

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6364 of 2018

Arising Out of PS. Case No.-36 Year-2016 Thana- BHEJA District- Madhubani

Choudhary Janardan Roy Son of Choudhary Sobhit Roy, Resident of Village-Batho, P.S.-Bahera, District Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Dayakant Jha Son of Late Umakant Jha, Resident of Village-Rahuya Sangram P.S. Bheja, District-Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gagan Deo Yadav, Adv.

For the Opposite Party/s : Mr. Uday Chand Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 07-02-2019 Heard learned counsel for the petitioner as well as learned A.P.P.

On account of death of deceased allegedly by way of committing suicide at Chennai learned counsel for the petitioner has raised the maintainability of complaint petition as well as the order impugned. Though, in detail scrutiny, for the present is forbidden however, apart from other ingredients for constituting dowry death, the one happens to be soon before her death deceased has been tortured by the husband or relative of the husband for procurement of the dowry and the same is found duly substantiated which was exulted over the deceased while she was staying at her Sasural, within the original jurisdiction. Furthermore, sections 179 of the Cr.P.C. takes care of the situation.



At the present moment, learned counsel for the petitioner has referred **Y. Abraham Ajith & Ors vs Inspector of Police, Chennai & Anr.** reported in **(2004) 8 SCC 100** wherein, while dealing with the jurisdictional avenue, it has been held that same was to be within whose jurisdiction torture was inflicted. However, matter of jurisdiction has thoroughly been discussed by the Apex Court in **Mohan Baitha & Ors. vs. State of Bihar & Anr.** reported in **2001 (2) PLJR 83 SC** wherein it has been held:

“4. Mr. P.S.Mishra, the learned senior counsel, appearing for the accused persons contended that under [Section 177](#) of the Code of Criminal Procedure, an offence could be inquired and tried by the Court in whose local jurisdiction, it was committed and consequently on the basis of allegations made in the F.I.R. as well as the complaint filed, the incident constituting the alleged offence under [Section 304B](#) being at Jahanaganj (Azamgarh) in the state of Uttar Pradesh, the Magistrate at Bhagalpur in the State of Bihar will not have territorial jurisdiction to try the offence. Mr. Mishra also further contended that on the basis of allegations made, no offence under [Section 406](#) IPC can be said to have been constituted. On examining the assertions in the F.I.R. and the complaint as well as on scrutinizing the judgment of the learned Single Judge of Patna High Court, which is the subject matter of challenge, we do not find any substance in either of the contentions raised by Mr. Mishra. So far as the contention relating to the constitution of offence under [Section 406](#) is concerned, we are not



required to examine the same, since the accused never assailed the criminal proceedings itself on the ground that no offence under [Section 406](#) IPC can be said to have been committed. The accused merely assailed the territorial jurisdiction of the criminal court at Bhagalpur in relation to offence under [Section 304B](#) on the ground that the said offence stood committed in Uttar Pradesh. [Section 177](#) of the Code of Criminal Procedure on which Mr. Mishra relies, uses the expression "ordinarily". The use of the word "ordinarily" indicates that the provision is a general one and must be read subject to the special provisions contained in the criminal procedure code. That apart, this Court has taken the view that the exceptions implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court ([See Purshottamdas Dalmia vs. The State of West Bengal, \) \(L.N.Mukherjee vs. The State of Madras, \)](#) and ([Banwari Lal Jhunjhunwala and Ors. Vs. Union of India and Anr. 1963 Supp.\(2\) SCR,338.](#).) Even the Law Commission in its 41st Report had observed that the general rule laid down in [Section 177](#) is neither exclusive nor peremptory. The learned Single Judge while dismissing the contention raised by the accused has relied upon [Section 220](#) of the Code of Criminal Procedure and considering the narration of events culminating in the death of Kalpana, which constitutes offence under [Section 304B](#) of the IPC, the learned Single Judge has come to a conclusion that there appears to exist a continuity of action to attract Sub-section(1) of [section 220](#), and therefore, it cannot be said that the jurisdiction of the Magistrate at Bhagalpur is ousted to try the offence under



[Section 304B](#). The High Court also has casually observed that the assertions made prima facie constitute an offence under [Section 498A](#) and since the accused has approached the Court even before the Magistrate has applied his mind to the result of the investigation on the basis of the allegations made by the informant/complainant, it would not be appropriate to express any definite opinion on the same. According to Mr. Mishra, from the tenor of the impugned judgment, it can be well imagined that the judgment is rather strained one and has been passed in view of the earlier directions and by no stretch of imagination, the incident constituting the offence under [Section 304B](#) can be held to be one falling under [Section 220](#) of the Code of Criminal Procedure, so as to be tried along with the offence under [Section 406](#) at Bhagalpur. It may be noticed that under [Section 220](#) of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts



whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. Bearing in mind the aforesaid principles and on scrutiny of the narration of events in the F.I.R. as well as the complaint, we do not find any infirmity with the conclusion of the High Court in applying [Section 220](#) of the Criminal Procedure Code to the case in hand and in coming to the conclusion that the jurisdiction of the Magistrate at Bhagalpur cannot be held to have been ousted for the offence under [Section 304B](#) IPC. In the aforesaid premises, we see no merits in this appeal, which accordingly stands dismissed. The interim order of stay stands vacated and the Magistrate is directed to proceed with the matter expeditiously, in accordance with law.”

The aforesaid judgment has not been considered in Y.

Abraham Ajith & Ors vs Inspector of Police, Chennai & Anr.

That being so, the instant petition lacks merit and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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