects that the complaint consists of three phases. The first is on the date of

marriage at Raipur where the family members of the husband i.e. the petitioners had stalled the marriage proceedings itself on account of non-fulfillment of demand of dowry which only after much persuasion and assurance finally could be resolved and the marriage ceremony could get completed. The second phase is the respondent no.2 faced at Allahabad i.e. at her matrimonial home where if the nature of complaint is to be believed, she has been subjected to a great amount of torture, cruelty and harassment, in addition of being physical and mental tortured, ultimately she left for her parental home on 26.03.2012. The third phase is the phase while the respondent no.2 complainant was staying with her parents at Raipur. The father of the complainant was sent with obnoxious, indecent and vulgar messages with regard to the respondent No.2-complainant which further could be brought within the ambit of cruelty for the purpose of bringing home the offence under Section 498A IPC.

11. Thus, from the aforesaid three phases, the first and the third phases have happened at Raipur and therefore, in the light of Sub Section (c) of Section 178 CrPC it can be safely held that some part of the alleged acts on the part of the petitioners did take place at Raipur. Further, if we peruse the charge sheet it would reveal that the seizure memo made during the course of investigation also reflects the mobile messages which were received at Raipur and the other messages which were sent by the petitioners to the father of the complainant at Raipur.

12. In view of the same, this Court does not have any hesitation in reaching to the conclusion that the Court below has rightly rejected the application under Section 177 CrPC preferred by the petitioners. In the aforesaid factual matrix of the case and the materials available in the case including the allegations made in the complaint, this Court does not find

any infirmity or illegality committed by the Court below in rejecting the application under Section 177 CrPC.

13. Thus, the present CrMP being devoid of merit deserves to be and is accordingly rejected.

(P. Sam Koshy)
Judge

Bhola