

Satwant Singh and others Vs State of Punjab and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 1, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 177, 177, 178, 178, 178(c)
 Penal Code, 1860 (IPC) â€” Section 120B, 323, 406, 420, 467

Citation: (2008) 4 RCR(Criminal) 429

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: R.P. Dhir, for the Appellant; Rajni Gupta, DAG, Punjab for the Respondent No. 1 and Mr. Sandeep Arora, Advocate for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

This petition u/s 482 of the Code of Criminal Procedure has been moved for quashing of FIR No. 163 dated

21.10.2005 registered at Police Station Garshankar District Hoshiarpur under Sections 406, 498-A IPC and subsequent proceedings arising

therefrom.

2. The FIR against the petitioners reads as under :-

Sir, it is submitted that I Harjinder Kaur d/o Dilbag Singh r/o 47 Fendor Way, Brompton, Ontario, Canada. I was married on 04.09.99 to the

accused Kirpal Singh s/o Satwant Singh r/o House No. 819 Sector 38, Chandigarh also known as Dadu Majra Colony before marriage. Kirpal

Singh was residing at Canada and was driving a truck at Canada. The marriage was an arranged marriage and was performed with Sikh religious

rites and ceremony at Preet Palace, Rahon Road, Nawanshahr. At the time of marriage the accused Kirpal Singh was given one golden kara, one

gold ring, one woollen suit and cash Rs. 11000/-. Accused Satwant Singh was given one golden ring, one woollen suit and cash Rs. 5100/-.

Accused Joginder Kaur was given gold set, two gold bangles, one ring and cash Rs. 5100/-. Besides this my parents also gave other house hold

articles for my use, one Fridge, cooler, washing machines and utensils on the demand raised the accused cash Rs. One lac was also given to the

accused persons. Besides this my parents also gave gold jewellery worth Rs. 50,000/- to daughter Harjinder Kaur at the time of the marriage. Out

of the said wedlock a son namely Simerdeep Singh was born to me and Kirpal Singh. As Kirpal Singh was residing at Canada before marriage, so

I was also called at Canada to settle there. On 21.12.2002 my sister Sukhwinder died in a road accident and after the death of my sister my in-

laws started pressurizing me to get the land and other belongings of my parents transferred in the name of my husband Kirpal Singh otherwise they

would not keep me. Accused Kirpal Singh also started giving severe beating to me in order to pressurize me to get land and other belonging

transferred in his name. I narrated my tale of woes to my parents and told them that I was being maltreated and harassed by Kirpal Singh who is

being insulted by me in-laws to all these acts. I visited India in the month of March, 2003 on the account of my sister's death. At that time I went

to my in-laws who pressurized me to keep the minor children with them for a few months. Under these circumstances, I despite resistance left tile

child in India and thereafter I went back to Canada. After going back to Canada my husband started pressurizing me to get all the belongings and

land transferred to his name and otherwise he would not let me live with him. I requested that my parents are of limited means and have already

given sufficient dowry at the time of marriage and did not have any other means to pay anything except a small piece of land. But my husband

started harassing and maltreating me there after the marriage. I was not being treated in a proper manner but the problem became very serious are

my return from India. My husband started maltreating me mentally, physically and emotionally. Under these circumstances I took up a job in

Canada on the condition that I would hand over entire salary to my husband. It would be important to mention here that I was maintaining a joint

account with my husband and the entire amount given by me in cash and other amounts as earned by me was also kept. In the month of

November, 2003 a fight took place between me and my husband and he left nothing after taking away all my jewellery and other belongings. The

said jewellery was..... dollars. It also came to my notice later on that my husband took all the house hold articles, gold ornaments, belongings and

not only this he in fact had withdrawn all the money from the joint account which was around 50000 dollars. My husband had withdrawn money

from the joint account without informing me on account 7 2003, 9000 dollars and October 25, 2003, 4634, 57 dollars in this way. I was

completely left penniless and was frauded at the hands of my husband who left me. He is illegally occupying all the dowry articles and other

belongings of me that... this mental trauma in order to save my marriage and requested my parents to initiate a dialogue with my in-laws who were

settled at Chandigarh. That in the month of August 2004, I came to India along with my husband to bring Simerdeep (my son) back to Canada.

My in-laws refused to keep me and also refused to hand over the custody of the minor child. My parents visited to my in-laws and tried to

convince them to settle with me but my in laws who were greedy sort of persons threw me out of the house and ? stated that they did not have any

concern with our family and that there is no place for me in the house. They misappropriated the dowry and other cash amount which fraudulently

taken by my husband and mis-appropriated all the dowry articles given by my parents at the time of marriage to me which were part of Istri Dhan

and were for my exclusive use. They threw me from my matrimonial home by giving severe beating. The accused persons also stated that they have

got high up links and would implicate me in some false case in case she reported the matter in police. That after my return to India I stayed at

village Denowal Kalan and on went away to Canada. I went to Canada. The accused persons in connivance with one Malwinder Singh son of

Kashmir Singh resident of Dhanas moved a false and frivolous complaint writing allegations about cheating made by me. It has been alleged in the

said complaint that I had taken away a sum of Rs. 5 lacs from this person on account of taking him abroad in cash. The story as given by this

person is due to the fact that he had joined hands with my in-laws and at their behest a false and frivolous story was created to implicate me. My

husband got a photostat copy of my ticket of journey to India with him and later on in connivance with his parents manufactured a receipt in the

name of Mohinder Singh said Mohinder Singh also joined hands in the illegal act of forging receipts and was in conspiracy with accused namely

Kirpal Singh, Satwant Singh and his wife. That on account of said false and frivolous complaints my parents were being unnecessary harassed by

police station Sector 17, Economic Offence Wing and they are threatening to implicate my parents that all the accused persons have indulged in

illegal acts firstly treating me with severe cruelty. My husband had committed many excesses with me and I was often given beatings on many

occasions. My husband tried to kill me. However, I was saved with the grace of the God. All my cash ornaments, jewellery, household articles

were illegally taken by them and used by these accused persons. Now only this, these accused persons hatched a conspiracy to involve in a false

case. These accused persons prepared a forged receipt in the name of Mohinder Singh who was also a part of the conspiracy. The said accused

Mohinder Singh acting as per conspiracy tried to involve me in a false case by lodging complaint with Economic Offence Wing that he was duped

of Rs. 5 lacs by me on the pretext of taking him abroad. In said complaint even my parents were mentally harassed. All these accused person have

made mockery of the process of law by initiating false and frivolous complaint and by preparing a false receipt in my name of have made

themselves liable for offence of forging and cheating. The entire exercise of the accused was so that I may not take any action for claiming custody

of the child and to claim my dowry articles. All the accused namely Kirpal Singh, Satwant Singh, and his wife Joginder Kaur and Mohinder Singh

have committed an illegal act and that case be registered against them for committing offence under Sections 406, 498-A, 420, 467, 468, 471,

120-B Indian Penal Code and justice be done to me. Applicant..... Harjinder Kaur 42, Brompton, Ontario, Canada.

3. The reading of the FIR would show that no offence is alleged to have taken place within the jurisdiction of Hoshiarpur or at Garshankar. The

complainant is also not residing within the jurisdiction of said police station so as to invoke the provision of Section 181 of the Code of Criminal

Procedure to prosecute the accused at the place of residence of the complainant. Harjinder Kaur complainant is admittedly residing in Canada

since the year 2000. Kirpal Singh is also citizen of Canada and a petition for divorce and custody of the child has been filed in a Family Court at

Ontario, Canada. Instead of returning the complaint to the complainant the police authority took upon itself to investigate the case without there

being any jurisdiction with them in view of the allegation levelled in the FIR. The Hon'ble Supreme Court in the case of Y. Abraham Ajith and

Others Vs. Inspector of Police, Chennai and Another, has been pleased to lay down as under :-

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. IX 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 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 read as follows:

Section 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.

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 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 Vs. The State of West Bengal*, L.N. Mukherjee

Vs. The State of Madras, , *Banwari Lal Jhunjhunwala and Others Vs. Union of India (UOI) and Another*, and *Mohan Baitha and Ors. v. State of*

Bihar and Anr., 2001 (2) RCR (Criminal) 381 : 2001 (4) SCC 370, 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 observed by this Court in *State of Bihar Vs. Deokaran Nenshi and Another*, continuing offence is one which is susceptible of continuance, and

is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply

with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-

compliance occurs or recurs there is the offence committed.

A similar plea relating to continuance of the offence was examined by this Court in *Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee*, There

the allegations related to commission of alleged offence punishable under Sections 498A, 506 and 323 Indian Penal Code. 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 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.

The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the

Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

Where in civil cases, normally the expression "cause of action" is issued, in criminal cases as stated in Section 177 of the Code, reference is to the

local jurisdiction where the offence is committed. The expression ""cause of action"" is therefore not a stranger to criminal cases. It is settled law that

cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle

of facts, which taken with the law applicable to them gives the allegedly affected party a right to claim relief against the opponent. It must include

some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

The expression ""cause of action"" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstance forming

the infraction of the right of the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the

proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every

fact, which it would be necessary for the complainant to prove, it traversed, in order to support his right or grievance to the judgment of the Court.

Every fact, which is necessary to be proved as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in

cause of action.

The expression ""cause of action"" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the

infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of

material facts.

The expression ""cause of action"" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or

a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in

court from another person. (Black's Law Dictionary a ""cause of action"" is stated to be the entire set of facts that gives rise to an enforceable claim;

the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In ""Words and Phrases"" (4th Edn.) the

meaning attributed to the phrase ""cause of action"" in common legal parlance is existence of those facts which give a party a right to judicial

interference on his behalf.

In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

Cause of action"" has been defined as meaning simple a factual situation the existence of which entitles one person to obtain from the Court a

remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the

plaintiff to succeed and even fact which a defendant would have a right to traverse. ""Cause of action"" has also been taken to mean that particular

act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely

the technical cause of action"".

When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable

conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with the matter.

4. The proceedings initiated on the complaint of the complainant herein clearly shows that the complainant has used her influence with the authority

and succeeded in harassing the petitioners for number of years. This is a classic case of misuse of process of the Court where process of the law

has been used as a tool to harass the petitioners to vindicate her grudge on account of the proceedings taken out at Canada. In view of the fact that

two the Courts at Garshankar/Hoshiarpur have no jurisdiction to entertain and try the case and also that this is a case of misuse of process of the

Court and the proceedings have been initiated with mala fide intention; the FIR No. 163 dated 21.10.2005 registered at Police Station Garshankar

District Hoshiarpur under Sections 406, 498-A IPC and subsequent proceedings arising therefrom are ordered to be quashed.

5. Petition allowed.

In view of the harassment caused to the petitioners, they are held entitled to cost of this petition, which is assessed at Rs. 10,000/-.