

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

(1)

**Crl. Misc. M-20827 of 2017 (O&M)
Date of Decision: July 17, 2018**

Shyamsunder Mittal and others

...Petitioners

Versus

The State of Punjab and another

...Respondents

(2)

Crl. Misc. M-8086 of 2018

Saurav Mittal

...Petitioner

Versus

The State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Rai, Senior Advocate with
Mr. Amit Jhanjhi, Advocate
for the petitioner(s) in both the petitions (**CRM-M-20827 of
2017 & CRM-M-8086 of 2018**).

Ms. Rajni Gupta, Senior DAG Punjab.

Ms. Geeta Luthra, Senior Advocate with
Mr. Lovekirat Singh Chahal, Advocate &
Mr. J.S. Bedi, Senior Advocate with
Mr. P.S. Ahluwalia, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. By this common order, this court proposes to dispose of two criminal miscellaneous petitions (**CRM-M-20827 of 2017 & CRM-M-8086 of 2018**), which are arising out of FIR No.27 dated 09.05.2017, registered under Sections 406, 498-A, 494 of Indian Penal Code at Police Station Women Cell, Division No.7, Police Commissionerate, Jalandhar, Punjab. **Criminal Misc. No.M-20827 of 2017** has been preferred by Shyamsunder Mittal, Mrs. Saroj Shyamsunder Mittal, Shashank Shyamsudner Mittal and Smt. Payal Sitani whereas, **Criminal Misc. No.M-8086 of 2018** has been preferred by Saurav Mittal, seeking quashing of the aforesaid FIR as well as the challan/final report.

2. In brief, the facts of the case are that a marriage was solemnized between complainant-Sonakshi Mittal and Saurav Mittal (**petitioner in CRM-M-8086 of 2018**) on 03.06.2015 at Gurgaon. It was the second marriage for both concerned. On account of a matrimonial dispute that arose between the parties, FIR No.27 dated 09.05.2017, under Sections 406, 498-A, 494 of Indian Penal Code came to be registered on complaints bearing No.674 dated 26.04.2017 and No.575 dated 08.04.2017. In the said FIR, it was alleged that a marriage had been solemnized between the complainant and Saurav Mittal on 03.06.2015 at Gurgaon. It was further alleged that at the time of the wedding, gifts were exchanged and approximately an amount of ₹ 12 crores was spent in the said marriage, which included the expenditure for the stay of the family of the Saurav Mittal and guests. After solemnization of the wedding, the complainant

went to reside with her husband in Mumbai where all her gold, diamond and costly articles were taken away from her and kept by the parents of the Saurav Mittal. Allegations of demand of dowry were also raised, while also submitting that the complainant's husband under the influence of drugs had subjected her to unnatural sex against her wishes, while they were in Turkey and despite resistance, continued to subject her to the same. Complainant was threatened with dire consequences in case, she would disclose the same to her parents. That on 26.07.2015, she also received serious cuts and injuries on her arm and despite the fact that her in-laws were aware of this, they did not report the matter to the police. There is an allegation in the FIR regarding demand of ₹ 2 crores as well, apart from narrating the various incidents of cruelty and demand of dowry and inhuman treatment meted out to her during her pregnancy, the complainant has alleged that she was subjected to assault and offence which is punishable under Section 377 of Indian Penal Code. It is stated that on account of inhuman behaviour, the complainant had no option, but to leave her matrimonial home. A supplementary statement was suffered by her father in which it was stated that on the night of 03.08.2015, he was a witness to his daughter being subjected to an offence punishable under section 377 IPC at Jalandhar when his daughter was with them and his son-in-law had come to visit.

3. Mr. R.S. Rai, learned Senior counsel, assisted by Mr. Amit Jhanjhi, Advocate, while advancing arguments on behalf of the petitioners **in CRM-M-20827-2017** argued that the instant petition has been filed at Jalandhar, is not sustainable since, the courts at Jalandhar would have no jurisdiction to entertain the matter. It is argued that the marriage between

the parties was solemnized at Gurgaon and thereafter, the complainant started residing with her husband and in-laws. It is argued that all the allegations that have been raised regarding Saurav Mittal being drug addict and in the habit of consuming alcohol is untrue, while submitting that Saurav Mittal and the complainant have travelled abroad for their honeymoon for Turkey and Greece, which expenses were borne by the son of petitioners No.1 and 2, Saurav Mittal. It is also submitted that all the expenses regarding birth of the baby girl Maira was born by their family. It is also submitted that after 40 days of the delivery, the complainant desired to go to Jalandhar for attending a marriage of a close relative and at that time, she had taken all her jewellery with her given at the time of marriage by the petitioners No.1 and 2 and her parents. It is also submitted that every effort was made to reconcile the differences between Saurav Mittal and the complainant, which did not fructify. It is argued that no offence whatsoever has taken place at Jalandhar, therefore, the courts at Jalandhar would have no jurisdiction to entertain the same and the same ought to be transferred either at Mumbai or at Gurgaon.

4. Learned Senior counsel, while advancing arguments on behalf of the petitioner in **CRM-M-8086-2018** argued that the supplementary challan dated 18.11.2017, vide which the petitioner has been challaned under Section 377 of Indian Penal Code, ought to be quashed. It is submitted that a reading of the statement of Dr. Bhawna Gupta w/o Ravinder Kumar Gupta would reveal that no internal check up was done on Sonakshi Mittal, who came to her for a medical check up in OPD. In the medical history, it has been informed that unnatural sex has been performed

upon her about 6-7 days ago. The doctor had prescribed her certain tests and asked her to come back with the reports. It is argued that a supplementary statement has been suffered by Sanjay Goel, father of the complainant, which is to the effect that on the night of 03.08.2015, when he got up at night, he heard shrieks of his daughter Sonakshi from inside. When he looked inside from window, he saw that his son-in-law has been committing unnatural sex with his daughter against her wish. Learned Senior counsel submits that the entire statement has been made only to harass the petitioner(s) and to draw jurisdiction at the courts at Jalandhar. It is argued that Dr. Bhawna Gupta is an Ayurvedic doctor and not a gynecologist. It is also argued that in case, the offence of Section 377 IPC had taken place on the night of 03.08.2015, she should have gone to a regular gynecologist, while also arguing that the complainant left in the company of the Saurav Mittal and returned to Bombay and thereafter, a female child was born 18.04.2016. In support of his arguments, learned Senior counsel relied upon judgments rendered in **Amarendu Jyoti and others vs. State of Chhatisgarh and others, 2012(12) SCC 363, Bhura Ram and others vs. State of Rajasthan and another, 2008(2) RCR (Criminal) 761, Manish Ratan and others vs. State of M.P. And another, 2007(1) RCR (Criminal) 513, Y. Abraham Ajith and others vs. Inspector of Police, Chennai and another, 2004(3) RCR(Criminal) 988, Naresh Kumar and others vs. Chanchal Rani and others, 2010(2) RCR (Criminal) 668.**

5. Per contra, Ms. Geeta Luthra, learned Senior Counsel assisted by Mr. Lovekirat Singh Chahal and Mr. J.S. Bedi, Senior Advocate, assisted

by Mr. P.S. Ahluwalia appearing on behalf of the complainant would submit that there was a demand of dowry at Jalandhar itself, apart from that the offences under Section 377 IPC has been committed at Jalandhar. It is submitted that though the parties resided in Mumbai, but the demand of dowry was made at Jalandhar itself, when the in-laws of the complainant came to Jalandhar, and therefore, it is a continuous offence. It is also argued that the medical available on the record would show that the complainant had gone to Sethi Hospital and was attended by Dr. Bhawna Gupta, who is a lady doctor and therefore, it cannot be said that she had gone to an Ayurvedic doctor. In support of their arguments, learned Senior counsel relied upon judgments rendered in **Sunita Kumari Kashyap vs. State of Bihar and another, 2011(3) RCR (Criminal) 26, Shiv Dayal Arora and another vs. Smt. Renu Arora, 2007(3) RCR (Criminal) 10, Gaganpreet Kaur vs. Senior Superintendent of Police, U.T. Chandigarh and others, 2009(1) RCR (Criminal) 394.**

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case.

7. Two fold questions arises to be determined:

(i) Whether the courts at Jalandhar would have the jurisdiction to try the offences under the said FIR?

(ii) Whether the offence under Section 377 of IPC is made out and the challan quashed?

8. A reading of the FIR would clearly reflect that there is a demand of dowry of ₹ 2 crores made by the petitioner(s) herein and when the complainant refused to ask for the amount of ₹ 2 crores from her

parents, she was sent to Jalandhar with the instructions to bring the above said demanded amount from her parents, otherwise, she should not return to their house. It is stated that the parents of the complainant, however, expressed their inability to pay the demanded amount. There are specific allegations in the FIR that *“the parents of Saurav Mittal then came to Jalandhar on 23rd of November, 2015 and visited the house of the parents of the applicant and on their visit, the applicant started thinking that they have probably come to Jalandhar in order to take her back, but was surprised when the parents of respondent demanded the payment of Rs.2 crores from her parents as a condition precedent for taking back the applicant to their house.”* Apart from above, in the supplementary statement that has been suffered by father of the complainant, it has been stated that there was an offence of Section 377 of Indian Penal Code having been committed at Jalandhar, on the night of 03.08.2015. Moreover, there is also allegation that calls were made by the petitioner(s) to her parents residing at Jalandhar demanding dowry. Section 180 of Code of Criminal Procedure provides for place of trial where act is an offence by reason of relation to other offence. Law in regard to jurisdiction to try an offence is well settled. Section 177 of Code of Criminal Procedure stipulates that every offence should be inquired into and tried by the Court within whose local jurisdiction, the offence was committed. The argument raised by learned Senior counsel for the petitioner(s) that the marriage was performed in Gurgaon and alleged maltreatment and demand of dowry was at Mumbai would have been sustainable, if there were no allegations in the FIR that the parents of Saurav Mittal came to Jalandhar on 23.11.2015 and at that time,

made a demand of ₹ 2 crores from her parents, as a condition precedent for taking back the complainant to her matrimonial home. The supplementary statement that has been recorded on the basis of which a supplementary challan has been presented, clearly alleges that an incident took place on the night of 03.08.2015 at Jalandhar itself between Saurav Mittal and the complainant, which has led to adding of Section 377 IPC as well. Therefore, the argument raised that jurisdiction would lie either at Mumbai or at Gurgaon, is clearly not sustainable. The case law relied upon in **Y. Abraham Ajith and others vs. Inspector of Police, Chennai and anr, 2004(3) RCR (Criminal) 988**, would not be applicable to the instant case. The complainant therein had filed proceedings at Nagercoil alleging harassment on account of demand of dowry and thereafter, she left Nagercoil and came to live at Chennai and instituted proceeding there. In the complaint, there was no allegation of demand of dowry at Chennai, which led the Supreme Court to arrive at a conclusion that there was no cause of action arisen at Chennai and it is on these basis, the complaint came to be quashed. Whereas, in the case of **Sunita Kumari Kashyap vs. State of Bihar and another, 2011(3) RCR (Criminal) 26**, judgment relied upon by counsel for the respondent, the Supreme Court while taking note of the judgment rendered in **Y. Abraham Ajith and others** case (supra) declined to interfere in the said matter on account of specific allegations made in the complaint stating that the complainant had been maltreated and treated cruelly at the hands of husband and relatives at Ranchi. It was because of cruelty meted out and on account of insufficient dowry, she was taken to her parental home at Gaya by her husband with dire consequence

for not fulfilling demand of dowry. It was held that both Courts at Ranchi and Gaya would be competent to entertain the proceedings since there was also a demand of dowry at Gaya. Unlike in the case of ***Y. Abraham Ajith and others*** and the other case law relied upon by the petitioners there is allegation that a demand was made from the respondent at Jalandhar and thus case law relied upon would not be applicable to the peculiar facts and circumstances of the present case. Therefore, in the instant case, on the basis of the supplementary statement given and the contents of the FIR, this court has no hesitation in holding that the courts at Jalandhar would have the territorial jurisdiction to try the offence under the FIR.

9. The second limb of argument that the offence under Section 377 of IPC is not made out and the supplementary challan ought to be quashed, is again not sustainable. In this regard, the argument that the complainant had gone to an Ayurvedic doctor whereas, she should have gone to a gynecologist, is at the present moment an argument, which is not appealable to the court, considering the fact that she did go to Sethi Hospital and was treated by Dr. Bhawna Gupta, who is shown to be a lady doctor. A perusal of the medical slip shows that the said hospital is equipped to deal with the gyane problems. There are specific allegations that have been made in the supplementary challan that the offence under Section 377 IPC has been added on the basis of evidence that is currently available. The argument raised that the complainant had accompanied her husband Saurav Mittal back to Mumbai after the incident of 03.08.2015 and thereafter the complainant delivered a child, are arguments that are to be taken at the time of their defence and these cannot be looked into at the present moment. This

court is not inclined to interfere in this question at this stage, since these are all disputed question of facts, which cannot be answered either way at the present moment and can only be decided, after both the parties led their evidence in support of their allegations so levelled.

10. In view of the foregoing discussion and ratio of law, both the petitions in hand are hereby dismissed, being devoid of any merits.

11. Anything observed or said by this court hereinabove shall have no affect on the merits of the case (which is to be decided on the basis of evidence led), as any observation is for the purpose of deciding the petitions in hand.

July 17, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No