

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.579 of 2018

Arising Out of PS. Case No.-13 Year-2013 Thana- MAHILA PS District- Jehanabad

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Kumar Gaurav Son of Late Anil Kumar, Resident of Village- Karhari Mathia,
P.S.- Parasbigha, District- Jehanabad.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr.Aditya Narayan Singh-1, Advocate
For the Opposite Party/s :	Mr.Anjani Kumar, Sr. Advocate AAG-4
	Mr. Amit Kumar Jha, AC to AAG-4
	Md. Iftekhar Mahmood, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date : 10-12-2019

Heard Mr. Aditya Narayan Singh-I, Advocate, for
the petitioner and Mr. Anjani Kumar, learned Additional
Advocate General No.4, for the State.

2. Petitioner is accused in connection with
Jehanabad Mahila P.S. Case No.13 of 2013, corresponding to
Sessions Trial No.56 of 2016. The petitioner has challenged, in
this application under Section 482 Cr.P.C., order dated
15.11.2017 passed in the aforesaid Sessions Trial whereby
learned trial Judge has refused to discharge the petitioner under
Section 227 Cr.P.C. It is worth to mention that cognizance has
been taken against the petitioner and others for offences under
Sections 304B and 120B of the Indian Penal Code and Section 4



of the Dowry Prohibition Act by order dated 08.02.2013 and the order of cognizance has attained finality.

3. According to FIR, the petitioner is husband of the victim Mamta Kumari. Mother of Mamta Kumari initially filed Complaint Case No.482 of 2012 in the Court of learned Chief Judicial Magistrate, Jehanabad, which was registered as an FIR on the order of the Magistrate passed under Section 156(3) Cr.P.C. According to complaint petition the victim was married with this petitioner on 11th March, 2011 in the village of complainant, namely, Lakhawar, P.S. Ghoshi, Distt- Jehanabad. After marriage the victim went to her matrimonial house in village Karhari Mathiya P.S. Parasbigaha, District- Jehanabad. Allegation is that the petitioner and father of the petitioner were insisting for four lacs as further dowry. The husband of the informant as well as the informant tried to pacify them pleading that they have already taken loan at the time of marriage. Hence, they would consider in future about the demand. However, the accused persons continued torturing the victim mentally and physically. The victim used to inform her parent including the complainant on mobile talk. It is stated that the petitioner was posted in the Air-force at Pathankot and he took the deceased to Pathankot. At Pathankot also the torture



continued resulting in aggravated tension to the deceased which was complained by the deceased to her family members. On 12th April, 2012 the petitioner asked on phone to Mritunjay Kumar son of the informant, who was working at Bhubneshwar in Orissa, to come to Pathankot as the victim was seriously ill. When Mritunjay reached there he found dead body of the victim and the people along with the petitioner, 20-25 in number pressurized to Mritunjay Kumar to sign on papers and thereafter the dead body was cremated.

4. After investigation of the case the police submitted final form as mistake of fact. It is worth to mention that an UD case was registered at Pathankot and the police of Jehanabad received the inquiry report of UD case, post mortem report of the victim etc. from Pathankot Police. The post mortem report revealed that the cause of death was asphyxia due to anti mortem hanging. The police further got information that the petitioner had brought his wife to Pathankot on 11.11.2011 and had kept her in his family quarter. On 12.11.2012 when the petitioner returned from duty at 2:30 PM he found that room of his residence was locked from inside. When the door was broken the victim was found hanging with the ceiling fan.

5. Thus the following facts emerges from the



record; (i) That the victim died in unnatural circumstances within a year of her marriage in the house of this petitioner. (ii) There is allegation of demand of more dowry and torture for non-payment of the same just after few days of marriage till before death of the victim at Pathankot.

6. The impugned order reveals that the Magistrate found sufficient material in the case-diary to disagree with the police report for taking cognizance and the order of cognizance got finality as it was not challenged anywhere. The impugned order further reveals that there was sufficient material in the case-diary to ask the petitioner to face trial.

7. Learned counsel for the petitioner submits that since the actual occurrence took place at Pathankot and there is no other material to substantiate demand of dowry and torture for the same before the death except the bald statement of the family members made only after death of the victim no case cognizable by the Court at Jehanabad is made out. Learned counsel submits that since no part of the occurrence took place within the territorial jurisdiction of Jehanabad Court, hence, the cognizance as well as subsequent proceeding including impugned order is without jurisdiction. His next contention is that the complaint petition was filed after two months delay



suppressing the result of inquiry of UD case by the Pathankot police and making a false statement that signature of the son of the informant was taken on papers under pressure. Though it was a case of suicidal death, however, with oblique motive the informant has filed the criminal prosecution which should not be allowed in the ends of justice. Son of the complainant never made any complaint to the Panjab Police that his signature was forcefully taken. Learned counsel has placed reliance on judgment of this Court dated 26.08.2019 passed in Cr. Misc. No.42980 of 2016 wherein order of cognizance was quashed by this Court.

8. Learned Senior Counsel Mr. Anjani Kumar submits that so far territorial jurisdiction of the Court at Jehanabad is concerned, this case comes under exception to the general rule contained in Section 177 Cr.P.C., which provides that every offence shall ordinarily be inquired and tried by a Court within whose local jurisdiction it was committed. Learned counsel has carefully gone through the complaint petition and submits that the offence of illegal demand and torture was partly committed within the territorial jurisdiction of Jehanabad Court and partly committed within the jurisdiction of Court at Pathankot. Since offence under Section 498A of the Indian



Penal Code is a continuing offence, hence, the jurisdiction of the Court would be governed by the provisions of Section 178 and 179 Cr.P.C. and both the Courts would have jurisdiction over the matter. Therefore, the Court at Jehanabad has got the jurisdiction to try the case. He next submits that the consideration of the material at the stage of cognizance is the same as is considered at the stage of charge. There must be prima facie case disclosing commission of cognizable offence and if the aforesaid requirement is fulfilled the Court is competent enough to ask the accused to face the trial.

9. Identical issue and scope of Sections 178 and 179 Cr.P.C. was considered by the Hon'ble Supreme Court in **Rupali Devi V. State of U.P.** reported in **(2019) 5 SCC 384** and it was held that the offence under Section 498A of the Indian Penal Code is a continuing offence and wherever the victim take shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by her husband or his relative, the Court there would have jurisdiction to entertain a complaint made by the victim.

10. In the present case, unnatural death of the victim was committed within a year of her marriage which is admitted fact. There is allegation of demand of dowry and



torture for the same just after marriage till death. Therefore, presumption under Section 113B of the Evidence Act would be in favour of commission of offence and the burden would be at the accused to be discharged at the defence stage of trial by evidence as to what are the materials which create doubt on the prosecution version and the claim of the petitioner that Pathankot police found a case of suicide and the brother of the deceased did not make any complaint at Pathankot would be looked into only at the stage of the trial and not at the initial stage of framing of the charges.

11. Though neither cognizance has been taken nor charges have been framed, the averments made in the FIR and statement of the witnesses before the police makes out a case of cruelty against a married woman by her in-laws. The offence under Section 498A of the Indian Penal Code is a continuing offence and the said offence has been committed at both the place within the jurisdiction of the Jehanabad Court and within the jurisdiction of Pathankot Court. Only the alleged dowry death was committed at Pathankot. Section 178 and 179 Cr.P.C. are being reproduced below:

“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.”*

12. Thus, in my view the jurisdiction of the Court at Jehanabad is squarely covered under Clauses (b)(c) and (d) of Section 178 Cr.P.C. as well as under Section 179 Cr.P.C. Therefore, in my considered opinion, the Court-below has jurisdiction to pass the impugned order and proceed with the trial. The claim of the petitioners that the brother of the deceased, who reached at Pathankot before cremation of the dead body and saw everything and participated in the post mortem did not raise grievance before the Pathankot police and



the complaint petition was filed after two months of the occurrence in a pre-planned manner can be looked into at the stage of trial only for appreciation of the trustworthiness of the case of the prosecution. On that very basis, it cannot be argued that no prima facie case is made out disclosing a cognizable offence against the petitioner to ask the petitioner to face trial. Therefore, on merit also the impugned order cannot be interfered with. It is again the matter of appreciation of evidence that the police relied on the material received from Pathankot for coming to the conclusion that this was a case of mistake of fact. On the basis of conclusion of the police which was already disagreed by the Magistrate at the time of cognizance which got finality, the prosecution case cannot be thrown away at the threshold.

13. The case of **Pritam Kumar V. The State of Bihar** relied upon by the learned counsel for the petitioner is distinguishable from this case. In **Pritam Kumar's** case the brother of the deceased had lodged an information with the police disclosing some different reason of death of his sister in the matrimonial house and this information was lodged soon after death. Thereafter, a complaint was filed in a different jurisdiction of the Court by one of the parent and that Court took



cognizance even after receipt of entire material including the information lodged by the brother of the deceased and medical report submitted therein. In the peculiar facts of that case, this Court held that the case was result of malicious prosecution and was abuse of the process of the Court.

14. Considering the entire facts of this aforesaid, in my view, this application has got no merit. Accordingly, it stands dismissed.

Mkr./-

(Birendra Kumar, J)

AFR/NAFR	NAFR
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