

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38512 of 2016

Arising Out of PS. Case No.-3313 Year-2014 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Nupur Kaviraj @ Nupur Ghosh D/o Late Vikas Kabi Raj
 2. Mausmi Kabi Raj W/o Late Vikas Kabi Raj
 3. Dipankar Kabi Raj S/o Late Vikas Kabi Raj Resident of at present Keerthi Harmony Apartment, Ground Floor H606 Main Road, Raghvendra Nagar, P.S.- Ramamoorthy Nagar Kalkare, Bangalore, Karnataka, Proprietors MS. Nupurs, Shop No.28 First Floor, Safina Plaza, 84/85 Infontary Road Bangalore 560081, Karnataka permanent resident of Village- Dubrajpur, P.S.- Dubrajpur, District- Bhirkhum West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Putul Rai Kabi Raj @ Putul Rai W/o Sri Dipankar Kabi Raj, D/o Sri Shankar Rai at present resident of Mohalla- Purani Bazar Gudri Road, P.S.- Town, District- Muzaffarpur- 842001.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jagjit Roshan, Advocate Mr. Om Prakash Singh, Advocate
For the State	:	Mrs. Asha Kumari, A.P.P.
For the Informant	:	Mr. Sanjay Parasmani, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 24-09-2024

1. The petitioners have filed the instant criminal miscellaneous case under Section 482 of the Cr.P.C. praying for quashing of the order of cognizance dated 25.06.2015 taken by the learned Sub-Divisional Judicial Magistrate, East Muzaffarpur in Complaint Case No.3313 of 2014 on the basis of a complaint filed by the opposite party no.2.

2. The opposite party no.2 filed a complaint before the learned Sub-Divisional Judicial Magistrate, East Muzaffarpur



stating, inter-alia, that her marriage was solemnized on 06.02.2013 with the petitioner No.3 according to Hindu rites and ceremonies. During the initial talk of marriage, the petitioners demanded one Maruti Alto Car and Golden Chain for the groom. However, the father of the complainant/opposite party no.2 clearly stated that he was not in a position to fulfill the demands of the petitioners due to his financial crises. In order to meet other demands of the petitioners, the father of the opposite party no.2 had to spent a sum of Rs.11,00,000/- (Rupees Eleven lacs only) on the occasion of the said marriage. After marriage, the opposite party no.2 went to Bangalore at her matrimonial home and on 15.12.2013, a reception was held at Bangalore on account of the marriage of the petitioner No.3 with the opposite party no.2. In the said reception, the accused persons made derogatory remarks against the complainant/opposite party no.2. However, the opposite party no.2 somehow stayed in her matrimonial home and she became pregnant. At that time, the petitioner No.3 assaulted her on her stomach, used filthy language against her and also deprived her from food and clothings. Due to such persisted physically and mentally torture, the opposite party no.2 became ill but nobody in her matrimonial home treated her medically.



3. It is also alleged by the opposite party no.2 that she brought a sum of Rs.50,000/- from her paternal home and handed over the said money to the accused persons. That on 07.05.2014, the parents of the complainant/opposite party no.2 took her to Muzaffarpur for her treatment. At Muzaffarpur, complainant/opposite party no.2 suffered with miscarriage of her pregnancy. Subsequently, on 21.07.2014 she returned Bangalore with her brother. The accused persons abused the brother of the complainant/opposite party no.2 for non-fulfillment of Maruti Car and Golden Chain. It was further alleged that the complainant/opposite party no.2 was brought to Kolkata and after leaving her at Kolkata Railway Station, the accused persons fled away. Since then, the complainant/opposite party no.2 has been residing at her paternal home.

4. In the instant application, the petitioners have denied the allegations made by the opposite party no.2 in her complaint before the learned Magistrate.

5. At the time of hearing, the learned Advocate for the petitioners made the following submission :

It is contended by the learned Advocate for the petitioners that the petitioners admittedly reside in Bangalore outside the jurisdiction of the learned Sub-Divisional Judicial



Magistrate, Muzaffarpur. Therefore, it was incumbent upon the learned Sub-Divisional Judicial Magistrate to carry out an inquiry or order investigation as contemplated under Section 202 of the Cr.P.C. before issuing of process.

6. It is held in the *National Bank of Oman Vs. Barakara Abdul Azia & Anr.*, reported in (2013) 2 SCC 488, that the duty of a Magistrate receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C. is different from the investigation contemplates in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the court;
- (ii) for the limited purpose of finding out whether a



prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have.

7. Section 202 Cr.P.C. was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,”

The notes on clauses for the above-mentioned amendment read as follows:

“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.”

8. In the instant case, before taking cognizance, the



learned Magistrate did not make any investigation under Section 202 of the Cr.P.C., though the petitioners have been residing at Bangalore.

9. It is also submitted by the learned Advocate for the petitioners that marriage of the petitioner No.3 with opposite party no.2 was solemnized in Patna and she used to stay for few months in Bangalore in the State of Karnataka. From paragraph No.5 of the instant application under Section 482 of the Cr.P.C., it is ascertained that the opposite party no.2 has alleged about the incident of torture allegedly perpetrated by petitioner no.3 at Bangalore.

10. It is urged by the learned Advocate for the petitioners that Section 178(c) of the Cr.P.C. states:

“where an offence is a continuing one, and continues to be committed in more local areas than one, or it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

11. Drawing attention of this Court to the above-mentioned provision, it is submitted by the learned Advocate for the petitioners that no doubt, Section 498A of the I.P.C. is a continuing offence but for application of Section 178(c) of the Cr.P.C., the continuing offence must be committed in more than one local areas. So far as the case of the opposite party no.2 is



concerned, admittedly, she was not tortured at her paternal home within the jurisdiction of Muzaffarpur, nor any illegal demand of dowry was made by the petitioners at Muzaffarpur, Bihar, so even if Section 498A of the I.P.C. is a continuing offence, than also the said offence has not been committed within the territorial jurisdiction of the learned Sub-Divisional Judicial Magistrate, Muzaffarpur.

12. Similarly, Section 179 of the Cr.P.C. is also not applicable in the present case because for application of Section 179 of the Cr.P.C. there must be consequence upon act or illegal omission. The words “consequence which has ensued” obviously mean “by reason of any consequence” i.e. consequence must be necessary ingredient of the offence and where the act itself is complete offence irrespective of any consequence which has ensued, Section 179 of the Cr.P.C. does not apply and at the place where act was committed determines the jurisdiction.

13. In the present case, alleged act of physical and mental torture were made at Bangalore, Karnataka and merely after ouster from her matrimonial home, the opposite party no.2 came at Muzaffarpur and she had miscarriage of her pregnancy, cannot be said to be the part of the alleged occurrence, which



took place in Bangalore. Therefore, the learned Sub-Divisional Judicial Magistrate, Muzaffarpur does not have any jurisdiction to try the case.

14. On this point the learned Advocate on behalf of the petitioners refers to the decision rendered by this Court in reference from *District and Sessions Judge, Siwan Vs. Suo-Moto*, reported in *2017 SCC Online Pat 3741* and *Narayan Bind Vs. The State of Bihar and another*, reported in *2017 SCC Online Pat 501*.

15. The learned Advocate on behalf of the opposite party No.2, on the other hand, submits that the learned Sub-Divisional Judicial Magistrate, Muzaffarpur on receiving complaint, examined the complainant and the witnesses under Section 200 of the Cr.P.C. and issued summons without meeting the mandatory requirement of Section 202 of the Cr.P.C., though the petitioners were outside his territorial jurisdiction. The provision of Section 202 of the Cr.P.C. were amended vide 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 the police officer or by such officer as he deems fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing the summons.

16. The Hon'ble Supreme Court in *Vijay Dhanuka Etc. V. Najima Mamtaj Etc.*, reported in (2014) 14 SCC 638, held that Section 202 of the Cr.P.C., inter-alia, contemplates postponement of the issue of process in a case where the accused is residing at a place beyond the area, in which he exercise his jurisdiction and thereafter, to either enquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he deems fit. In the face of it what needs our determination is as to whether in a case where the accused is residing at a place beyond the area, in which the Magistrate, exercises his jurisdiction enquiry is mandatory or not. While, the Hon'ble Supreme Court held that such enquiry is mandatory. It is further held that in a case where the Magistrate has examined the complainant on solemn affirmation and also the witnesses and only thereafter, he had directed for issuance of process, the said order of issuance of process after taking cognizance cannot be held to be impugned, as the Magistrate



himself while examining the complainant and the witnesses inquired about the veracity of the complaint under Section 202 of the Cr.P.C.

17. Without delving upon the question as to whether an enquiry under Section 202 of the Cr.P.C. was held or not, this Court finds that the learned Sub-Divisional Judicial Magistrate, Muzaffarpur had no territorial jurisdiction to entertain the complaint, in view of the provisions contained in Section 178(c) of the Cr.P.C. and Section 179 of the Cr.P.C.. As the learned Sub-Divisional Judicial Magistrate, Muzaffarpur had no territorial jurisdiction, he could not take cognizance of offence upon a complaint registered as Complaint Case No.3313 of 2014.

18. For the reasons stated above, the instant criminal miscellaneous application is allowed and the order of cognizance dated 25.06.2015 passed by the learned Sub-Divisional Judicial Magistrate, East Muzaffarpur is quashed.

(Bibek Chaudhuri, J)

mdrashid/-

AFR/NAFR	NAFR
CAV DATE	17.09.2024
Uploading Date	
Transmission Date	

