

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Reference No. 1 of 2014

=====

Reference from District & Sessions Judge, Siwan

.... Petitioner/s

Versus

Suo- Motu

.... Respondent/s

=====

Appearance :

For the Petitioner/s :

For the Respondent-State : Mr. Anjani Kumar, AAG-2

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 11-01-2017

This reference, under Section 395 (2) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Code"*), has been made by learned District and Sessions Judge, Siwan, through letter No. 678, dated 16.08.2012, addressed to the Registrar General of this Court. The reference has arisen out of Cr. Revision No. 113 of 2012, pending in the Court of learned District and Sessions Judge, Siwan, in which an order of learned Judicial Magistrate, dismissing a complaint petition, under Section 203 of the Code, was under challenge.

2. Following is the question of law, which has been referred by the learned Sessions Judge, Siwan, for decision of



this Court:-

"(i) Whether mental agony of an estranged wife ousted from Sasural and living in a different district can be said to be continuation of dowry-torture (punishable under Section 498A I.P.C.) and whether it can be said to be consequence of the physical and mental torture given to her in Sasural.

(ii) Whether the court within whose territorial jurisdiction, such estranged wife is living has jurisdiction to take cognizance and try a case under Section 498A I.P.C. even where the demand of dowry and torture by accused persons is alleged to be committed in her Sasural situated in other district."

The necessity of reference by learned Sessions Judge, Siwan arose in view of two conflicting decisions of this Court; one in case of ***Dinesh Mahto Vs. The State of Bihar & Ors.***, reported in ***2012 (2) PLJR 107***, and another in case of ***Bhagwati Prasad Kyal & Anr. Vs. State of Bihar & Anr.***, dated ***14.12.2011***, passed in ***Cr. Miscellaneous No. 8726 of 2009*** and another analogous case. Both the decisions are Single Bench decisions and in both the cases reliance has been place on a Supreme Court decision in case of ***Y. Abraham***



Ajith & Ors. Vs. Inspector of Police, Chennai & Anr.,
reported in ***(2004) 8 SCC 100.***

3. Faced with the situation that views expressed in the aforesaid two decisions of this Court were conflicting, which could not be reconciled, learned Sessions Judge, Siwan, has referred the question of law, under Section 395 (2) of the Code, for decision by this Court on the points so referred.

4. I have heard Mr. Anjani Kumar, learned Additional Advocate General No. 2, at length. Before I proceed to answer the reference, I need to take note of brief facts of the case and the decisions rendered by this Court in cases of *Dinesh Mahto (supra)* and *Bhagwati Prasad Kyal (supra)*.

5. A complaint petition was filed by the complainant, disclosing offence punishable under Section 498A of the Indian Penal Code (*hereinafter referred to as the "IPC"*), alleging that after solemnization of her marriage with the accused, she went to her matrimonial home, situate in Gopalganj district, where she lived without any difficulty for about a year. The accused persons, thereafter, started ill-treating her, demanding dowry and torturing her therefor. The in-laws are also said to have attempted to kill her by burning. Thereafter, she came to her parental house, situate within the district of Siwan, and started living there. The said complaint petition was filed in the Court of learned Chief Judicial



Magistrate. Siwan. Learned Judicial Magistrate, Siwan dismissed the complaint petition recording that since no part of "cause of action" had arisen within the district of Siwan, the Court, at Siwan, did not have any territorial jurisdiction to try such case. Aggrieved by the said order of the learned Judicial Magistrate, the complainant filed a revision application in the Court of learned Sessions Judge, Siwan, which gave rise to the aforesaid Cr. Revision No. 113 of 2012.

6. Before learned Sessions Judge, Siwan, the complainant placed reliance on a decision of this Court in case of *Dinesh Mahto (supra)*, paragraph 13 of which reads thus:-

"13. From the aforesaid facts and the circumstances of the case, it is no doubt that the harassment and cruelty as alleged was caused to the opposite party no. 2 at the hands of the accused-petitioners at her sasural situated in the district of Lakhisarai and she was driven out from there by them by snatching her personal belongings and she, ultimately, reached at her Maika in the district of Begusarai. As such, while the cause arose at Lakhisarai, but the effect of the cause was ensued and was continuing in the district of Begusarai, due to the mental cruelty suffered continuously by the opposite party no. 2 in view of the provisions of Sections



178(c) and 179 of Chapter-XIII of the Code of Criminal Procedure. As such, I find no illegality in the impugned order dated 26.2.2007 passed by the Sub-Divisional Judicial Magistrate, Begusarai, in Complaint Case No. 206(C) of 2006, amounting to abuse of the process of the Court."

7. The accused persons, on the other hand, placed reliance on another decision of this Court in case of *Bhagwati Prasad Kyal (supra)*, paragraphs 18 and 19 of which read thus:-

"18. No doubt, section 498A of the IPC is a continuing offence but for application of section 178 (c) of the Cr. P.C the continuing offence must be committed in more local areas than one. So far as the case of opposite party no.2 is concerned, admittedly, neither she was tortured nor any demand was made from her by the petitioners at Muzaffarpur, Bihar. So, even if section 498A of the IPC is a continuing offence, then also, the aforesaid offence has not been committed at Muzaffarpur, Bihar.

"19. Similarly, section 179 of the Cr. P.C is also not applicable in the present case because for application of section 179 of the Cr. P.C there must



be consequence of an act or illegal omission. The words "consequence which has ensued" obviously, mean "by reason of any consequence" that is consequence must be necessary ingredient of the offence and where the act itself is complete offence irrespective of any consequence which has ensued, section 179 of the Cr. P.C does not apply and at the place where act was committed determines the jurisdiction. In the present case, the alleged illegal demand and torture were made at Raniganj, Burdwan, West Bengal and, merely, after ouster from her matrimonial home the opposite party no.2 came at Muzaffarpur and she suffered there from mental agony, it can not be said that part of the alleged occurrence has also taken place at Muzaffarpur. Therefore, I am of the opinion that no consequences of the alleged occurrence have happened at Muzaffarpur, Bihar and the offence of section 498A of the IPC and 4 of the D.P. Act were completed at Raniganj district Burdwan, West Bengal and, so, I am of the considered view that section 179 of the Cr. P.C is not applicable in the present case."

8. The two views, as noted above, are apparently



conflicting. However, since in my view, the issue involved is squarely covered under a recent Division Bench decision of Supreme Court in case of **Amarendu Jyoti & Ors. Vs. State of Chhattisgarh & Ors.**, reported in **(2014) 12 SCC 362**, and the question referred to by the learned Sessions Judge, Siwan stands fully answered by the said decision, I have not considered it necessary to refer the matter to a Larger Bench.

9. The Supreme Court in case of *Amarendu Jyoti (supra)* has clearly held in paragraph 11 as follows:

"11. *We find that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. We do not agree with the High Court that in this case the mental cruelty inflicted upon Respondent 2 "continued unabated" on account of no effort having been made by the appellants to take her back to her matrimonial home, and the threats given by the appellants to take her back to her matrimonial home, and the threats given by the appellants over the telephone. It might be noted incidentally that the High Court does not make reference to any particular piece of evidence regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, we are of the*



view that it cannot be held that the Court at Ambikapur has jurisdiction to try the offence since the appropriate Court at Delhi would have jurisdiction to try the said offence. Accordingly, the appeal is allowed.”

The Supreme Court in case of *Amarendu Jyoti (supra)* has considered its earlier decision in case of *Y. Abraham Ajith (supra)*. In the said case of *Amarendu Jyoti (supra)*, the marriage had taken place at Patna, whereafter, the couple had resided in Delhi. After sometime, the wife had left Delhi for parent's place at Ambikapur. After 2½ years thereafter, the father of the wife had lodged the First Information Report at Ambikapur, alleging that the wife had been subjected to cruelty by her husband.

10. On a challenge to the prosecution, having been made under Section 482 of the Code, on the ground of lack of territorial jurisdiction of the Court at Ambikapur to try the offence, the High Court, having regard to the provisions of Sections 178 and 179 of the Code, had held that after the wife had left the husband's society at Delhi and gone to Ambikapur to reside with her father, acts of cruelty continued and, therefore, the offence of cruelty was a continuing offence. The High Court of Chhattisgarh viewed that since the wife abandoned her husband's company because of cruel-treatment



and compelled her to stay at Ambikapur and further that respondent No. 2 was subjected to cruelty by telephone calls over which she was threatened and demand of dowry was made, offence of cruelty having continued, the Court at Ambikapur had the jurisdiction to try the offence.

11. When the matter travelled to Supreme Court, the core question which came up for consideration was as to whether the allegations made in the First Information Report, constitute continuing offence.

12. The Supreme Court answered the said question with reference to the allegations made in the complaint petition in case of *Amarendu Jyoti (supra)* in paragraph 11, as has already been extracted hereinabove.

13. Mr. Anjani Kumar, learned Additional Advocate General No. 2, while assisting this Court with reference of facts of this case, has submitted that the mental cruelty inflicted on the complainant continued unabated even when the complainant was residing with her father in the district of Siwan and, therefore, the cruelty meted out to her by the accused persons being continuing one, the jurisdiction of the Court at Siwan, cannot be questioned. He has placed reliance on another Supreme Court decision in case of ***Sunita Kumari Kashyap Vs. State of Bihar & Anr.***, reported in **(2011) 11 SCC 301**, to bolster his argument.



14. The facts in case of *Sunita Kumari Kashyap (supra)* are clearly distinguishable as in that case, there was allegation of ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and she was taken to parental home at Gaya by her husband with a threat of dire consequences for not fulfilling the demand of dowry. In my view, no controversy survives after clear and unambiguous decision of Supreme Court in case of *Amarendu Jyoti (supra)*.

15. In the present case there is no allegation in the complaint petition that the complainant was tortured or harassed after she left the company of her husband at Gopalganj. Chapter-XIII of the Code deals with the jurisdiction of criminal Courts in inquiries and trials. Sections 177 to 179 of the Code being relevant are extracted hereinbelow:-

"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 area,

it may be inquired into or tried by a Court having jurisdiction over any of such local area.

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."*

16. A bare reading of the said provisions, as noted above, shows that as a normal rule, the offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction the said offence was committed. Section 178 of the Code contemplates a situation where it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where offence is a continuing one, and continues to be committed in more local areas than one, or in consequence of several acts done in different local areas. In either of the



circumstance, the offence may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 179 of the Code states that offence can also be inquired into or tried by a Court within whose jurisdiction consequence of an offence has ensued.

17. Upon perusal of the entire complaint petition, which is there on the record, it can easily be seen that there is no allegation of any ill-treatment after the complainant left the company of her husband. The plea that because of complainant was living with her father, at Siwan, and there also she was suffering the consequences of ill-treatment, meted out by her husband, and, therefore, Siwan Court would also have the jurisdiction, cannot be accepted. Mere fact that the complainant was residing at Siwan will *per se* not constitute "cause of action" in the absence of any allegation of cruelty at that place because that will lead to anomalous situation and place of "cause of action" shall keep on shifting depending on the movement of the wife. If the wife keeps on shifting her abode from one place to another after having left the society of her husband, can it be said that as consequence of ill-treatment ensued at different places, since her suffering continued at different places and the Courts, having jurisdiction at all such places, shall have the territorial jurisdiction to inquire into and try the offence. The answer, in my view, will be in negative, in



view of the Supreme Court decision in case of *Amarendu Jyoti (supra)*. The territorial jurisdiction will depend upon the nature of accusation made in the First Information Report/the complaint petition for deciding as to whether a particular Court will have the territorial jurisdiction by virtue of provisions under Sections 177 to 179 of the Code.

18. Having discussed thus, the answer, in my view, to the reference would be that mental agony to an estranged wife, ousted from her in-laws place and living in a different district, cannot be said to be continuation of offence, punishable under Section 498A of the IPC, and her living in a different district, cannot be said to be a consequence of physical and mental torture meted out to her at her in-laws place, so as to create territorial jurisdiction of the Court of the district in which she is living, unless there is specific case of physical or mental torture at the place where she is living, apart from her in-laws' place. Merely, on the ground that the estranged wife is living within the territorial jurisdiction of a Court, such Court cannot inquire into, take cognizance or try the case under Section 498A of the IPC, where the offence of demand of dowry and torture by the accused persons is said to have been committed at her in-laws' place, situate in a different district.

19. I answer the reference accordingly.



20. Let a copy of this order be sent to the Court of learned Sessions Judge, Siwan, for disposal of Cr. Revision No. 113 of 2012 in conformity with the present order.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.01.2017
Transmission Date	19.01.2017

