

(2014) 02 GAU CK 0052**Gauhati High Court****Case No:** Crl. P No. 560 of 2013

Sudhir Chandra Saha

APPELLANT

Vs

Rumpa Saha

RESPONDENT

Date of Decision: Feb. 14, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 178(c), 179, 397(2)
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 313, 34, 406, 498, 498-A

Citation: (2014) 2 DMC 789 : (2014) 3 GLD 332 : (2014) 2 GLT 651**Hon'ble Judges:** Arup Kumar Goswami, J**Bench:** Single Bench**Advocate:** S. Banik, Advocate for the Appellant; G.P. Bhowmik, Advocate for the Respondent**Final Decision:** Dismissed**Judgement**

Arup Kumar Goswami, J.

This application u/s 482 of the Code of Criminal Procedure, 1973, for short, Cr.PC. is directed against the judgment and order dated 26.02.2013 passed by the learned Additional Sessions Judge, FTC No. 1, Tinsukia, dismissing Criminal Revision No. 19/2012 holding that the Court at Tinsukia will have territorial jurisdiction to try the CR Case No. 53(C)/12 filed by the opposite party No. 1, and the order dated 14.05.2012 passed by the learned Sub-Divisional Judicial Magistrate, Tinsukia in CR Case No. 53(C)/12 taking cognizance of offence against the petitioners under Sections 498-A/406/34 IPC and issuing summons were issued u/s 91 of Cr.PC. to produce stridhan articles and also for appearance. The facts as described in this application are that the marriage of the petitioner No. 3 was solemnised with the opposite party No. 1 on 28.06.2011. The petitioner Nos. 1, 2 and 4 are the father, mother and brother, respectively, of the petitioner No. 3. After marriage, the

opposite party No. 1 resided with the petitioners at Nabapally, Police Station-Barasat, Kolkata. The petitioner No. 3 and opposite party No. 1 came to Tinsukia on 07.12.2011 to the parental home of the opposite party No. 1 and then on 11.12.2011, the petitioner No. 3 went back to his place of residence at Nabapally.

2. The opposite party No. 1 filed a complaint in the Court of the learned Chief Judicial Magistrate, Tinsukia, against the petitioners praying for taking cognizance of offences u/s 498-A/406/34 IPC and for recovery of stridhan articles as mentioned in the schedule of articles to the complaint petition.

3. The learned Magistrate took cognizance under Sections 498-A/406/34 IPC by an order dated 14.05.2012 and issued summons against the petitioners for appearance. The learned Magistrate had also issued summons u/s 91 of Cr.PC. for production of stridhan articles.

4. A revision was preferred by the petitioners before the Court of Additional Sessions Judge, No. 1, Tinsukia, which was registered as Criminal Revision No. 19/12, challenging the said order dated 14.05.2012 on the ground that the Courts at Tinsukia do not have territorial jurisdiction to entertain the complaint petition.

5. The learned Additional Sessions Judge, No. 1, Tinsukia, by his judgment and order dated 26.02.2013, relying on a judgment of this Court in the case of Bina Dey and Others Vs. Pratibha Dey (Baidya), wherein, this Court had taken the view that the place where the wife is forced to take shelter will have jurisdiction to try the offence u/s 498-A IPC, held that the Court at Tinsukia will have territorial jurisdiction to entertain the complaint petition and as such dismissed the revision.

6. I have heard Mr. S Banik, learned counsel for the petitioners and Mr. G.P. Bhowmik, learned counsel appearing for opposite party No. 1. There is no appearance on behalf of the State of Assam, arrayed as opposite party No. 2.

7. Mr. Banik, learned counsel for the petitioners submits that even if the allegations of cruelty as stated in the complaint petition are taken at their face value, the offence was committed in the State of West Bengal and therefore, no cause of action had arisen within the local jurisdiction of the Courts at Tinsukia. Accordingly, the Courts at Tinsukia does not have any jurisdiction to try the case and the learned revisional Court also failed to consider the matter in its proper perspective, he submits.

8. In support of his submission, the learned counsel has drawn the attention of this Court to the provision of this Court as enumerated in Sections 177 and 178 Cr.PC. The learned counsel has also placed reliance in the decisions rendered by the Apex Court in (i) Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, and (ii) Sunita Kumari Kashyap Vs. State of Bihar and Another.

9. Mr. G.P. Bhowmik, learned counsel appearing for opposite party No. 1, submits that at the time of marriage, opposite party No. 1 was gifted many articles by her

parents and relatives and the same were taken by her to the matrimonial house. Barely some time had elapsed when the in-laws started subjecting the opposite party No. 1 to mental and physical torture for not bringing a sum of Rs. 25,00,000/- as dowry. The marriage was solemnised on 28.06.2011 and though the complainant stayed in the place of her in-laws till 07.12.2011, the husband used to sleep separately from the complainant and that she learnt that the husband was having an illicit relationship with a lady. He submits that the husband, at the instigation of accused persons, brought the opposite party No. 1 to her parental home and left her there and went back. While she was at Tinsukia, husband also used to rebuke them over phone and threatened them with dire consequences.

10. Learned counsel submits that on the basis of the allegations made in the complaint petition, the Courts at Tinsukia will have jurisdiction to try the case. Learned counsel also submits that this application before this Court is basically a second revision petition though styled as an application u/s 482 Cr.PC. and in view of the bar of Section 397(2) Cr.PC., this application is not maintainable.

11. In support of his submission that the Courts at Tinsukia will have jurisdiction, the learned counsel relies on the judgment of the Apex Court in the case of (i) State of M.P. Vs. Suresh Kaushal and Another, and (ii) Sunita Kumari Kashyap Vs. State of Bihar and Another.

12. I have heard the learned counsel for the parties and have perused the materials available on record.

13. In the complaint petition, date of occurrence of the offences are shown as 07.12.2011 and onwards. In the complaint petition, it is stated that her marriage with the accused No. 3 was solemnised on 28.6.2011 according to Hindu rites and customs and thereafter, she was taken on 10.07.2011 to the house of the in-laws at Nabapally, Barasat, Kolkata. At the time of marriage, her parents and relatives had gifted her many articles and she had taken them to the house of her in-laws, After a couple of days of her stay in the house of her in-laws, she was subjected to mental and physical torture by her husband and other relatives for not bringing Rs. 25,00,000/- as dowry. The husband never used to sleep with her and she had learnt that he had a relationship with a lady of Silchar, Assam. The husband used to assault her frequently at the instigation of the other accused persons and on their instigation, the husband, on 07.12.2011, brought her to her parental home at Borpathar in Tinsukia district of Assam and went back. The husband also used to rebuke the complainant and other family members over phone threatening them of dire consequences if they proceeded with the matter any further. It is also stated that despite demands made, articles gifted to her at the time of marriage, were not returned back by the accused persons.

14. Section 177 of the Code provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

15. Section 178 provides that (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, it may be enquired into or tried by Court having jurisdiction over any of such local areas.

16. The expression "Cause of Action" is normally used in civil cases. In Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. However, the variations in expression do not really make any difference relating to jurisdiction of a Court to try a case.

17. "Cause of Action" consists of a bundle of facts, which would go to enforce the legal enquiry for redress in a Court of law. In other words, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, comprises in cause of action.

18. The Apex Court had considered the meaning of the expression "Cause of Action" in *Y. Abraham Ajith* (supra) as follows:

16. 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.

17. 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. In 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.

18. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

"Cause of action" has been defined as meaning simply 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 every fact which a defendant would have a right to traverse.

"Cause of action" has also been taken to mean that a 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.

On the basis of the averments made in the complaint petition, the Apex Court held that no part of cause of action had arisen in Chennai and accordingly, had quashed the proceeding in the Court of the learned Magistrate at Chennai.

19. The relevant facts in Suresh Kaushal (supra) are that the marriage between one Ranjana and her husband Suresh was held at Jabalpur and thereafter, the couple resided at Indore. Ranjana was subjected to physical torture when she was in her family way and she had to be taken to her paternal house at Jabalpur where miscarriage took place.

20. At the instance of Ranjana, a criminal case was registered against her husband Suresh and her sister-in-law for the offence under Sections 313 and 498 IPC read with Section 34 IPC. Charge-sheet was submitted by the police and the case was later on committed to the Court of Sessions by the Court of learned Magistrate at Jabalpur. Against the framing of charge, the accused moved the jurisdictional High Court in revision for quashing of the charge. Charge was quashed on the ground that Court at Jabalpur has no territorial jurisdiction to try the case.

21. The matter being carried to the Apex Court, the Apex Court held that when the allegation is that the miscarriage took place at Jabalpur because of the atrocities and physical torture committed at Indore, in view of Section 179 Cr.PC., the Court at Jabalpur would certainly have jurisdiction.

22. In Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, the salient facts were that the wife was the appellant before the Apex Court and the respondents were husband, parents-in-law and two sisters-in-law of the appellant. The gravamen of the allegations of the appellant Sujata Mukherjee was that on account of dowry demands, she had been maltreated and humiliated not only in the house of her in laws at Raighar but as a consequence of such events, the husband of the appellant had also come to the house of her parents at Raipur and assaulted her. Complaint was filed by the appellant in the Court of the learned Chief Judicial Magistrate, Raipur, who issued summons.

23. Two criminal revision petitions came to be filed against the refusal of the learned Chief Judicial Magistrate to recall the summons or to transfer the case to the Court at Raighar. The jurisdictional High Court took the view that the complaint made by the appellant was not maintainable at Raipur in respect of other accused persons except the husband and that such complaint is maintainable only against the husband at Raipur.

24. The Apex Court held that offence being a continuing one having been committed in many local areas including at Raipur, the learned Magistrate at Raipur has jurisdiction to proceed with the criminal case in his Court. The Apex Court observed that in such continuing offence against the appellant, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part and therefore, Section 178(c) is attracted.

25. In Bhura Ram and Others Vs. State of Rajasthan and Another, the case of the complainant was that she had left the place where she was residing with her husband and in-laws and came to Sri Ganga Nagar, State of Rajasthan. All the alleged acts, as per the complaint, had taken place in the State of Punjab and therefore, the Apex Court observed that the Court at Rajasthan did not have any jurisdiction to deal with the matter and consequently, quashed the proceeding pending before the Court of Additional Chief Judicial Magistrate, Sri Ganga Nagar. Direction was given for returning of the complaint to the complainant and it was observed that she may file the same in the appropriate Court to be dealt with in accordance with law.

26. In Sunita Kumari Kashyap (supra) the brief facts were to the effect that the appellant Sunita Kumari Kashyap was married to one Sanjay Kumar Saini as per Hindu rites and ceremonies at Gaya. At the time of her marriage, her father had gifted many articles and cash of Rs. 2,50,000/- . However, she was harassed and tortured immediately after marriage by her in-laws for bringing less dowry. Additional demand of Rs. 4,000,00/- was also made and when she was in the family way, she was forcibly taken from her matrimonial home at Ranchi and brought to her paternal house at Gaya where she gave birth to a girl child, which worsened her plight. The husband came up with a new demand that unless her father gave his house at Gaya to him, she will not be taken to her matrimonial house at Ranchi. With these broad allegations, she had lodged an FIR under. Sections 498-A/406 IPC read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, for short, DP Act, in a Police Station at Gaya.

27. Cognizance was taken by the learned Chief Judicial Magistrate, Gaya under Sections 498-A/406 IPC read with Section 34 IPC and Sections 3 and 4 of the DP Act. The learned Magistrate also rejected an objection taken that the Court at Gaya had no jurisdiction. Against the said order, a revision application was filed before the High Court and the High Court took the view that the proceedings at Gaya is not maintainable for lack of jurisdiction.

28. The Supreme Court reversed the order of the High Court holding that it was the assertion by the appellant about ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her paternal house at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, the offence being continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya will have jurisdiction to try the case instituted therein. It was held that the episode at Gaya was only a consequence of continuing offence of harassment and ill-treatment meted out to the complainant and Section 178(c) of the Code clearly gets attracted.

29. That though the learned revisional Court dismissed the revision application placing reliance on Bina Dey (supra) which is also reported in Bina Dey and Others

Vs. Pratibha Dey (Baidya), , the said judgment was held to be not good law by this Court in the case of Parashmoni Konwar and Another Vs. Parimita Shyam Konwar and Another, in view of subsequent judgment of Y Abraham Ajith (supra).

30. There are allegations in the complaint petition that the accused persons committed cruelty upon the complainant at Nabapally. It is also clear from the complaint petition that at the instigation of other accused persons, the husband of the complainant took the complainant to her parental home and left her behind and she was not taken back. The act of the husband leaving the complainant behind at her parental home at the instigation of the other accused persons will, on the face of it, indicate that the Court at Tinsukia will have jurisdiction to entertain the complaint as against the husband. It is to be borne in mind that offence u/s 498-A is a continuing offence and with regard to the incident of taking away the complainant to her parental home at Tinsukia and leaving her behind at Tinsukia, the husband may have taken part at Tinsukia but the genesis of the event was the instigation of the other accused persons. On some occasions, all the accused had taken part and on one occasion, one of the accused had taken part. Thus, the continuing offence of 498-A was committed in many local areas including at Tinsukia. Therefore, I am of the considered opinion that the principles enunciated in Sujata Mukherjee (supra) will be applicable to the facts of this case and consequently, Section 178(c) of Cr.PC. is attracted.

31. In view of the above discussion, I am of the considered opinion that Court at Tinsukia will have jurisdiction to try the complaint case against all the petitioners. In the result, I find no merit in this application and accordingly, the same is dismissed. No cost.