

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83250 of 2019

Arising Out of PS. Case No.-67 Year-2019 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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SURAJ RAJ Son of Shri Nageshwar Tiwari Resident of Shukla Colony
Hinoo, P.S.- Doranda, Distt - Ranchi (Jharkhand)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Kumar Purnima Bharti Wife of Suraj Raj Resident of Village - Ganaul, P.S.-
Bihpur, Distt - Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Harsh Singh, Advocate

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER

3 16-01-2020 This application is for quashing of the criminal prosecution initiated against the petitioner by order dated 15.4.2019 whereby and whereunder after inquiry finding a prima facie case for the offences under Sections 494/34 and 498A of the Indian Penal Code processes were issued against the petitioner in Complaint Case No. 67 of 2019, pending in the court of Sri D.K.Yadav, J.M.F.C., Naugachia.

The case, in short, is that opposite party No.2 got married with the petitioner on 28.2.2017 as per Hindu rites and rituals at Patna and after marriage she came to her sasural at Ranchi. Thereafter she came to her naihar at Ganaul where the petitioner demanded Rs.20 lacs claimed to be due in the marriage and also Rs.20 lacs for purchasing of a car and even when she returned to Ranchi to her sasural she was tortured for the above demand. Further



allegation is that she was administered wrong medicine in order to miscarry her pregnancy and all the accused persons were abusing her and threatening her to get the petitioner married with some other lady and for that she had given an information petition in the court of Naugachhia. Further case is that when nobody came for her 'bidai' her father had taken her to Ranchi but the accused persons abused her and not allowed her to enter inside the house and she was assaulted by all the accused persons and they told that petitioner had second marriage with her younger sister.

The complainant was examined on solemn affirmation under Section 200 of Cr.P.C. and after inquiry under Section 202 Cr.P.C. finding a prima facie case process were issued against the petitioner, which is under challenge before this Court.

The ground for quashing as per Mr. Harsh Singh, learned counsel for the petitioner is two fold, firstly drawing my attention towards Chapter XIII of the Cr.P.C. and Sections 177, 178 and 179 of Cr.P.C. has submitted that the Judicial Magistrate, Naugachhia has no jurisdiction to entertain the complaint petition as no cause of action arises within the jurisdiction of Naugachhia and secondly it is submitted that as per amended provisions of Section 202 Cr.P.C., once a Magistrate has come to know about the fact that accused persons reside out of his jurisdiction, he has to stay issuance of process against the accused persons, but learned Magistrate has not considered the amended provisions of Section 202 Cr.P.C.



Further, elaborating above two grounds for quashing so far jurisdictional point is concerned, learned counsel for the petitioner has relied upon a decision of Hon'ble Apex Court in the case of **Y. Abraham Ajith vs. Inspector of Police : (2004) 8 SCC 100** and further relied upon a decision of Hon'ble Apex Court in the case of **Bhura Ram and others vs. State of Rajasthan and another : (2008) 11 SCC 103** and submitted that Hon'ble Apex Court has already held that the complaint can be lodged only at the place where cause of action arises. So far another contention that impugned order is hit by amended provisions of Section 202 Cr.P.C. learned counsel for the petitioner relying upon a decision of Hon'ble Apex Court in the case of **Udai Shankar Awasthi vs. State of U.P. : (2013) 2 SCC 435** has submitted that once a Magistrate has come to know that accused persons are residing beyond the jurisdiction of learned Magistrate concerned, he has to stay the issuance of process but learned Magistrate, in the present case, in spite of the fact that petitioner is residing out of the jurisdiction of Naugachhia court, has issued processes against the petitioner. On the basis of above submission, it has been submitted that in view of above the order issuing processes against the petitioner is hit by Chapter XIII of Cr.P.C., Sections 177 and 178 of Cr.P.C. and also the amended provisions of Section 202 Cr.P.C. and as such the impugned order is without jurisdiction and allowing the same to continue is an abuse of process of the court.



Heard learned APP, who has opposed the above contentions of learned counsel for the petitioner stating that the offence under Section 498A IPC is a continuing offence and after complainant being subjected to cruelty and harassment and not allowed to live in the matrimonial house she is residing at Naugachhia and for the first time demand of Rs.20 lac was made at village Ganaul within the jurisdiction of Naugachhia, as such Judicial Magistrate, Naugachhia is quite competent to entertain the complaint petition.

Further he has submitted that so far second contention that amended provisions of Section 202 Cr.P.C. has not been followed by learned Magistrate, learned Judicial Magistrate has very much followed the same as such the order issuing processes is not hit by the amended provisions of Section 202 Cr.P.C.

Having heard both sides and perused the record. So far first point raised by learned counsel for the petitioner that Judicial Magistrate, Naugachhia has no jurisdiction to entertain the complaint petition and the same is hit by Chapter XIII Sections 177 and 178 of Cr.P.C., for better appreciation of the fact Sections 177 and 179 Cr.P.C. are incorporated herein-below:

**“S. 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.**

S. 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.”

As such so far the reference pointed out by learned counsel for the petitioner is concerned, it appears that in the case of Y. Abraham Ajith (supra) Hon’ble Apex Court has held in paragraph-11 of the said judgment as follows :

“11. A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee vs. Prashant Kumar Mukherjee. There the allegations related to commission of alleged offences punishable under Sections 498A, 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.”



And in the case of Bhura Ram (supra) following the above judgment Hon'ble Apex Court has held in paragraph-6 of the judgment as follows :

“6. Since the accused abjured the guilt, eleven witnesses were examined to substantiate the prosecution version. The trial court found that though the case rested on circumstantial evidence and the chain of circumstances was complete and, therefore, he must be punished for offence punishable under Section 302 IPC. Life imprisonment was imposed. Before the High Court the stand taken was that the circumstances highlighted by the prosecution do not make out a case of conviction of the accused. The prosecution on the other hand submitted that the circumstances clearly establish the offence by the accused.”

However, before proceeding further, paragraphs 8 and 9 of the decision of Hon'ble Apex Court in the case of Y. Abraham Ajith (supra) are also quoted hereinbelow :

“8. Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common-law rule referred to in Halsbury's Laws of England (Vol.9, para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which reads as follows :

“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 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.”

9. “All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed”, as observed by Blackstone. A significant word used in Section 177 of the Code is “ordinarily”. Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia v. State of W.B., L.N.Mukherjee v. State of Madras, Banwarilal Jhunjhunwala v. Union of India and Mohan Baitha v. State of Bihar exception 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 consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand.”

As noticed above, Section 179 Cr.P.C. is an exception to the provisions of Sections 177 and 178 of Cr.P.C. The above question of jurisdiction also arose before this Court earlier and learned Single Judge of this Court after considering several judgments of Hon’ble Apex Court as well as of this Court, by a detailed judgment in the case of **Upendra Rai vs. The State of Bihar & Anr. (Cr.Misc.No. 12180 of 2014)** in paragraph-18 has held as follows :

“18. In Jagdish and others v. State of Rajasthan and another reported in 1998 Cri. L.J. 554, it has been held :

“7. If repeated demand for dowry is made and harassment is meted out to a woman which may be physical or mental is an act of cruelty. It is not necessary that the husband or his relatives must be present at the time when the housewife is subjected to cruelty. If their act or conduct, omission or commission is of such a nature which results in mental and physical



harassment it will amount to an act of cruelty to a woman and it is immaterial that the woman is living at that relevant time at her matrimonial home or at her parents house. The offence under Section 498A is a continuing offence and if the act of cruelty continues even while, the woman is living at her parents house, the offence is triable by both the Courts in whose territorial jurisdiction the act of continuing offence of cruelty has been committed at matrimonial home or the parents house. In the instant case prima facie it has been shown that Narayani was subjected to cruelty at her matrimonial home Binjbayala and she was compelled to leave the matrimonial home due to the threats given by the petitioners. It has been further stated that when she was living at her parents house the petitioners insisted on their demand for Rs. One lac failing which she will have to remain at her parents house. This prima facie at this stage shows thzat the petitioners continued to cause harassment to Narayani with a view to coerce her to satisfy their unlawful demand i.e. to compel her to live at her parents house. Therefore, prima facie it appears that she has been subjected to cruelty at Manak Khedi within the definition of “cruelty” given in the explanation of Section 498A I.P.C. On taking into consideration the F.I.R. and the papers under investigation i.e. the statements of witnesses, it appears that act of maltreatment and humiliation by the petitioners continued even while Narayani was residing with her parents. Therefore, I am of the view that Clause (c) of Section 178, Criminal Procedure Code is clearly attracted and the learned Additional Chief Judicial Magistrate, Suratgarh has also territorial jurisdiction to try the case against the petitioners under Section 498A, I.P.C. which is a continuing offence.”

It further appears that on the point of jurisdiction as under Sections 177 and 178 Cr.P.C. considering that opinion of Hon’ble Apex Court is sharply divided but in the case of Y. Abraham Ajith



(supra) and several other decisions it was held that jurisdiction of entertaining of a complaint is only where cause of action arises, whereas in the case of **Sujata Mukherjee v. Prashant Kumar Mukherjee : (1997) 5 SCC 30** and several other cases a different view has been taken as such matter was referred to the Larger Bench. Hon'ble Larger Bench of three Hon'ble Judges of Hon'ble Apex Court in the case of **Rupali Devi vs. State of Uttar Pradesh and others : (2019) 5 SCC 384** has considered the provisions of Sections 178 and 179 of Cr.P.C. and also considering the judgment in the case of **State of Bihar vs. Deokaran Nenshi : (1972) 2 SCC 890** has observed in paragraphs 13, 14 and 15 of the judgment as follows :

“13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The abovestated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (Second Amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. “Cruelty” which is the crux of the offence under Section 498A IPC is defined in Black’s Law Dictionary to mean “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the



mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Penal Code. The definition of “domestic violence” in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498A of the Penal Code which define “cruelty”. The provisions contained in Section 498A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of an emotional distress and mental agony. Her sufferings at the parental home



though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C. which would squarely be applicable to the present case as an answer to the question raised.”

and also held in paragraph-16 of the said judgment as follows :

“16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Penal Code.”

In view of above judgment, it is settled by 3-Judges Bench of Hon’ble Apex Court that the court where wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code. In the present case also, when nobody came for Bidai of the complainant, her father had taken her to Ranchi but accused persons abused her and not allowed her to enter into the



house and all the accused persons told that petitioner had already married her younger sister. She apprehending danger for life had come back to Ganaul within the jurisdiction of Naugachhia civil court and thereafter she had filed a complaint petition in Naugachhia court. It further appears that from paragraph 3 of the complaint petition demand of Rs.20 lac as dowry was made at her Naihar village Ganaul. In view of above settled proposition by Hon'ble Apex Court the Judicial Magistrate, Naugachhia, is competent to entertain the complaint petition and to issue processes against the petitioner after inquiry. However, there is no merit in the first point raised by learned counsel for the petitioner. So far second point regarding order issuing processes hit by amended provisions of Section 202 Cr.P.C. is concerned, amended Section 202 Cr.P.C. is enumerated hereinbelow for better appreciation of the fact :

“202. Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by



a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

Amendment Act, 2005.- False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section(1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

On bare perusal of the above amended Act it appears that any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Learned counsel for the



petitioner has also referred to a decision of Hon'ble Apex Court in Udai Shankar Awasthi case (supra) and in paragraph-40 of the said judgment Hon'ble Apex Court has held as follows :

“40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended with the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.”

In the present case, it appears that the learned Magistrate has himself conducted inquiry and after finding sufficient ground for proceeding against the petitioner he has issued process against the petitioner and considering the same it appears that the order issuing process is not hit by amended provisions of Section 202 of Cr.P.C. as the section itself provides that once he came to know that accused persons are residing outside his jurisdiction learned Magistrate has empowered either to inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding against the petitioner before issuing



summons.

In view of the discussions made above, I find no force in the submission of learned counsel for the petitioner that the impugned order issuing process is hit by amended provisions of Section 202 Cr.P.C.

Considering the entire discussions made above, I find no merit in this application.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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