

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION No. 257 OF 2009

Dinesh Karjavkar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr.Saldhana Francis a/w. Ms.Madhavi Kadam for the Applicant.
Mr. A.R.Patil, APP for Respondent-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 7th FEBRUARY 2019**

ORAL JUDGMENT:

1. This application is directed against the order dated 15.4.2009 passed by the learned Sessions Judge, Dindoshi, Mumbai in Sessions Case No.698 of 2005 thereby rejecting the application at exhibit 9 and holding that the Sessions Court, Dindoshi has territorial jurisdiction to try the offence punishable under section 376 of the Indian Penal Code against the applicant/accused. The applicant also prays that the learned Sessions Judge, Dindoshi be directed to drop the charge under section 376 since the learned Sessions Judge has no jurisdiction to try the said offence.

2. The applicant/accused is charged under sections 363 and 376 of the Indian Penal Code in C.R. No. 121 of 2005 registered with Malvani Police Station, Mumbai. The victim girl was kidnapped from Malvani, Mumbai and raped in a village Pavla, State of Haryana. The applicant/accused moved an application, which is marked at exhibit 9, as the offence had taken place at Mumbai in the State of Maharashtra and also at the village Pavla in the State of Haryana. Only one offence of kidnapping can be tried in Mumbai, Maharashtra and the offence of rape cannot be tried in Mumbai, Maharashtra. It was pre-planned at the village Pavla in the State of Haryana.

3. The learned counsel for the applicant/accused has submitted that the Sessions Court, Bombay did not consider properly section 177 of the Cr.P.C. under which the territorial jurisdiction of the Criminal Courts is formed. In support of his submissions, he has relied on the following judgments:-

- (i) **Rajendra Ramchandra Kavalekar v. State of Maharashtra reported in 2009 AIR SCW 1379;**
- (ii) **Emperor v. Mohanlal Aditram reported in A.I.R. 1928 Bombay 475 (2);**

(iii) Jagan Nath and another v. State of Haryana reported in 1983 CRI.. L.J. 1574;

(iv) The State v. Sri Lal and others reported in 1971 CRI.L.J. 141.

4. The learned APP while opposing this Revision Application has submitted that view taken by the learned Sessions Judge is correct. Though the offence of abduction and rape are different offences, they are committed in same chain of circumstances. They itself constitute one offence. He has relied on sub clause (2) of section 181 of the Cr.P.C and stated that under section 178 of the Cr.P.C., the place of inquiry and trial can be fixed. He has also relied on sub clauses (1) & (4) of section 220 of the Cr.P.C.

5. Chapter XIII of the Cr.P.C. states about jurisdiction of the Criminal Courts in inquiries and trials. As per section 177 of the Cr.P.C., every offence shall ordinarily be tried by a Court within whose local jurisdiction it was committed. However, there are further sections where the place of the trial is to be decided in certain offences. These sections are exception to section 177 of the Cr.P.C.

6. In the present case, the victim girl was kidnapped or abducted from Malvani, Mumbai. Undoubtedly, the case can be tried for the offence of abduction at Mumbai in the State of Maharashtra, but she was raped in the village Pavla, Haryana. Section 177 of the Cr.P.C. lays down a general rule of trial deciding territorial jurisdiction of the trial Court. However, the nature of the offence committed, is different so also the offence of kidnapping continued at various places in the same continuous process.

7. In the present case, the offence of kidnapping took place at Mumbai and the victim girl was raped in the village Pavla, Haryana. In all the rulings cited and relied by the learned counsel for the applicant/accused are mainly based on section 177 of the Cr.P.C.

8. In the case of **Emperor** (supra), the applicant was tried under section 376 read with 144 of the Indian Penal Code. The offence under section 366 of the Indian Penal Code triable at “A” place and the offence under sections 376 and 114 triable at “B” place and, therefore, the learned Single Judge of this Court has taken a view that the Court at “B” had no jurisdiction to try the offence, which was

occurred at “A” place. I have gone through the said judgment. In my humble opinion, the learned Single Judge of this Court had no opportunity to deal with the sections 184 and 220 of the Cr.P.C. and, therefore, in the said case, it was held that the offences under sections 366 and 376 are to be tried separately at different places where the actual offence has taken place.

9. Section 184 of the Cr.P.C. reads as under:

“Place of trial for offences triable together - Where-

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with, and tried together by virtue of the provisions of section 223, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offence”.

10. In order to understand the scope section 184 of the Cr.P.C., one has to see the provisions of sub clauses (1) and (4) of section 220 of the Cr.P.C. The same are as under :-

“ Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) ...

(3) ...

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts”.

11. I rely on the ratio laid down in the case of **Mohan Baitha & Ors. vs. State of Bihar & anr. Reported in (2001) 4 SCC 350** which is pointed out by the learned Additional Public Prosecutor Mr.Patil. In the said case of Mohan Baitha & Ors (supra), the offence under section 304B took place at Jahanaganj in Uttar Pradesh and the other offences under sections 498A, 120B and 406 took place at Bhagalpur in the State of Bihar. So, the investigation was carried out by the Police Station, Nath Nagar in District Bhagalpur in the State of Bihar. The case had challenged the territorial jurisdiction of the Court at Bhagalpur on the ground that the offence under section 304B has

taken place at Jahanaganj in the State of Uttar Pradesh and hence, that offence be tried separately at Uttar Pradesh. The High Court turned down the said prayer and, therefore, the accused approached the Supreme Court. The Supreme Court thus, in that case, dealt with the same issue of territorial jurisdiction when the different offences were committed at different places which can be treated as the same course of transaction. It held in para 4 thus:

*“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.*

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.

12. In the present case, the offences of kidnapping and rape have been committed. These are two different offences. They are committed at different places, but these two offences constitute one chain of transaction when they are combined together. Sections 184 and 220 (1) and (4) of the Cr.P.C. are to be read together as complimentary provisions in the Code and, therefore, when the abduction of the victim girl had taken place in Mumbai, Maharashtra though she was raped at the village Pavla, Haryana, the place either

Mumbai or Haryana both the Courts enjoyed the power of entertaining and trying the said offence and both the Courts have equal territorial jurisdiction. Therefore, the said case is investigated by Mumbai police. The chargesheet is filed at Mumbai and the learned Sessions Judge of Greater Bombay has the territorial jurisdiction to try and decide the case. Hence, the order dated 15th April, 2009 passed by the learned Asst. Sessions Judge, Gr. Bombay is upheld. Criminal Revision Application is dismissed.

13. As the case is registered in 2005 and because of stay in this application, the trial is pending and therefore, as the revision is rejected, the stay is vacated. The Sessions Court to proceed with the trial and it is expedited. The matter be taken up on priority basis and it should be concluded on or before 31st October, 2019.

14. The Criminal Revision application is disposed of accordingly.

(MRIDULA BHATKAR, J.)