

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.10536 of 2015

ORDER:

The criminal petition is filed by petitioner/A1 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.464 of 2015 on the file of the Judicial First Class Magistrate, Kodad, Nalgonda District, registered for the offences under Sections 498-A & 506 IPC and under Sections 3 & 4 of Dowry Prohibition Act, 1961.

2. Heard the learned counsel appearing for the petitioner/A1, the learned Public Prosecutor, representing the State and the learned counsel appearing for the 2nd respondent.

3. The 2nd respondent/*de facto* complainant filed a complaint against the petitioner and his parents before the jurisdictional police alleging that the marriage of the petitioner and herself was performed on 15.11.2003 as per Hindu custom and rites at Ramakrishna Degree College, Miryalaguda road, Haliya, Nalgonda District and at the time of marriage, the parents of the 2nd respondents gave cash of Rs.4 lakh and gold ornaments worth of Rs.5 lakhs and spent Rs.6 lakh for the marriage. After the marriage, the 2nd respondent joined the petitioner and both of them went to USA in December, 2013 and acquired citizenship of USA. The 2nd respondent could not conceive till 4 years after the marriage and the medical reports reveal that there is fault in the petitioner and hence she consulted for Test Tube Baby and came back to India in 2014 and took treatment. While the 2nd respondent was in USA she got employment and her salaries were

credited into the account of the petitioner on mutual understanding. As the treatment of the 2nd respondent is expensive, the petitioner and his parents subjected her to cruelty and demanded her parents for additional dowry. When the 2nd respondent was 6 months pregnant, the petitioner and his parents forced her to travel to USA and insisted her to do job. The petitioner and his parents came to know through medical tests that there is female baby in the womb of the 2nd respondent and then they started harassing the 2nd respondent. After she gave birth to a female baby, the 2nd respondent resigned her job for the welfare of the baby. The petitioner confined the 2nd respondent and her baby in a room without providing any maintenance for them. Thereafter, the 2nd respondent and her daughter came to India in 2015 and placed the issue before the elders. However, there is no change in the attitude of the petitioner and his parents and hence she lodged the complaint.

4. The learned counsel for the petitioner submitted that no offence took place as alleged in India and no previous sanction was obtained under Section 188 Cr.P.C to conduct trial in the above case and hence the initiation of proceedings against the petitioner and his parents is abuse of process of law. The learned counsel further contended that at the request of the concerned police, the learned Magistrate, without applying his mind, erroneously issued non-bailable warrant against the petitioner and summons to the non-petitioners/A2 & A3.

5. The learned counsel for the 2nd respondent submitted that part of the crime has been committed in India and part of the crime has been committed in USA and therefore, sanction under

Section 188 Cr.P.C is not necessary and in support of his contentions, he relied upon the following decisions.

6. In ***Muralikrishna v. State***^[1] the High Court of Madras held that if it is a continuing offence committed in India and furtherance of that committed in a foreign country, before trying the offence, previous sanction of the Central Government is not necessary.

7. In ***Thota Venkateshwarlu vs. State of A.P.Tr.Princl.Sec. & Anr.***^[2], the Hon'ble Supreme Court held that the provision of Section 4 of the Indian Penal Code has been extended to offences committed by any citizen of India in any place within and beyond India.

8. In ***Fatma Bibi Ahmed Patel v. State of Gujarat***^[3] the Hon'ble Supreme Court after referring to Section 4 IPC and Section 188 Cr.P.C has laid down in paragraphs-14, 15 and 16 as under:

“14. There are materials before us to show that the appellant is a citizen of Mauritius. She has been visiting India on visas issued by India. She, thus, indisputably is not a citizen of India. She might have been staying in India with her relatives as has been contended by the complainant, but it has not been denied and disputed that she is not a citizen of India. If she is not a citizen of India having regard to the provisions contained in Section 4 of the Penal Code and Section 188 of the Code of Criminal Procedure, the order taking cognizance must be held to be illegal.

15. In terms of Section 4 of the Penal Code, the Indian courts will have jurisdiction to try an accused only if the accused is a citizen of India even if the offence was committed outside India or

by any person on any ship or aircraft registered in India wherever it may be. Neither of the aforementioned contingencies is attracted in the instant case. Section 188 of the Code of Criminal Procedure also deals with offences committed outside India. Clause (a) brings within its sweep a citizen of India, whether on the high seas or elsewhere, or by a person, although not citizen of India when the offence is committed on any ship or aircraft registered in India.

16. In view of the fact that the offence is said to have been committed in Kuwait, the provisions of the Penal Code or the Code of Criminal Procedure cannot be said to have any application.”

9. Section 4 of the Indian Penal Code reads as under:

“4. Extension of Code to extra-territorial offences:- The provisions of this Code apply also to any offence committed by—

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be.

Explanation: In this section the word ‘offence’ includes every act committed outside India which, if committed in India, would be punishable under this Code.

A, who is a citizen of India, commits a murder in Uganda, he can be tried and convicted of murder in any place in India in which he may be found.”

10. Section 188 of the Code of Criminal Procedure reads as under:

“188. Offence committed outside India:-
When an offence is committed outside India---

- (a) by a citizen of India, whether on the high seas or elsewhere; or
- (b) by a person, not being such citizen, on any ship or aircraft registered in India,
he may be dealt with in respect of such offence as if

it had been committed at any place within India at which he may be found.

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

11. From the above authoritative pronouncement what emanates is that the provisions of the Penal Code will apply to any offence committed by any citizen of India in any place and if he is not an Indian citizen, such an offence should have been committed on a ship or aircraft registered in India. It is also clear from the provisions of law that if an offence is committed outside India by an Indian citizen or by a person who is not an Indian citizen on any ship or aircraft registered in India, he may be dealt with in respect of such an offence at any place within India.

12. In the instant case, the facts as stated above reveal that the *de facto* complainant and the petitioner/A.1 were married in the year 2003 and immediately thereafter, both of them left for United States of America (USA) where the petitioner/A.1 was already gainfully employed. The *de facto* complainant/wife also appears to have secured a job and they lived there. Not only that, both of them have acquired the citizenship of USA and were living there.

13. A reading of the complaint shows that all the acts of omissions and commissions which are alleged to have perpetrated against the petitioner/A.1 have taken place in USA. The fact that both the petitioner/A.1 and the *de facto* complainant/wife are citizens of USA is clear from the recitals of the very complaint, wherein it is stated that when the *de facto* complainant/wife has certain problems with her husband, the petitioner/A.1, her brother

had to obtain temporary VISA for her to come to India where the matter was placed before the elders for settlement.

14. A reading of the complaint shows that almost all the allegations are in respect of the petitioner/A.1/husband and they are said to have been perpetrated in USA and even the allegations made against the non-petitioners/A.2 & A.3, who are the parents of the petitioner/A.1 are also in respect of the acts which are taken place in USA. In that view of the matter, since both the petitioner/A.1/husband and the *de facto* complainant/wife are the citizens of USA and all the incidents of harassment, cruelty etc., are took place in USA, the cognizance of such an offence against the person who is a citizen of a foreign country cannot be taken in the court in India.

15. For the reasons stated above, I am of the opinion that all further proceedings against the petitioner/A.1 are liable to be quashed.

16. The Criminal Petition is accordingly allowed. Consequently, proceedings in C.C.No.464 of 2015 on the file of the Judicial First Class Magistrate, Kodad, Nalgonda District against the petitioner/A1 are hereby quashed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 17 .08.2016

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[\[1\]](#) (CrI.O.P.No.13724 of 2013,
dated 13.12.2013, Madras High Court)

[\[2\]](#) (SLP.(CrI.)No.7640 of 2008, dated 02.09.2011)

[\[3\]](#) (2008) 6 SCC 789