

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.O.P.No.4816 of 2016
and Crl.M.P.No.2529 of 2016

Sudha Jain

.. Petitioner/A2

..Vs..

1.State of Tamil Nadu through Inspector of Police,
W-4, All Women Police Station, Kilpauk,
Chennai - 600 010. ... 1st Respondent/Complainant

2.Neha Dogra ... 2nd Respondent/Defacto
Complainant

Prayer :-Criminal Original Petition filed under Section 482 of
Cr.P.C, praying to call for the records and
quash the FIR in Crime No.4 of 2015 registered on 06.08.2015
under Sections 498A, 406 and 506(ii) of IPC on the file of W-4,
All Women Police Station, Kilpauk, Chennai.

For Petitioner : Mr.B.Ramprabu

For R1 : Mrs.M.F.Shabana,
Govt.Advocate (Crl.side)

For R2 : Mr.R.Mohandoss

ORDER

The Criminal Original Petition has been filed to call for
the records and quash the FIR in Crime No.4 of 2015 registered
on 06.08.2015 under Sections 498-A, 406 and 506(ii) of IPC on
the file of W-4, All Women Police Station, Kilpauk, Chennai.

2. The learned counsel for the petitioner contended that the
present Criminal Original Petition has been filed by one
Mr.Sudha Jain who is accused No.2 in the case. As per the
complaint itself, all the occurrences in the FIR come within the
territorial jurisdiction of respondent Police Station. Further,
all the occurrences in case of the prosecution relate only at
New Delhi. Even, according to the defacto/complainant, he came

to Chennai only during June-July 2012 and 14.09.2012. The Chennai police could not register the case against the petitioner and his other family members are stated to reside in New Delhi and they are shown as stated, only absconders. This Court, has jurisdiction in respect of the occurrences happening in Chennai only. Hence, the complaint registered by the respondent-police is liable to be quashed.

3. The learned counsel for the petitioner relied on the decision of Supreme Court reported in 2004 DGLS (soft.) 1036 equivalent to 2004(6) Supreme Court 207.. Y.Abraham Ajith & Ors. Versus Inspector of Police, Chennai and another wherein the Apex Court held as follows:-

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 was 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".

3. This Court also heard the learned Government Advocate appearing for the first respondent on the above aspects of the case.

4. The learned counsel for the second respondent/complainant has mainly contended that since the offences registered under Sections 498-A, 406 and 506(ii) of IPC are continuing offences, the Court can hear the continuing offences and there is no illegality or infirmity in registering the FIR against the petitioner in the respondent police station, as abatement and cruelty at the hands of the husband continues at the matrimonial house. The offences of harassment or ill treatment meted out to complainant are still continuing. Hence, the respondent police has got jurisdiction to investigate the offences. Hence, Criminal Original Petition has to be dismissed.

4. The learned counsel for the second respondent relied upon the following decisions in (i) (2011)9-S.C.C.527 as follows:-

(i) 14. The language of Section 188 CrPC is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal Case, it was held that sanction under Section 188 CrPC is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M.Sahai, J., observed as follows: (SCC p.628, para29)

"29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one-commission of an offence; second - by an Indian citizen; and third-that it should have been committed outside the country".

15. Although the decision in Ajay Aggarwal case was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to

what has been observed hereinabove in the interpretation of Section 188 CrPC. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 CrPC. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.

ii) In (2011)11-S.C.C.301 as follows:-

8. Chapter XIII of the Code of Criminal Procedure, 1973 (in short "the Code") deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 are relevant which are as follows:

"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 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. Keeping the above provisions in mind, let us consider the allegations made in the complaint. On 17.10.2007, Sunita Kumari Kashyap, the appellant herein made a complaint to the Inspector-in-Charge, Magadh Medical College Police Station, Gaya. In the complaint, the appellant, after narrating her marriage with Sanjay Kumar Saini, Respondent 2 herein on 16.4.2000 stated what had happened immediately after the marriage at the instance of her husband and his family members' ill-treatment, torture and finally complained that she was taken out of the matrimonial home at Ranchi and sent to her parental home at Gaya with the threat that unless she gets her father's house in the name of her husband, she has to stay at her parental house forever. In the said complaint, she also asserted that her husband pressurized her to get her father's house in his name and when she denied she was beaten by her husband. It was asserted that after keeping her entire jewellery and articles, on 24.12.2006, her husband brought her at Gaya and left her there warning that till his demands are met, she has to stay at Gaya and if she tries to come back without meeting those demands she will be killed. It was also stated that from that date till the date of complaint, her in-laws never enquired about her. Even then she called them but they never talked to her.

10. A perusal of the entire complaint, which was registered as an FIR, clearly shows that there was ill-treatment and cruelty at the hands of her husband and his family members at the matrimonial home at Ranchi and because of their actions and threat she was forcibly taken to her parental home at Gaya where she initiated the criminal proceedings against them for the offences punishable under Sections 498-A and 406/34 IPC and Sections 3 and 4 of the DP Act.

Among the offences, the offence under Section 498-A IPC is the main offence relating to cruelty by husband and his relatives. It is useful to extract the same which is as under:

18. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Section 178 and 179 of the Code, 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, as the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-treatment and humiliation meted out to the appellant at the hands of all the accused persons and in such continuing offence, on some occasions all had taken part and on other occasions one of the accused, namely, the husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.

19. In view of the above discussion and conclusion, the impugned order of the High Court holding that the proceedings at Gaya are not maintainable due to lack of jurisdiction cannot be sustained. The impugned order of the High Court dated 19.03.2010 in Criminal Miscellaneous Case No.45153 of 2009 are set aside. In view of the same, the SDJM, Gaya is permitted to proceed with the criminal proceedings in Trials Nos.1551 of 2008 and 1224 of 2009 and decide the same in accordance with law.

5. This Court perused the materials available on record. Even according to the petitioner, the occurrence has not occurred within the jurisdiction of the respondent police.

Hence, according to the petitioner, the respondent as no territorial jurisdiction to register the FIR and the same has to be quashed. The citations relied on by learned counsel for the petitioner are not applicable to the facts of the present case.

6. Per contra, the above citations relied on by the learned counsel for the second respondent, are squarely applicable to the present facts of the case. The law laid down by the Supreme Court in Sunita Kumari Kashyap vs. State of Bihar and another reported in 2011 shows that the offence of dowry ill-treatment / cruelty at the hands of the husband and the relatives at the matrimonial home, is a continuing offence of harassment or ill-treatment made over by the complaints and it is therefore clear that the respondent police has jurisdiction to investigate the case. Hence, in view of the above authority laid down by the Supreme Court of India, the respondent police has jurisdiction to register the FIR and investigate the offence which is continuing offence. Hence, this Court finds no merits in the arguments of the learned counsel for the second respondent. Hence, the Criminal Original Petition filed by the petitioner to quash the FIR is liable to be dismissed.

7. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai - 600 010.

2.The Public Prosecutor,
High Court, Madras 104.

1 cc to Mr.B.Ramprabu, Advocate, sr.49373
1 cc to M/s.Swaminathan Law Associates, sr.49234

Crl.O.P.No.4816 of 2016
and Crl.M.P.No.2529 of 2016

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kra 08.09.2016