

(2008) 07 JH CK 0064

Jharkhand High Court

Case No: Criminal M.P. No. 676 of 2006

Budhwa Oraon and Others

APPELLANT

Vs

The State of Jharkhand and
Nutan Ekka

RESPONDENT

Date of Decision: July 30, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 180, 181
- Penal Code, 1860 (IPC) - Section 323, 34, 354, 498A, 511

Citation: (2008) 4 JCR 202

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: M.K. Dey, for the Appellant; Mukesh Kumar, Assistant Public Prosecutor and Sumeet Gadodia Advocate for the O.P. No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

All the seven petitioners have invoked inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 2.5.2006 passed by the Sub divisional Judicial Magistrate, Ranchi in Complaint Case No. 574 of 2005 wherein having been satisfied with the prima facie offence under Sections 498A/354/323 read with 34 of the Indian Penal Code, processes were directed to be issued against the petitioners-accused.

2. The short fact of the case as narrated in the complaint petition by the complainant/opposite party No. 2 Nutan Ekka was that her marriage was solemnized with one Simon Ekka at Prabhat Tara Catholic Church, Dhurwa and at that time her husband was posted as Superintendent in the Central Excise Department, Jamshedpur. After her marriage, she accompanied her husband to

Jamshedpur where she lived at quarter No. 6/24 O.C. Road, South Park, Bishtupur, Jamshedpur and led a peacefully conjugal life for about one and half years. Thereafter, the complainant found that her husband was returning late in the night and that too under the influence of liquor with his friends, who again used to take liquor at the quarter when she was forced to serve them liquor again, abusive language to open the door but sensing foul she did not open the door inspite of their threat. Narrating the sequence of occurrence that On 30th October, 2004 at about 1 P.M. when she came to Jamshedpur from Ranch, all the eight named accused including the petitioners entered into her room by breaking open the door with the help of axe, pushed her down on the earth by holding her hair, abused, assaulted and compelled her to sign on the blank papers but she refused. However, on urge when she was allowed and accordingly she entered in the bath room, it was alleged that the petitioners Gabriel Kujur, Rajesh Kujur and Surender Sundi also by entering into the said bath room tried to outrage her modesty but she was saved by the witness Rajni Beck on her outcry. In the meantime, though two representatives of Saint Marry Church namely Rudolf Minz and Robin Ekka came there but they were not allowed to meet her. Yet, she managed to flee away from the place of occurrence and came to her uncle's house at Parudih and from there she went to her parental home at Ranchi. She expressed her desire and made several attempts to resume her conjugal life with her husband but she was threatened to be killed or would be sent to jail by false implication. She was consistently threatened by one Nirmala Toppo who asked her to desert her husband. She filed the complaint petition in the above situation.

3. Mr. M.K. Dey, the learned Counsel for the petitioners submitted that the learned SDJM, Ranchi without appreciation of the provision of law took cognizance of the offence u/s 498A of the Indian Penal Code against the petitioners who are not at all related to the husband or her in laws nearly or remotely.

4. Advancing his arguments Mr. Dey submitted that the petitioner No. 1 Budhwa Oraon was a Police Inspector posted at Jamshedpur and the petitioner No. 2 Anjali Lakra, his wife, was also Sub Inspector of Police. The petitioner No. 3 Surendra Sundi was a business man. The petitioner No. 4 Gabriel Tirkey, a bank employee posted at Bank of Baroda, Jamshedpur, petitioner No. 5 Rajesh Kujur, a Sub Inspector in Central Investigation Department and petitioner No. 6 Imilda Kujur @ Emelda Ekka, wife of the petitioner No. 5, was also Inspector of Police in Jharkhand Armed Force and petitioner No. 7 Roshan Dungdung was a complainant, Mr. Dey submitted that it was not practically possible that these petitioners could have ventured to do so in presence of their wives as per the complaint case. More so, the allegation was that they tried to outrage the modesty of the complainant and not that they actually outraged the modesty so as to attract an offence u/s 354 of the Indian Penal Code but the learned SDJM, on erroneous consideration, directed the processes to be issued against all the accused persons including the petitioners for the common offence u/s 354 of IPC though three of the accused were females i.e. wives of the

petitioners No. 1, 3 and 5 which shows non application of judicial mind by the S.D.J.M. Ranchi while passing the impugned order dated 2.5.2006 u/s 204 of the Code of Criminal Procedure.

5. On the point of jurisdiction, Mr. Dey, the learned Counsel submitted that the impugned order passed by the SDJM, Ranchi is barred by jurisdiction under Sections 177/178 of the Code of Criminal Procedure. According to the prosecution case, the alleged occurrence took place at Jamshedpur, as such, the SDJM Ranchi had no territorial jurisdiction to pass the impugned order u/s 204 Cr.P.C. calling upon the accused persons including the petitioners to appear and to stand charge when no part of cause of action for initiation of criminal proceeding arose within the local jurisdiction of the court of S.D.J.M.

6. Mr. Dey pointed out that when the statement of the complainant/opposite party No. 2 was recorded on her solemn affirmation, she had given altogether a different version, contrary to the facts as narrated in her complaint petition. Even the witnesses produced on her behalf in course of enquiry u/s 202 of Cr.P.C. were not consistent. Mr. Dey, the learned Counsel exhorted that in view of such inconsistent statements the criminal prosecution of the petitioners by issuing processes against them was mere mechanical exercise of jurisdiction and without application of judicial mind which is liable to be quashed and the criminal prosecution of the petitioners would be the abuse of process of law. On the other hand, the learned A.P.P. assisted by Sumit Gododia, advocate for and on behalf of the complainant/opposite party No. 2 contended that even if the petitioners were not found to be the near relatives of the husband or in laws of the complainant, they responsible police officers cannot be exonerated from their criminal liability.

7. Having regard to the facts and circumstances as presented, three points evolved for consideration viz;

(i) Section 498A of the Indian Penal Code is not attracted as none of the petitioners is relative of the husband of the complainant/opposite party No. 2.

(ii) The allegation of trying to outrage the modesty of the complainant/opposite party No. 2 was not against all the petitioners herein.

(iii) The SDJM Ranchi had no territorial jurisdiction to pass the impugned order by issuing the processes against the petitioners as no part of alleged occurrence had taken place in his territorial jurisdiction.

8. Section 498A of the Indian Penal Code deals with the cruelty by her husband or relative of her husband which speaks:

Who ever, being the husband or the relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation -: for the purpose of this section "Cruelty" means

(a) any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women, or

(b) harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

9. The object of this section is to prevent the torture to a woman by her husband or by relatives of her husband, the ingredients therefore, are that woman must be married, she must be subjected to cruelty or harassment and that such cruelty or harassment must have been shown either by husband or by the relatives of her husband. In the instant case the complainant/opposite party No. 2 failed to show that the harassment or cruelty alleged to be shown to her was made by none other than the relatives of her husband, as she failed to connect the (Sic).

10. I find substance in the arguments that the allegation of attempt to outrage the modesty of the complainant was directed only against the petitioners Budhwa Oraon, Surendra Sundi and Rajesh Dungdung but the learned SDJM, Ranchi on erroneous consideration of the fact and without application of judicial mind found prima facie offence under Sections 354 of the Indian Penal Code also against the other petitioners without any overt act who are ladies, and the petitioner No. 7 Rajesh Dungdung, which is illegal and it amounts to miscarriage of justice. Therefore, if at all any offence is made out prima facie under Sections 354/511 of the Indian Penal Code, it is only against the petitioners Budhwa Oraon, Surendra Sundi and Rajesh Kujur without prejudice to the individual merit of their case.

11. On the point of territorial jurisdiction Mr. Dey relied upon the decision reported in [Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another](#), . The Apex Court in Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. observed:

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

The Apex court further observed that the crucial question was whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it was the place where the offence was committed. In essence it was the cause of action for initiation of the proceedings against the accused. It was finally observed by the Apex Court in the following manner:

When the aforesaid legal principles are applied to the factual scenario disclosed by the complainant in the (sic).

12. In the facts and circumstances and in view of the proposition as laid down, I have no hesitation to observe that as no part of the alleged occurrence had taken place within the territorial jurisdiction of SDJM, Ranchi, the criminal prosecution of the petitioners in the given situation is barred by territorial jurisdiction.

13. In the circumstances, criminal proceeding of the petitioners as well as the order impugned dated 2.5.2006 drawn by the SDJM Ranchi cannot sustain, accordingly quashed being barred by jurisdiction in Complaint Case No. 574 of 2005. However, the complainant/opposite party No. 2 may re-agitate the matter before the competent court.

This Criminal Miscellaneous petition is allowed.