
**Sharda Devi @ Sharda Devi Upadhyay, Smt. Bageshwari Pandey,
Tarkeshwar Upadahyay and Shashi Bhushan Upadhya Vs State of
Jharkhand and Another**

Criminal M.P. No. 385 of 2008

Court: Jharkhand High Court

Date of Decision: Nov. 9, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 178, 179, 201#Dowry Prohibition Act, 1961
" Section 3, 4#Penal Code, 1860 (IPC) " Section 498, 498A

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Shailesh, for the Appellant; Krishna Shankar, for the O.P. No. 2, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad

1. The entire criminal proceeding of Topchanchi P.S. case no. 182 of 2005 (G.R. No. 4835 of 2005) including the order dated 15.6.2006 under

which cognizance of the offences has been taken u/s 498A of the Indian Penal Code and also u/s 3/ 4 of the Dowry Prohibition Act is being sought

to be quashed on the ground that the court which has taken cognizance lacks territorial jurisdiction. Before adverting to the submissions advanced

on behalf of the parties, the case of the prosecution needs to be taken notice of.

2. It is the case of the informant that the informant-opposite party no. 2 after getting married to Tarkeshwar Upadahyay, petitioner no. 3, when

came to Burdwan (West Bengal) where her father-in-law was in service to live with them, accused persons started ill-treating her. After staying for

some days, she came back to her parents house at Gomo but after one month, when she came to her in-laws" place, accused persons started

putting forth demand of Rs. 1 lac and in order to get the demand fulfilled, she was being subjected to torture. After a month, she again came to her

parents" house. After a few days, she was taken again to her in-laws" place where her mother-in-law and other accused persons again put forth

the demand of Rs. 1 lac. On the occasion of marriage of the brother of her husband, she came to Bharthai where also she was subjected to assault

as demand of Rs. 1 lac had not been fulfilled. When maternal uncle of the informant was informed about it, he along with others came there and

asked from the father-in-law and mother-in-law as to why they are behaving like that. Upon it, accused persons told them that they can do

anything which they wish to do. Thereafter the matter was informed to Siwan Police Station and then the informant came along with her maternal

uncle to his house. However, with the intervention of the Officer-in-Charge of Siwan Police Station, father-in-law of the informant took the

informant to his house but after few days, they again started subjecting her to torture. When things became quite bad, she came to her parents"

house at Gomo where she fell ill on account of being tortured physically and mentally.

3. On such allegation, a written report was submitted to the Officer-in-Charge, Gomo Police Station which was forwarded to Topchanchi Police

Station where a case was registered as Topchanchi (Hariharpur) P.S. case no. 182 of 2005 u/s 498A of the Indian Penal Code and also u/s 3/ 4

of the Dowry Prohibition Act.

4. On submission of the charge sheet, cognizance of the offence was taken, vide order dated 15.6.2006 which is under challenge.

5. Mr. Shailesh, learned counsel appearing for the petitioners would submit that since no cause of action ever accrued at the place where the case

was lodged, the court did commit illegality in taking cognizance of the offence, in view of the decision rendered in a case of Bhura Ram and Others

Vs. State of Rajasthan and Another, and also in a case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another,

6. As against this, Mr. Krishna Shankar, learned counsel appearing for the opposite party no. 2 submits that it is the case of the informant that

when she was subjected to mental and physical cruelty, she came to her parents" house at Gomo where she fell ill and thereby part of the cause of

action can certainly be said to have occurred at Gomo, territorial jurisdiction of which the court does have and as such, order taking cognizance

never suffers from any illegality.

7. It be stated that in a case of Bhura Ram and others vs. State of Rajasthan and another (supra) and also in a case of Y. Abraham Ajith vs.

Inspector of Police (supra), the Hon"ble Supreme Court has been pleased to hold that only that court in whose territorial jurisdiction, the cause of

action or part of cause of action has accrued, will have jurisdiction to take cognizance of the offence and therefore, that court in whose territorial

jurisdiction cause of action never accrued does not have jurisdiction to try the cases.

8. Subsequently in a case of Sunita Kumari Kashyap Vs. State of Bihar and Another, , the Hon"ble Supreme Court did hold that the court who

does have territorial jurisdiction of the place where consequence of offence accrued can very well deal with the matter. The fact of that case

appears to be somewhat different from the fact of the aforesaid two cases decided earlier by the Hon"ble Supreme Court which would be evident

from paragraph 18 of the decision rendered in a case of Sunita Kumari Kashyap vs. State of Bihar and another (supra)

18. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant wife about

the 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

parental home at Gaya by her husband with a threat of dire consequence for not fulfilling their demand of dowry, we hold that in view of Sections

178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being

Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, as the offence was a

continuing one and the episode at Gaya was only a consequence of continuing offence of harassment and ill-treatment meted out to the

complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of

ill-treatment and humiliation meted out to the appellant at the hands of all the accused persons and in such continuing offence, on some occasions

all had taken part and on other occasions one of the accused namely, the husband had taken part, therefore, undoubtedly clause (c) of Section 178

of the Code is clearly attracted.

9. Thus, the facts which were there in the Sunita Kumari Kashyap was that in that case though torture was inflicted at Ranchi, but at one point of

time, the husband took his wife to parental home at Gaya where threat of dire consequence for not fulfilling their demand of dowry was extended

and, therefore, Their Lordship did find that consequence in terms of sub-clause (c) of Sections 178 and 179 of the Code ensued at Gaya and,

therefore, the court at Gaya does have jurisdiction to proceed with the case.

10. Here in the instant case, whatever overt acts constituting offence either u/s 498A of the Indian Penal Code or u/s 3/ 4 of the Dowry Prohibition

Act have been alleged to have been committed it has been committed either at Burdwan or at Bharthai, district Siwan whereas the case has been

lodged at a place which falls within the jurisdiction of the court at Dhanbad where no part of cause of action seems to have fallen, though allegation

is that she fell ill at Gomo on account of being subjected to torture physically and mentally but factum of falling ill never constitute part of the

offence either u/s 498 of the Indian Penal Code or u/s 3/ 4 of the Dowry Prohibition Act.

11. Thus, it can easily be said that no cause of action ever accrued at Dhanbad and as such, the court at Dhanbad had absolutely no jurisdiction to

take cognizance of the offence as alleged.

12. Under the circumstances, I do find that the court has committed illegality in taking cognizance of the offences. Accordingly it is set aside.

13. However, the opposite party no. 2 would be at liberty to invoke the provision as contained in Section 201 of the Code of Criminal Procedure

by approaching the court to get the complaint returned for presentation to the proper court with an endorsement to that effect. If resort is made to

that provision, necessary order be passed. Thus, this application stands allowed.