

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29293 of 2015

Arising Out of PS.Case No. -101 Year- 2014 Thana -KATRA District- MUZAFFARPUR

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1. Rajesh Thakur S/o Navin Chandra Thakur
2. Navin Chandra Thakur S/o Jaidev Thakur Both Resident of Village Chakanti,
Police Station Nanpur, District Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Prabhat Ranjan Thakur S/o Vakil Thakur Resident of Village Jajuar, Police
Station Katra, District Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Birendra Kumar Singh, Adv.
Mrs. Jyotsna Kumari, Adv.
For the State : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mr. Neeraj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 18-01-2017

Invoking the inherent jurisdiction of this Court under
Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the
petitioners have prayed for quashing of the order dated 18.05.2013
passed by the learned Additional Sessions Judge-X, Muzaffarpur in
Sessions Trial No. 148 of 2012 whereby he has rejected the petition
dated 04.02.2013 of the accused petitioners filed under Section 227 of
the CrPC assailing the jurisdiction of the trial court to proceed with
the trial.

2. The Opposite Party No.2 Prabhat Ranjan Thakur initially
filed a complaint case vide Complaint Case No. 2317 of 2004 in the



court of Chief Judicial Magistrate, Muzaffarpur against the petitioners and nine others alleging offences under Sections 323, 379, 498-A, 307 and 504 of the Indian Penal Code (for short 'IPC') against them. The said complaint was referred to the Katra Police Station for investigation under Section 156(3) of the CrPC, pursuant to which Katra P.S.Case No. 101 of 2004 dated 03.10.2004 was registered under Sections 323, 379, 498-A, 307, 504 read with 34 of the IPC as also Sections 3 and 4 of the Dowry Prohibition Act against the petitioners and their nine other family members and investigation was taken up.

3. The Investigating Officer of the case in course of investigation did not find any material attracting the offences under Sections 323, 379, 307 and 504 read with 34 of the IPC. However, after extensive investigation of the case, the police came to the conclusion that the materials collected during investigation hardly makes out a case for the offence under Section 498-A read with 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners only and thus submitted charge-sheet for the offences under Section 498-A read with 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act arraying the petitioners as accused to stand trial for the said offences.

4. On receipt of the police report submitted under Section



173(2) of the CrPC, the learned Chief Judicial Magistrate, Muzaffarpur took cognizance of the offences under Sections 323, 379, 498-A, 307, 504 read with 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners vide order dated 25.03.2010 and summoned them to face trial.

5. Since the offence under Section 307 of the IPC is exclusively triable by the court of Sessions, after supplying necessary documents in compliance with the provisions prescribed under Section 207 of the CrPC, the case was committed to the court of Sessions for trial.

6. At the stage of framing of charge, the petitioners filed an application under Section 227 of the CrPC seeking discharge from the case on the ground that there is no sufficient ground for proceeding against the petitioners in the case. The application filed by the petitioners has been rejected by the learned Additional Sessions Judge-X, Muzaffarpur vide order dated 18.05.2015.

7. The said order dated 18.05.2015 is under challenge in the present application.

8. In the complaint petition, initially filed in the court of the Chief Judicial Magistrate, it has been alleged by the Opposite Party No.2 that his sister Nutan Kumari was married to the petitioner no.1 on 18.05.2003. The ceremony of the marriage had taken place at



Muzaffarpur. After marriage, his sister was taken to her *sasural* situated at village Chakanti in the district of Sitamarhi. The accused persons were not satisfied with the gifts presented to the girl at the time of marriage. They started subjecting his sister to cruelty for non-fulfillment of demand of Indica car and one katha land at Sitmarhi.

9. It has been alleged that the complainant-opposite party no.2 along with father and other family members went to the *sasural* of his sister and tried to persuade the accused persons not to harass her but their request went unheeded. They continuously harassed his sister for non-fulfillment of demand of dowry and ultimately they took his sister to the courtyard and poured kerosene oil on her body and tried to burn her but in the meantime his sister raised hue and cry as a result of which some persons of the locality assembled and at their intervention her life could be saved.

10. It is further alleged that ultimately the accused persons ousted her from her matrimonial home and all attempt to persuade them by the opposite party no.2 and his family members to allow his sister to live peacefully in her matrimonial home failed.

11. Lastly, it is alleged that the complainant came to know that the petitioner no.1 was having affair with some other girl and for that reason also his sister is being harassed.

12. It is submitted by Mr. Kanhaiya Prasad Singh, learned



Senior Counsel for the petitioners that taking the statement of the informant and his witnesses on their face value as recorded by the Investigating Officer, there is no sufficient or competent ground to proceed with the trial. He contended that there is allegation in the First Information Report that the accused persons by taking the sister of the informant in the courtyard and pouring kerosene oil on her body attempted to burn her but the said allegation do not find support from the statement of the witnesses examined under Section 161(3) of the CrPC during investigation. Hence, the police had rightly held in its report that the allegations under Sections 323, 379, 307 and 504 read with 34 of the IPC are not made out.

13. In addition to the aforesaid contentions, learned Senior Counsel for the petitioner submitted that the concerned court at Muzaffarpur has no jurisdiction to hold trial of the case even if the allegations contained in the complaint leading to the institution of the First Information Report are accepted to be true in totality. According to him, no part of the cause of action arose within the territorial jurisdiction of the court at Muzaffarpur as apart from the fact that the parental home of the alleged victim is situated at Muzaffarpur and the marriage had taken place from there, there is no whisper either in the complaint or during investigation that the victim was ever coerced or subjected to cruelty within the territorial jurisdiction of Muzaffarpur.



14. It is contended by the learned Senior Counsel for the petitioners that the question relating to want of territorial jurisdiction of the Court of Muzaffarpur in the present case is squarely covered by the decisions of the Hon'ble Supreme Court in *Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another [(2004)8 SCC 100]* and *Bhura Ram and others Vs. State of Rajasthan and another [2008(3) PLJR (SC) 367]*.

15. Per contra, Mr. Neeraj Kumar, learned counsel for the complainant-opposite party no.2 would submit that the marriage had taken place at Muzaffarpur and the parental home of the victim is also situated at Muzaffarpur. He would contend that the victim is residing at her parental home. According to him, the offence under Section 498-A of the IPC is continuing one and hence the court at Muzaffarpur was competent to take cognizance of the offence and hold trial. He would further contend that since there is allegation of demand of dowry and subjecting the victim to cruelty for non-fulfillment of the same, the trial Judge has rightly rejected the application filed by the petitioners under Section 227 of the CrPC.

16. Mr.Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State supported the contention advanced by the learned counsel for the informant.

17. I have heard learned counsel for the parties and perused



the materials available on record.

18. The common Law of England that all crimes are local and justiciable only by the local courts within whose jurisdiction they are committed finds place in Section 177 under Chapter XIII of the CrPC, which reads as under :-

“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.”

19. It would be evident from reading of Section 177 of the CrPC that the competency of a forum to take cognizance or inquiry and trial of an offence as defined under Section 2 of the CrPC is determined by the place where the offence may have been committed. Ordinarily, crimes are in their local nature and jurisdiction of the criminal courts is local. However, use of the word “ordinarily” in Section 177 of the CrPC indicates that the provision is a general one and the same is not applicable in all cases. The rule that every offence shall be tried by the court within whose jurisdiction it was committed is not an unexceptional or unchangeable principle.

20. Section 178 of the CrPC provides for the difficulty which may arise where there is conflict between different areas or there may be some doubt which particular Magistrate has jurisdiction to try the case. Section 178 of the CrPC reads as under :-



“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.”*

21. From a bare reading of Section 178 of the CrPC it would be evident that the Section provides for four contingencies :

- (1) When it is uncertain in which of several local areas an offence was committed;
- (2) where an offence is committed partly in one local area and partly in another;
- (3) where an offence is a continuing one, and continues to be committed in more local areas than one; and
- (4) where an offence consists of several acts done in different local areas.

22. In the aforesaid four contingencies, Section 178 of the CrPC lays down that the offence made in an area can be tried by the court having jurisdiction of any of such local area.

23. The aforesaid two provisions of the CrPC have been interpreted by the Hon’ble Supreme Court in ***Y. Abraham Ajith*** (Supra) and ***Bhura Ram*** (Supra) wherein the Court has held that where no act of cruelty or harassment is alleged upon the husband by the wife at the place of wife, the courts of that place have no



jurisdiction to try local cases.

24. In **Bhura Ram** (Supra), the Hon'ble Supreme Court while dealing with the jurisdiction of the court to try the offences punishable under Sections 498-A, 406 and 147 of the IPC, analyzed the facts and held in paragraph 4 as under :-

“4. The facts stated in the complaint disclose that the complainant left the place where she was residing with her husband and in-laws and came to the city of Sri Ganganagar, State of Rajasthan and that all the alleged acts as per the complaint had taken place in the State of Punjab. The Court at Rajasthan does not have the jurisdiction to deal with the matter. On the basis of the factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter. As a consequence thereof, the proceedings before the Additional Chief Judicial Magistrate, Sri Ganganagar are quashed. The complaint be returned to the complainant and if she so wishes she may file the same in the appropriate court to be dealt with in accordance with law.”

25. As argued by the learned counsel for the complainant-opposite party no.2, it is to be seen whether the allegation made in the complaint petition leading to institution of the First Information Report would constitute a continuing offence.

26. This issue is no more res integra. In **State of Bihar Vs. Deokaran Nenshi and Anr. [1972(2) SCC 890]**, it is held in paragraph 5 as under :

“5. A continuing offence is one which is susceptible



of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

27. ***In Sujata Mukherjee (Smt.) Vs. Prashant Kumar Mukherjee, [(1997) 5 SCC 30]***, it has been held by the Hon’ble Supreme Court in paragraphs 3 and 7 as under :-

“3. At the hearing of these appeals, Mr. Gambhir, the learned counsel appearing for the appellant, has submitted that it will be evident from the complaint that the appellant has alleged that she had been subjected to cruel treatment persistently at Raigarh and also at Raipur and incident taking place at Raipur is not an isolated event, but consequential to the series of incidents taking place at Raigarh. Therefore, the High Court was wrong in appreciating the scope of the complaint and proceeding on the footing that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur. Hence, the criminal case filed in the Court of the Chief Judicial Magistrate, Raipur was only maintainable against the respondent husband against whom some overt act at Raipur was alleged. But such case was not maintainable against the other respondents.



7. ...We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted. ...”

28. In **Y. Abraham Ajith** (Supra), the Hon’ble Supreme Court taking note of the decision in **Sujata Mukherjee** (Supra), held in paragraph 11 as under :-

*“11. A similar plea relating to continuance of the offence was examined by this Court in **Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee** (1997 (5) SCC 30). There the allegations related to commission of alleged offences punishable under Section 498A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.”*

29. Further in **Ramesh and others Vs. State of Tamil Nadu**, [(2005)3 SCC 507], the Hon’ble Supreme Court held in paragraphs



11 and 12 as under :-

“11. In the view we are taking, it is not necessary for us to delve into the question of territorial jurisdiction of the Court at Trichy in detail. Suffice it to say that on looking at the complaint at its face value, the offences alleged cannot be said to have been committed wholly or partly within the local jurisdiction of the Magistrate’s Court at Trichy. Prima facie, none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction of that Court. Almost all the allegations pertain to acts of cruelty for the purpose of extracting additional property as dowry while she was in the matrimonial home at Mumbai and the alleged acts of misappropriation of her movable property at Mumbai. However, there is one allegation relevant to Section 498-A from which it could be inferred that one of the acts giving rise to the offence under the said Section had taken place in Chennai. It is alleged that when the relations of the informant met her in-laws at a hotel in Chennai where they were staying on 13-10-1998, there was again a demand for dowry and a threat to torture her in case she was sent back to Mumbai without the money and articles demanded.

12. Thus the alleged acts which according to the petitioner constitute the offences under Sections 498-A and 406 were done by the accused mostly in Mumbai and partly in Chennai. Prima facie, there is nothing in the entire complaint which goes to show that any acts constituting the alleged offences were at all committed at Trichy.”

30. In view of the ratio laid down by the Hon’ble Supreme Court in the aforesaid decisions, this Court is of the considered opinion that where no act of cruelty or harassment is committed by the husband upon the wife, the courts of that place will have no jurisdiction to try the offence. In the present case, the physical and



mental torture is alleged to have been committed on the victim in her matrimonial home within the territorial jurisdiction of Sitamarhi and not at her parental home within the jurisdiction of the court at Muzaffarpur, Hence, I am of the opinion that the court at Muzaffarpur district had no jurisdiction either to entertain the complaint for the offence under Section 498-A of the IPC or to order for investigation under Section 156(3) of the CrPC or to take cognizance of the offence or to frame charges and proceed with the trial as no part of cause of action had arisen at Muzaffarpur and the entire cause of action had arisen only within the territorial jurisdiction of the district of Samastipur.

31. Although I have held that the learned Magistrate had no jurisdiction to take cognizance of the offence or to commit the case to the court of Sessions for trial and the trial court has no jurisdiction to frame charges and proceed with the trial, I am of the opinion that the petitioners cannot be discharged from the case on that basis and the proceeding cannot be dropped against them for the simple reason that in exercise of power conferred under Section 156(3) of the CrPC the police had jurisdiction to investigate the case. In the case of a cognizable offence, the police may hold an investigation irrespective of any order of the court. The courts have no control in such cases over investigation or even the action of the police in holding such



action.

32. Section 156 falling within Chapter XII reads as under :

“156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

33. The investigation contemplated under Section 156(3) of the CrPC starts with making the entry in the book to be kept by the Officer-in-Charge in the Police Station of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police under Section 173(2) of the CrPC. Such investigation can commence by the police even without the order of the Magistrate. I have already noticed that no notice of the police officer can be called in question on the ground that the case was one which such officer was not empowered under the Section to investigate.

34. In this regard, I think it appropriate to refer to the



decision of the Hon'ble Supreme Court in ***Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and another [AIR 1999 SC 3596]***, wherein in paragraph 10 the Hon'ble Supreme Court has held as under :-

“10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Ss. 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer-in-charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, such officer shall, forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it.”

35. In view of the ratio laid down by the Hon'ble Supreme Court in ***Satvinder Kaur*** (Supra), while exercising power under



Section 482 of the CrPC, I set aside the impugned order dated 18.05.2015 passed by the learned Additional Sessions Judge-X, Muzaffarpur in Sessions Trial No. 148 of 2012 whereby the application filed under Section 227 of the CrPC has been rejected. I also set aside the order dated 23.05.2010 passed by the learned Chief Judicial Magistrate, Muzaffarpur in Katra P.S. Case No. 101 of 2004 by which cognizance has been taken against the petitioners after perusing the police report. Further, I direct the learned trial Judge to return the charge-sheet to the S.H.O. of Katra Police Station for filing it before the court of competent jurisdiction at Sitamarhi.

36. Consequently, the application is allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	18.08.2016
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