

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3083 OF 2017

JUDGMENT:

The petitioner is the 1st accused in C.C. No.568 of 2010 on the file of XIII-Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad. He filed Criminal M.P.No.66 of 2017 in the aforesaid Calendar Case under Section 177 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), questioning the territorial jurisdiction of the said Court, who tried the Calendar Case, in which an offence punishable under Section 498-A of Indian Penal Code, 1860 (I.P.C.) was alleged against the petitioner, incidentally, disposed of the petition observing that the Court has no jurisdiction to try the case ordering that the complaint shall be returned to the respondent and directed to file in appropriate court to be dealt with in accordance with law.

2. His plea was that he never married her (*de facto* complainant) and false allegations have been alleged against him. His main plea is that even if allegations are taken together, the said Court has no jurisdiction to try the offence. The learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad, accepted the request and returned the complaint to the respondent-State by passing an elaborate order dated 17.1.2017.

3. Aggrieved over the same, the complainant filed Criminal Revision Petition No.55 of 2017 on the file of Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad. The learned Additional Metropolitan Sessions Judge, Hyderabad, referred to the rulings relied on by the learned XIII Additional Chief Metropolitan Magistrate, Hyderabad in Criminal M.P.No.66 of 2017, and then placing reliance in **Sunita Kumari Kashyap v. State of Bihar and another**¹ and **Chitte Siddaiah v. Chitte Sujatha**² where it is held that Section 498-A of I.P.C. is a continuing offence, allowed the Criminal Revision Petition by order dated 15.11.2017, setting aside the order passed by the learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P. No.66/2017 in C.C. No.568 of 2010, dated 17.1.2017, and remanded to the lower Court with a direction to proceed with the case.

4. Aggrieved over the same, the revision petitioner, who is the 1st respondent in Criminal Revision Petition No.55 of 2017, preferred the present Criminal Revision Case, questioning the order dated 15.11.2017, passed by the learned VIII-Additional Metropolitan Sessions Judge, Hyderabad.

5. Heard Sri I. Gopal Reddy, learned counsel for the revision petitioner and Mrs. S. Nanda, Panel Advocate appointed by

¹ 2011 Law Suit (SC) 392

² 2007 Law Suit (AP) 707

the High Court Legal Services Committee on behalf of the 2nd respondent party-in-person.

6. Learned counsel for the petitioner, Sri I. Gopal Reddy, placed reliance in **Amarendu Jyoti v. State of Chattisgarh**³ to substantiate his submission that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. He has also relied on a ruling in **Y.Abraham Ajith v. Inspector of Police**⁴ wherein the Hon'ble Supreme Court in the factual position occurring therein held that the logic of Section 178 (c) of the Code relating to continuance of the offence cannot be applied. The expression of the Hon'ble Supreme Court in paragraph-11 is thus:

“11. A similar plea relating to continuance of the offence was examined by this Court in *Sujatha Mukherjee v. Prashant Kumar Mukherjee* (1997) 5 SCC 30. There the allegations related to commission of alleged offences punishable under Sections 498-A, 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 the 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.”

³ 2014 (9) SCALE 162 = (2015) 10 SCJ 628

⁴ (2004) 8 SCC 100

7. The decision in **Bhura Ram v. State of Rajasthan**⁵ states that since the alleged act as per the complaint had taken place in the State of Punjab, the Court at Rajasthan, where the complainant-wife was residing along with her parents does not have the jurisdiction to deal with the matter, the offence being Section 498-A of I.P.C., holding thus in paragraph-6:

“6. 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.”

8. He further relied on a decision rendered by a learned Single Judge of this Court in **Sivangala Thandi Deepak v. The State of A.P.**⁶ wherein the learned Single Judge followed the decision of the Hon'ble Supreme Court in **Geeta Mehrotra v. State of Uttar Pradesh** [(2012) 10 SCC 741] that the dispute cannot be resolved through a petition under Section 482 of Cr.P.C., when the dispute is regarding the territorial jurisdiction covered by Sections 177 to 181 of Cr.P.C., and that such question of territorial jurisdiction can be determined by the trial Court itself. This ruling has been relied on by the learned counsel in order to fortify his submission that the order

⁵ (2008) 11 SCC 103

passed by the trial Court holding that it has no territorial jurisdiction is based on proper reasoning and the Revisional Court was not right in setting aside the order of the trial Court.

9. The learned counsel for the 2nd respondent, un-official respondent, in order to substantiate the submission that the offence is a continuous one, places reliance in **Sunita Kumari Kashyap** (1 supra) in the context of jurisdiction of the Criminal Courts in inquiries and trials. The Hon'ble Apex Court referring to Sections 171 to 179 of Criminal Procedure Code, 1973, held in paragraph-6 thus:

“6. Chapter XIII of the Code of Criminal Procedure, 1973 (in short “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 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.

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.”

⁶ 2014 (2) ALD (CrI.) 894 = (2015) 3 ALT (CrI.) 226

From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

However, when 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 an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

10. Learned counsel drawn attention to the submissions made on behalf of the complainant therein that it is evident from the complaint that the complainant 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.

11. Learned counsel places reliance in **Ferro Alloys Corpn. Ltd. v. Union of India**⁷, wherein the Hon’ble Supreme Court, in paragraph-28 held, thus:

“28. It is no doubt true that principle of constructive res judicata can be invoked even inter se Respondents, but it is well settled that before any plea by contesting Respondents could be said to be barred by constructive res judicata in future proceedings inter se such contesting Respondents, it must be shown that such a plea was required to be raised by the contesting Respondents to meet the claim of the appellant in such proceedings. If such a plea is not required to be raised by the contesting Respondents with a view to successfully meet the case of the appellant, then such a plea inter se contesting Respondents would remain in the domain of an independent proceedings giving an entirely different cause of action inter se the contesting Respondents with which the appellants would not be concerned. Such pleas based on independent causes of action inter se Respondents cannot be said to be barred by constructive res judicata in the earlier proceedings where the lis is between the appellants on the one hand and all the contesting Respondents on the other. In other words, when the

⁷ (1999) 4 SCC 149

appellants are not concerned with the inter se disputes between the contesting Respondents such inter se disputes amongst Respondents would not give rise to a situation wherein it can be said that such contesting Respondents might and ought to have raised such a ground of defence or attack for decision of the Court. In this connection, it would be profitable to refer to a decision of this Court in the case of *Iftikhar Ahmed & Ors. vs. Syed Meharban Ali and Ors.*, (AIR 1974 SC 749), dealing with the principle of res judicata which obviously would include also the question of constructive res judicata between the co-defendants. K.K. Mathew J., speaking for the Court in that case made the following pertinent observations: (SCC p. 155. paras 13-15)

“13. Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co- defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and (3) that the Court actually decided the question.

14. *In Chandu Lal Agarwalla v. Khalilur Rahaman*, AIR 1950 PC 17. Lord Simonds said:

‘It may be added that the doctrine may apply even though the party, against whom it is sought to enforce it, did not in the previous suit think fit to enter an appearance and contest the question. But to this the qualification must be added that, if such a party is to be bound by a previous judgment, it must be proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided.’

15. We see no reason why a previous decision should not operate as res judicata between co-plaintiffs if all these conditions are mutatis mutandis satisfied. In considering any question of res judicata we have to bear in mind the statement of the Board in *Sheoparsan Singh v. Ramnandan Prasad Narayan Singh* AIR 1916 PC 78 that the rule of res judicata while founded on ancient precedent is dictated by a wisdom which is for all time and that the application of the rule by the Courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

‘The raison detre of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest: and to allow persons who had deliberately chosen a position to reprobate it and to blow hot now when they were blowing cold before would be completely to ignore the whole foundation of the rule.’ (see Ram Bhaj v. Ahmed Said Akhtar Khan, AIR 1938 Lah 571)

The aforesaid principle would squarely get attracted while considering the question of constructive res judicata between the appellant on the one hand and the contesting Respondents on the other who were all co-Respondents before this Court in TISCO and IDCOLs appeals. Considering the basic requirements of the principle of constructive res judicata amongst co-Respondents in TISCO and IDCOLs appeals, it has to be found out whether inter se those co-Respondents the question of correct assessments of present appellants need for chrome ore was necessary to be agitated by the present appellant for enabling the Court to give appropriate relief to TISCO and

IDCOL in their appeals before this Court. It becomes absolutely clear on the facts of the present case that the grievance of the appellant in the present proceedings regarding the alleged error in the assessment of its requirement for chrome ore and the question whether such assessment was required to be revised upwards, which may be relevant for deciding the appellants independent claim against the Central Government as well as the State of Orissa and also vis-a-vis other contesting claimants being three other Respondents had nothing to do with the question of granting relief to the appellants TISCO and IDCOL in the said earlier proceedings. As this important condition was not satisfied for attracting the bar of constructive res judicata against the appellant, it is not possible to agree with the contention of learned counsel for the Respondents that the appellants grievance in the present proceedings was also barred on the ground of constructive res judicata, in the light of the earlier decision of this Court in TISCOs case [(1996) 9 SCC 709]. *(emphasis supplied)*

12. Yet another decision relied on by the learned Counsel is in **Smt. Dr. Renuka Datla and others v. Biological E Limited and others**⁸, wherein a learned Single Judge of this Court dealt with the phrase “approve and reprove” by drawing the source of doctrine of approbation and reprobation, in paragraphs-58 to 62 held thus:

“58. The phrase “approve and reprove” is borrowed from Scotch Law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (Verschures Creameries v. Hull and Netherlands Steamship Co.). In Lissenden v. C.A.V. Bosch, Ltd., the House of Lords pointed out that the equitable doctrine of election applies only when an interest is conferred as an act of bounty through some instrument. In that case, the House of Lords held that the withdrawal by a workman of the compensation in money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen’s Compensation Act.

59. In Banque Des Marchands De Moscou v. Kindersley Evershed, M.R., referring to the phrases “approbating and reprobating” and “blowing hot and blowing cold” held:

“These phrases must be taken to express, first, that the party in question is to be treated as having made an election from which he cannot resile, and, second, that he will not be regarded, at least in a case such as the present, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his present action is inconsistent.”

⁸ LAWS)(APH) 2015 4 20 = 2015 (193) comp cas 356 (T & AP)

60. The above Judgments were referred to and relied upon by the Supreme Court in *Bhau Ram v. B. Baijnath*, 1961 AIR (SC) 1327.

61. That was a case where an appeal was filed before the Supreme Court under the Reva State Pre-emption Act 1949 by the plaintiff in a suit in whose favour a decree was passed and who has filed appeal before the Supreme Court not being satisfied with the decree. The plaintiff has questioned the constitutionality of the provisions of the Reva State Pre-emption Act before the Supreme Court. A preliminary objection was raised to the maintainability of the appeal on the ground that after the Special Leave was granted to file the appeal the plaintiff has withdrawn the price of pre-emption which was deposited by the defendant by pressing into service the doctrine of approbation and reprobation. Placing reliance on the English law referred to above, the Constitution Bench of the Supreme Court rejected the preliminary objection.

62. The legal position that emerges from the decisions referred to above is that the doctrine of approbation and reprobation applies to a case where a party has made an election and he has derived benefit out of such election.”

13. Learned counsel also relies on a decision of this Court in **M/s. Forbesvycke Private Limited v. Turbovent Industries Private Limited** (W.P. No.14962 of 2017, dated 06.12.2017) referring to the very same proposition in the context of doctrine of election, where the Hon’ble Supreme Court in paragraphs-25 to 27 held thus:

25. In *Nagubai Ammal and Others v. B.Sharma Rao and Others* (AIR 1956 SC 593), it was stated:

“It is clear from the above observations that the maxim that a person cannot ‘approbate and reprobate’ is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto.”

26. In *C. Beepathuma and others v. Velasari Shankaranarayana Kadambolithaya and others* (AIR 1965 SC 241), it was state: “The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland “that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.” (see Maitland’s lectures on Equity Lecture 18). The same principle is stated in White and Tudor’s Leading Cases in Equity Vol. 18th Edn. at p.444 as follows: “Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives

one that he should not enjoy both..... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument.” (See also Prashant Ramachandra Deshpande v. Maruti Balaram Haibatti, 1995 Supp (2) SCC 539)

27. Thomas, J. In **P.R. Deshpande v. Maruti Balaram Haibatti** [(1998) 6 SCC 507] stated the law, thus:

“The doctrine of election is based on the rule of estoppels the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppels by election is one of the species of estoppels in pais (or equitable estoppels) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

[See also Devasahayam (Dead) by LRs. V. P. Savithramma and Others, (2005) 7 SCC 653]”

14. Learned counsel also places reliance in **R.N. Gosain v. Yashpal Dhir**⁹ on the very same principle wherein the Hon’ble Supreme Court held thus:

“Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage”. [See: Verschures Creameries Ltd. V. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B.608, at p.612, Scrutton, L.J]. According to Halsbury’s Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”. (para 1508).

15. Learned counsel further relied on a decision in **P.R. Deshpande vs. Maruti Balaram Haibatti**¹⁰ in relation to the very same principle of approbation and reprobation wherein the Hon’ble Apex Court extracted the expression of the Hon’ble Supreme Court in **R.N. Gosain** (9 supra).

⁹ (1992) 4 SCC 683

16. To appreciate the controversy in the present Criminal Revision Case, on the anvil of the propositions in the aforesaid rulings relied on both sides respectively, more particularly, whether Section 178 of the Code would apply, certain basic facts require advertence.

The Complainant, who is the 2nd respondent herein, was married earlier and her first marriage ended in 1996. She has a son through her first wedlock. While things stood thus, she married the petitioner on 15.02.2008, out of love and trust with the consent of her family and his family, having come into contact as the petitioner contacted her through a matrimonial site and they spoke with each other daily from July, 2007 to November, 2007 and in November, 2007 they met directly for the first time; he met her family and friends; they liked each other; he booked her ticket for 5th December, 2007 to Coimbatore to meet his parents and she went there and stayed for two days. Initially, they thought that they get engaged and she would go to U.S.A. to see his lifestyle and then get married if every thing is O.K. She sent complete information to U.S.A. where he lives for fiancé visa. Since her family refused to take the risk and since she was also scared and keeping in view her son's welfare, she requested him for a temple marriage and register the same.

17. Thus, when he came to Hyderabad on 14th February, 2008 again, they got married the next day. She asked for registration, then he told her that he would apply for fiance visa and cannot register

¹⁰ (1998) 6 SCC 507

the marriage itself as that would be an offence in U.S.A. and promised that he would go back and inform about their marriage, cancel the fiance visa and register the marriage at Hyderabad and not breaking any laws. Then on 17.02.2008, they flew to Coimbatore to his parents house. They had lunch, the next day inviting five families and introduced them to her. Then, she learnt that the petitioner's relations and petitioner's parents were not happy with her and they insulted her torturing mentally in the presence of their relatives and did not feed her properly. When asked the petitioner about it, he scolded her and told her to say to his parents that she is very rich, but he did not even bring his parents to her house at Bowenpally, Hyderabad, telling her that they would laugh seeing at her house. Then they came back to Hyderabad on 21.2.2008 and held a reception party on 23.2.2008 at 'Kakatiya Sherton' and about 100 people of friends and families of both sides were invited and attended. Pictures and videos of both functions have been with them.

18. She, then, avers that he took her to Kerala on 25.2.2008, to a resort owned by his friend called, Anthony George. There, he started abusing her from the day they landed. He asked her to tempt his friend sexually so that he would not charge them for stay. She refused and that night he physically abused her for non-cooperation. Next day morning, he was all apologetic and touched her feet and cried and then told her that they were going on a house boat which his same friend arranged. She was scared and refused. He promised her

that there would be no friends of him and that he would behave properly.

19. Thenceforth, what all transpired as projected in her complaint, opining that it would be appropriate to refer to the allegations she levelled in her own words extracted the relevant portion running thus:

“In the evening time he drank and with camera in the hand asked me to pose nude in the middle of the boat. He said the boat attenders would see me and get tempted and that makes him feel to have sex. I refused and was furious. He abused me saying I was a down street, backward piece of shirt, and no culture. He said this was very common in USA. I still did not co-operate and he locked me up in the room. He even told the boat attenders I was MAD. There were two boat attenders and a driver. They did not give me food till night. When I asked for food, Ajay came very apologetic again and started the same drama of touching my feet etc., when earlier he abused me and hit me regarding posing and asking me to put my hand in the Lungi of the attender I actually called up Mr. Alagar (family friend) and asked him to help me although I did not mention details of the abuse. Mr. Alagar is known to my family for last 20 years.

Then the same evening he gave some medication saying it would relieve my headache and cool me down. After that I felt very drowsy. He continued to drug me and in the 5 days of Kerala trip I vaguely remember incidents and was not able to remember and felt sick. During this, one day I vaguely remembers his friend Manoj lying next to me and I was naked on bed but covered. I remember I was furious again but had no energy and refused to take the HEADACHE pills anymore. For 3-4 days though I was getting tired as I did not have sex for years or the journey or the extra stress.

I would also like to mention that I take Rivotryl 0.5 (3 halves) 3 times a day. I have been taking since 4 years on and off, based on stress. I was completely normal, still I am. But Ajay said my drowsiness was due to Revotryl. Then he took me to Madras where he aid he would take to Madras where he said he would take me to a doctor. His brother lives in Chennai and we stayed for two days from where Ajay left to USA and I was booked back to Hyderabad. It took me two weeks to recover. From the pain (physical and emotional) after coming home and was trying to understand what happened. Ajay kept calling me. I went to the doctor and asked him about Rivotryl causing such symptoms and if so wanted to leave it, Dr. Chandrasekhar. He said it was a very low dose and could be tapered down slowly as I would get fits if I stop suddenly.

So I gathered not much to worry. But when Ajay started his harassment over phones and mails I went completely depressed. I realized the married had to end. I realized there was no love. I realized I could never trust him after the way he treated me while he was with me. So I asked him for a mutual separation. I do not even know if he had cancelled the fiance visa but he never came back. He kept saying but I said no short trips. If he has any respect for me he should take me as his wife, go and see a doctor here about his wild sexual fantasies (which scared) me. Then he said I should see a psychiatrist. I did. There was no problem but depressions. I did not discuss with the doctor about Ajay's abuses as Ajay sent me to a doctor recommended by his friend who is also a psychiatrist and referred me to Dr. M.S. Reddy.

I was sedated by the new medication doctor gave me and still was disturbed by this man. Neither he showed any love nor he showed any intentions for separation. The relationship was on and off and caused me immense mental torture. I told him if he had a problem he should stop calling me and break off the marriage in a proper manner. He threatened me of some sex tapes etc., and said I was his slave and never to go to police or tell anyone what happened at Kerala. Initially though an elders advice I was asked to be nice and loving to Ajay over the phones till he comes back to India and clarify what tapes he was referring to and then take a divorce, as I had made up my mind. I knew he was not a good man and had abused me. However, I did not mention this till now about his harassment due to my son and my family and was trying to do in a peaceful manner.

But unfortunately he kept harassing and threatening me over the phones. As I had already requested his friends and family to ask him to come here and settle things and nothing worked out, I now approach the law to help me in this regard as now Ajay, his parents and friends denied a marriage and says he remarried again. So now I know he had cheated me, abused me and harassed me mentally and physically and got something out of it. What I request the police to help me and do justice as I am scared of his criminal brains, and intention."

20. Turning to the submission made by the learned counsel for the 2nd respondent, she would submit that the petitioner has not at all raised territorial jurisdiction on earlier occasion that was on 5.5.2016, when he was detained by Kochi Police at Airport in connection with her complaint and produced before the XIII-Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, on 6.5.2016, whereupon he was remanded to judicial

custody. He made three attempts and in third attempt he got bail with certain conditions. Thereafter, he approached this Court by filing Criminal Petition No.10681 of 2016 seeking modification of the said conditions. The learned counsel refers to the conditions imposed by this Court on 12.8.2016, in Criminal Petition No.10681 of 2016 with the modifications. She, then referred the petitioner approaching the Hon'ble Supreme Court for further relief, but he was not successful, and, thereafter, only with a view to avoid trial, according to her, the petitioner has come up with the instant plea that the trial court has no territorial jurisdiction. It is mentioned in the Grounds filed along with her counter-affidavit, in paragraphs-6C, 6D, 6E and 6F thus:

“6C. In this Hon'ble Court while seeking modifications of conditions of bail, in Criminal Petition No.10681 of 2016, the petitioner through his senior counsel submitted that the petitioner is not going to dispute the cross examination done in the absence by his counsel and also the statement of witnesses recorded in chief by trial Court in the petitioner's absence, that no prejudice would be caused even if he is not present in the court during the course of trial. It was further submitted that the petitioner would be permitted to leave India after the examination with an undertaking that he will appear before the court at the time of his examination under section 313 Cr.P.C. and thereafter till the pronouncement of judgment. These submissions of the petitioner have been recorded in para-6 of the order dated 12 August, 2016, in Criminal Petition No.10681 of 2016, filed by the petitioner. It is therefore established that the petitioner undertook before the Hon'ble Court that the trial will go on in the matter.

6D. On the petitioner's undertaking recorded above this Hon'ble Court modified the conditions and passed the above mentioned orders.

6E. On the petitioner's undertaking this Hon'ble Court directed that the trial court shall take up the matter on day to day basis and dispose of the case at the earliest preferable within 6 months. Having accepted the jurisdiction of trial court before this Hon'ble Court and having obtained modified order and having complied with the conditions laid down by this Hon'ble Court, it does not lie in the mouth of the petitioner to contend that the trial court has no jurisdiction.

6F. The petitioner promised before this Hon'ble Court in Criminal Petition No.10681 of 2016, by undertaking made by a senior counsel on his behalf that he will cooperate in the trial. He also agreed to the order that the trial court shall take up the matter on a day to day basis."

21. Therefore, it is the submission of the learned counsel that having accepted before this Court, the jurisdiction of the trial Court and secured an order modifying bail conditions, the conduct of the petitioner going to trial court and challenging the territorial jurisdiction amounts to nothing short of wilful contempt of the Court order dated 12.8.2016, in Criminal Petition No.10681 of 2016. It is stated that by virtue of relaxed conditions he left the country without any proper order from trial court, by getting his passport released. Thus, having enjoyed the benefit of order which was passed on his undertaking that the trial can go on with the trial court even in his absence, he is estopped from acting contrary about the territorial jurisdiction. Learned counsel would submit that the photographs and CDs demonstrate that there was marriage and the denial of the petitioner about the marriage between them is founded on false averment. According to the learned counsel, the continued harassment after reaching Hyderabad even, is sufficient to hold that the Court at Hyderabad vested with territorial jurisdiction to take up trial, and, therefore, there is no merit in the Revision.

22. Thus, the decisions in **Ferro Alloys Corpn Ltd.** (7 supra), **Smt.Dr. Renuka Datla** (8 supra), **M/s.Forbesvycke Private Limited v. Turbovent Industries Private Limited** (W.P.

No.14962 of 2017, dated 06.12.2017), **R. N. Gosain** (9 supra), and **P.R. Deshapande** (10 supra) have been relied on by the learned counsel for the 2nd respondent in the context of doctrine of ‘approbation and reprobation’, referring to the conduct of the petitioner in agreeing with the conditions imposed by this Court and the Hon’ble Supreme Court to go for trial, but now, turning around by questioning the jurisdiction of the Court at Hyderabad.

23. Now, the short question that arises for consideration is, whether there has been continuous harassment?

24. When the averments in the compliant are taken wholly, the very allegation that the petitioner had been harassing her over phones and mails after he went to U.S.A. from Chennai and booking her ticket to Hyderabad and when she was at Hyderabad, threatening her that he was in possession of sex tapes, etc., cannot be brushed aside since even at this stage they do definitely indicate *prima facie* continued harassment, falling within the ambit of Section 178 (c) of the Code.

25. Therefore, the law declared by the Hon’ble Supreme Court in **Sunita Kumari Kashyap** (1 supra) would squarely apply to the fact-situation occurring in the present case.

26. The submissions of the learned counsel for the petitioner that even construing that harassment was true without admitting it, it was only at Kerala when the petitioner and 2nd respondent were at Kerala, as could be seen from the allegations mentioned in the complaint, and, therefore, the learned XIII-Additional Chief

Metropolitan Magistrate, Hyderabad, lacks jurisdiction, with respect, cannot be countenanced at this stage for the following reasons:

(i) Firstly, the complaint does contain averments as extracted in the above. At the cost of repetition, last paragraphs from the complaint afore-extracted would in unmistakable terms refer to the harassment of the petitioner over phone when the 2nd respondent continued to stay at Hyderabad, having reached Hyderabad. The details therefor have been shown in the complaint by the 2nd respondent in the preceding paragraphs extracted in the above.

(ii) Second reason is, the territorial jurisdiction of the XIII-Additional Chief Metropolitan Magistrate, Hyderabad, was not at all taken at the inception stage. In fact, he secured bail and to leave this country for U.S.A., he assured that he would abide by the conditions imposed by this Court, modifying the conditions that were imposed by the trial Court and he did not even succeed before the Hon'ble Supreme Court, where the Hon'ble Supreme Court by order dated 28.11.2016 in Petition (s) for Special Leave to Appeal (Crl.) No.7704 of 2016, arising out of impugned final judgment and order dated 12.8.2016 in Criminal Petition No.10683 of 2016, having referred to the modified conditions imposed by this Court, given certain directions in the concluding paragraph of the order, thus:

“In the aforesaid circumstances, we direct the Trial Court to decide the issue of framing of the charges within 15 days from

today and do not grant any unnecessary adjournments. We again reiterate that the Trial Court shall adhere to the time fixed by us.

We are not interfering with any other term imposed by the High Court.”

(iii) Third, the petitioner having accepted the conditions imposed by this Court, and having submitted himself to the jurisdiction of the learned XIII-Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, approaching this Court questioning the territorial jurisdiction is only an after-thought. The learned XIII-Additional Chief Metropolitan Magistrate, Hyderabad, somehow, overlooked the acts of the petitioner over phones and mails referred to in the complaint which would constitute acts of continued harassment. The Revisional Court is, therefore, right in setting aside the order passed by the trial Court, directing the trial Court to take up the Calendar Case to its file and to proceed with the trial.

27. Thus, the order under challenge neither suffers from irregularity nor illegality warranting interference.

28. There is no merit in the Criminal Revision Case, and, therefore, the present Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

January 24, 2018.

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