

Pabitra Chaudhary and Others Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: June 1, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 171, 177, 178, 178(c), 202

Dowry Prohibition Act, 1961 â€” Section 3, 4

Penal Code, 1860 (IPC) â€” Section 304B, 34, 406, 498A

Citation: (2007) PLJR 57

Hon'ble Judges: I.P. Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

I.P. Singh, J.

This application filed u/s 482 of the Code of Criminal Procedure, 1973 (in short the Code) is directed against the order

dated 23.2.2005 passed by the learned S.D.J.M., Bhagalpur in Complaint Case No. 1968 of 2004 issuing processes against the petitioners in a

case u/s 498A of the Indian Penal Code and also under Sections 3 and 4 of the Dowry Prohibition Act by opposite party No. 2. From the facts of

this case it would appear that opposite party No. 2 was married to petitioner No. 2 on 14.3.2000 and at the time of her marriage her parents had

given ornaments to her. When she went to her Sasural her in-laws and other persons named in the complaint petition started torturing her for not

bringing dowry and also obtained her signatures on blank sheets of paper. Thereafter the petitioners incited opposite party No. 2 to commit suicide

and also tried to give poison to her. Opposite party No. 2 filed a complaint petition against the petitioners before the Chief Judicial Magistrate,

Bhagalpur in which on 23.2.2005 an order was passed for the issuance of the process against them. It is against this order that the present

application has been filed on the ground that the court at Bhagalpur has got no jurisdiction to hear this matter and to issue the processes against the

petitioners.

2. Opposite party No. 2 in her complaint petition has further alleged that when she came to her Naihar at Bhagalpur the accused persons still

tortured her for dowry and enquiry u/s 202 of the Code was held in which also she supported her case.

3. The petitioners have contended that the learned S.D.J.M., Bhagalpur was lacking territorial jurisdiction in the matter and hence the impugned

order passed by him is illegal. The courts in the District of Maldah (West Bengal) will have the jurisdiction in the matter since the petitioners reside

there and opposite party No. 2 also resided there with them. It has further been alleged that opposite party No. 2 never liked to stay at her Sasural

and petitioner No. 2 has also filed a divorce suit against her. On these grounds it has been contended that the impugned order which is without

jurisdiction should be quashed.

4. The parties have been heard at length in the matter. My attention has been drawn to Section 177 of the Code which runs as follows:--

177. Ordinary place of inquiry and trial.--Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was

committed.

My attention has also been drawn to sub-section(c) of Section 178 of the code which runs as follows:--

(c) where an offence is a continuing one, and continues to be committed in more local areas than one.

5. It is not in dispute that opposite party No. 2 was married to Village Kendra Pokhar, P.S. Habibpur in the District of Maldah where the

petitioner No. 2 her husband resided. It is also not in dispute that her Naihar falls in the District of Bhagalpur in the State of Bihar. Under the

circumstances it has to be found out whether the courts at Bhagalpur or at Maldah in West Bengal will have jurisdiction to try this case.

6. On behalf of the opposite party No. 2 it has been contended that her torture started at her Sasural and when she went to her Naihar there also

the torture continued. In this connection my attention has been drawn to Annexure-1 which the complaint petition filed by her where the place of

occurrence has been shown to be both her Maika and her Sasural. In this complaint petition opposite party No. 2 has clearly stated that petitioner

No. 2 had demanded dowry even at Bhagalpur from her parents and pressurized her to secure the same. From this it would appear that there is

clear allegation in the complaint petition that the demand of dowry had also taken place at Bhagalpur.

7. On behalf of the petitioners reliance has been placed in a case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, .

In this decision from the facts it would appear that all the alleged offences had taken place at Nagercoil and none at Chennai. It was further held

that normally the general rule is that ordinarily every offence should be enquired into and tried by a court within whose local jurisdiction it was

committed. This rule is, however, subject to several exceptions and one of them is contained in Section 178(c) of the Code which provides that

where the offence is a continuous one it must be continued to be committed in more local areas than one, then courts of all those areas will have

jurisdiction to try any such offence. In this case, however, no offence was committed at Chennai and, therefore, the Hon"ble Supreme Court has

held that this is not a case of continuing offence so as to attract the provision of Section 178(c) of the Code.

8. In this connection a reference may also be made to the case of Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, . In this case the

offence was continued to be committed at the place of her parents where she came away from her Sasural. It was held that since the offence was a

continuing one the courts at her father"s place will also have jurisdiction to try the offence by virtue of Section 178(c) of the Code.

9. The question what could constitute a continuing offence had come up for consideration before the Hon"ble Supreme Court in the case of State

of Bihar Vs. Deokaran Nenshi and Another, . It"s paragraph No. 5 runs as follows:--

5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one

of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which

continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or noncompliance occurs and

reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an

offence once and for all and a act or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it

continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence

which takes place when an act or omission is committed once and for all.

10. This definition of a continuing offence has been quoted with the approval by the Hon"ble Supreme Court in the case of Manish Ratan and

Others Vs. State of M.P. and Another, .

11. In this connection a reference may also be made to the case of Abdul Nazar Madani Vs. State of Tamil Nadu and Another, . It was held by

the Hon"ble Supreme Court in this case that the purpose of criminal trial is fair and impartial justice uninfluenced by anything If it appears that was

not possible impartially at any place dispensation of justice the appropriate court may transfer the case to another court where it feels that the trial

would fair conducive to justice

12. In the case of Mohan Baitha and Others Vs. State of Bihar and Another, from the facts it would appear that F.I.R. was lodged at Bhagalpur

under Sections 304B and 406/34 of the Indian Penal Code on receiving a telephone call by the father for the victim that she died at Jahanaganj in

U.P. while preparing milk for the child. It was held that in a given case indicating proximity of time, unity or proximity of place continuity of action

and continuity of purpose or design are the factors for deciding whether certain acts form parts of the same transactions or not. Section 221 will be

decided on these factors and Section 177 is, therefore, not peremptory in nature nor a complete embargo.

13. In a recent decision in the case Vijay Singh Charak Vs. Union of India (UOI) and Others, the learned Single Judge (Navin Sinha, J.) has

decided what is meant ""ordinary courts in Section 171"" which according to him need not be limited to the special provision provided for by law.

14. In the case of Manish Ratan (supra) from the facts it would appear that the father-in-law of appellant No. 1 lodged the case at Jabalpur police

station where the matrimonial home of the wife was located. The wife in her turn lodged the F.I.R. at Datia police station (M.P.). The incident had

taken place at the house at Jabalpur. In this decision it was held that this was not a case of continuing offence since no occurrence is alleged to

have taken place at Datia police station and, therefore, only courts at Jabalpur will have jurisdiction in accordance with Section 177 of the Code.

This decision is, however, not applicable to the facts of the present case inasmuch as the alleged occurrence had taken place at Bhagalpur and was

a continuing one.

15. From the detailed discussions made above it becomes clear that there is no merit in this application. The courts at Bhagalpur will have

jurisdiction to try this case. In the result this application is dismissed.