

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8195 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- BUXAR

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Manoj Sharma, S/O Late Keshwar Sharma, Resident of Ward No.- 21A, New Ram Nagar, P.S.- Adhartal, District- Jabalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rubi Devi, D/O Hari Har Nath Sharma Resident of Piparpanti Road, Tarka Nala, Buxar, Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surednra Kuamr Singh, Advocate.
Mr. Anirudh Kumar Singh, Advocate.
For the State : Mr. Mushtaque Alam, APP.
For the Opposite Party/s: Mr. Digvijay Kumar Ojha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 29-06-2017

Heard learned counsels for the parties.

2. The petitioner husband of the O.P. No. 2, has challenged the order taking cognizance dated 27.07.2010 passed by the S.D.J.M., Buxar in Complaint Case No. 1006(C) of 2009 whereby he has taken cognizance under Sections 498A and 323 of the Indian Penal Code.

3. Learned counsel for the petitioner submits that in the year 2004, father of the present complainant/O.P. No. 2 had filed a complaint Case No. 486(C) of 2006 dated 26.06.2006 under Sections 323, 406, 498A and 504/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and the same was sent by the learned Chief Judicial Magistrate, Buxar under Section 156(2) of the



Cr.P.C. to the Buxar (Town) Police Station for registering a police case and accordingly Buxar (Town) P.S.Case No. 214 of 2006 was registered under Section 498A of the Indian Penal Code against the petitioner. Later on, after lapse of three years approximately, the present complaint case No. 1006(C) of 2009 was filed by the wife of the petitioner. The contents of the fact as alleged in both the complaints are identical, so second complaint case on similar fact is not maintainable, secondly, not even a part of the occurrence was committed within the territorial jurisdiction of Buxar district, so the learned court of S.D.J.M., Buxar has got no territorial jurisdiction for taking cognizance in the present case. Therefore, the impugned order requires to be set aside.

4. Learned counsel appearing on behalf of the O.P. No. 2 submits that it is fact that records of Buxar P.S.Case No. 214 of 2006 were transferred to Jabalpur Police in Madhya Pradesh during the period of investigation, but even after passing over a decade, whereabouts of the case is not known to anybody and Jabalpur Police has not filed final report as the same is evident from the reports obtained from the office of the District and Sessions Judge, Jabalpur as well as from the court of Additional Chief Judicial Magistrate Jabalpur and the Judicial Magistrate, 1st Class, Jabalpur that no document in those courts regarding said Buxar (T) P.S.Case No. 214



of 2006 is available nor chargesheet has been received. He further submits that a revision application was also filed by the complainant before the Sessions Court, Buxar against the transfer of police case to Jabalpur and the record was called for from the court of Jabalpur in the matter, but even after several reminders to the Jabalpur Court, the records were not received, so the petitioner left pursuing the matter and thereafter it was dismissed for default on 07.02.2015. So no any other case regarding the offence under Section 498A of the Indian Penal Code against the petitioner is pending except the present case. Moreover, the allegation levelled in the complaint petition explicitly shows demand of dowry made by one of the accused Kamala Devi, wife of brother of the husband of the O.P. No. 2 at Buxar and reiterated that unless demand of dowry is not fulfilled, she will not be taken back to matrimonial home. It is also submitted that even the maintenance amount, as directed by the Family Court, is not being regularly paid by the husband to his wife/complainant and their 15 years old daughter though husband is a constable in Madhya Pradesh Police and earns handsome salary.

5. Having considered rival submissions of both sides and on perusal of the materials on record, it appears that earlier case lodged by the father-in-law of the petitioner i.e., Buxar (T) P.S. Case No. 214 of 2006, was sent to Jabalpur jurisdiction for investigation



purposes, but the case is not traceable even after a decade it is not available there. The reports of the District and Sessions Judge, Jabalpur and Additional Chief Judicial Magistrate Jabalpur show that no such matter is pending relating to Buxar (Town) P.S. Case No. 214 of 2006 and in that case no process has been issued to the petitioner for appearance in that case. So in this backdrop of the facts, the present complaint No. 1006 (C) of 2009 is maintainable as in earlier police case no action has been taken. The petitioner is not being prosecuted in any earlier case relating to alleged offence under Section 498A of the Indian Penal Code.

6. So far as territorial jurisdiction of the court of S.D.J.M., Buxar is concerned, normally jurisdiction lies where occurrence is committed or even a part of occurrence is committed as contained in Sections 177, 178 and 179 of the Cr.P.C. It is explicit from fact narrated in the complaint case that one of the accused reiterated the demand of dowry in the parents home of the wife/complainant situated at Buxar so in view ratio decided in the case of *Sunita Kumari Kashyap v. State of Bihar* reported in (2011)11 SCC 301, the Hon'ble Supreme Court has held that cruelty under Section 498A of the Indian Penal Code is a continuing offence and even if a part of occurrence is committed within a particular territory, i.e. at the parental home of wife, the concerned court gets jurisdiction over the



case for enquiry and trial.

7. Therefore, for the reasons mentioned hereinabove, order taking cognizance is proper and no ground for interference is made out. It is, accordingly, dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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