

(1998) 01 MP CK 0023

Madhya Pradesh High Court

Case No: M. Cri. C. No. 6889 of 1997

Urbhay Kumar @ Om Prakash
and Others

APPELLANT

Vs

Smt. Hema Bai

RESPONDENT

Date of Decision: Jan. 29, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 182(2)
- Penal Code, 1860 (IPC) - Section 494, 495

Citation: (1999) ILR (MP) 176 : (1999) 1 MPLJ 286

Hon'ble Judges: V.K. Agarwal, J

Bench: Single Bench

Advocate: Sanjay Agrawal, for the Appellant; No appearance, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.K. Agarwal, J.

This petition u/s 482 of the Criminal Procedure Code has been preferred for quashing the order dated 3-12-1988 in Criminal Case No. 843/88 of J.M.F.C. Baloda Bazar and the order dated 21-7-1997 in Criminal Revision No. 413/88 by Additional Sessions Judge, Baloda Bazar, whereby the application filed by the petitioners u/s 182(2) of Criminal Procedure Code was dismissed.

The facts leading to the present petition are that the non- applicant/complainant filed a complaint under Sections 494 and 109 of Indian Penal Code against the petitioners/accused, alleging that non-applicant is legally married wife of petitioner No. 1. On account of maltreatment by petitioner No. 1 she was compelled to reside separately. Thereafter, the petitioner No. 1 with the help of other petitioners has married petitioner No. 2. The matter was reported by non-applicant to the police,

thereafter, a private complaint was filed by her, which after due enquiry has been registered by Judicial Magistrate First Class, Baloda Bazar, Distt. Raipur and process u/s 204 of Criminal Procedure Code was issued for the petitioners/accused.

The petitioners filed an application u/s 177 of Criminal Procedure Code in the trial Court challenging the territorial jurisdiction of the trial Court, which was dismissed by the trial Court by order dated 3-12-1988. The revision against the said petition filed by the petitioners was also dismissed by order dated 21-7-1997. The present petition has thereafter been filed praying that the order dated 3-12-1988 and that of revisional Court dated 21-7-1997 be quashed.

The learned counsel for the petitioner in this petition has urged that applicants' petition challenging the territorial jurisdiction of the trial Court was wrongly dismissed. It has been urged in this connection that Section 182(2) of Criminal Procedure Code provides that the offence punishable u/s 494 or Section 495 of Indian Penal Code may be inquired into or tried by a Court within whose local jurisdiction, the offence was committed or the offender last resided with his or her spouse by the marriage where or the wife by the first marriage has taken up permanent residence after the commission of the offence. It has been urged that since the non-applicant has alleged in his complaint that petitioner No. 1 solemnised his second marriage with petitioner No. 2 at Bhotia, Tahsil Sakti, Distt. Bilaspur; hence the alleged offence was committed at Village Bhotia, Tahsil Sakti, Distt. Bilaspur, i.e. within the jurisdiction of the Court of Sakti. It has further been urged that since the respondent was residing at Salounikala, Tahsil Bilaigarh, Distt. Raipur (within the jurisdiction of Court of J.M.F.C. Baloda Bazar) from before the alleged marriage of petitioners Nos. 1 and 2, it cannot be said that the respondent has taken permanent residence at Salounikala after the alleged commission of the offence by the petitioners. Therefore, the trial Court at Baloda Bazar, Distt. Raipur had no territorial jurisdiction to entertain the complaint and to try the petitioners. In this connection, the learned counsel for petitioners has relied upon [Sukhaswaroopal Vs. State of M.P. and Others](#), .

In order to appreciate the contentions raised as above, it will be useful to reproduce Section 182(2) of the Criminal Procedure Code.

"182 (2). Any offence punishable u/s 494 or Section 495 of the Indian Penal Code may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by first marriage has taken up permanent residence after the commission of the offence."

Thus the trial of the offences punishable u/s 494 or 495 of Indian Penal Code can be held at any of the following places :

(a) A court within whose jurisdiction the offence was committed; or

(b) Where the offender last resided with his or her spouse by the first marriage; or

(c) Where the wife of first marriage has taken up permanent residence after the commission of the offence.

It is clear therefore that under the amended provision of Section 182(2), Criminal Procedure Code the offended spouse by the first marriage has the choice to lodge the complaint and having the offender tried at a place where she has taken up permanent residence after the commission of the offence. Therefore, the residence of first wife within the territory and jurisdiction of the Magistrate would confer jurisdiction on him to try the case and thus it would be competent for him to take cognizance of the offence.

Thus, though the wife has the option to get the complaint lodged and offender tried : (a) at the place where the offence was committed or (b) where she last resided with her spouse; but she is not compelled to do so; and she has the third option open to her which is to lodge the complaint and get the trial held at the place where she has taken permanent residence after the commission of the offence. The spirit of the law as above which has been incorporated by way of amendment is to throw open a convenient jurisdiction to the wife by the first marriage, at the place where she has taken up permanent residence, after the commission of offence.

In [Tekumalla Muneiah and Others Vs. Chittari Babunuri Ammanamma and Another](#), the Andhra Pradesh High Court, dealing with almost a similar situation has observed:

"Merely because the section refers to the place where the first wife takes a permanent residence after the commission of the offence, it cannot be said that the wife who was living at that place earlier to the commission of the offence and continues to do so even after the commission of the offence, is not residing at that place after the commission of the offence. The section must be interpreted in accord with the intention of the Parliament. The incorporation of the clause "or the wife by the first marriage has taken up permanent residence after the commission of the offence" in the section is mainly to facilitate the first wife to file a complaint at the place where she permanently resides after the commission of the offence."

Reference may also be made to the decision of [Amrit Kaur Vs. Smt. Indrajit Kaur](#), in this connection.

Therefore, simply because the petitioner/respondent was residing at Village Salounikala, Tahsil Bilaigarh, Distt. Raipur from before the alleged marriage of petitioners Nos. 1 and 2, would not debar her from preferring and prosecuting the complaint at the Court having jurisdiction at that place, simply because she was residing there even prior to the commission of offence, i.e. performance of marriage between petitioners Nos. 1 and 2. Since her permanent residence is at Salounikala, after the commission of the offence she had the choice and option u/s 182(2) of the

Criminal Procedure Code to prefer and prosecute her complaint at the competent Court at Baloda Bazar, which has territorial jurisdiction over Salounikala.

The view taken by the two Courts below that the court of J.M.F.C. Baloda Bazar had jurisdiction to hear and try the case, appears to be reasonable and proper and in my opinion cannot be said to be perverse or illegal, and does not call for any interference. The petition has no merit and is accordingly dismissed.