

(2016) 08 PAT CK 0078

PATNA HIGH COURT

Case No: Criminal Writ Jurisdiction Case No. 383 of 2015(Arising Out of PS.Case No. -null
Year-null Thana-null District Eastchamparan(Motihari)

Pradeep Kumar Jaiswal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Aug. 29, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, Section 178

Citation: (2016) 168 AIC 534 : (2016) 3 BBCJ 380

Hon'ble Judges: Mr. Ashwani Kumar Singh, J.

Bench: Single Bench

Advocate: Mr. N.H. Khan, S.C.-1 and Mr. Md. Naushaduzzoha, A.C. to S.C.-1, for the
Respondent; Mr. Anil Jaiswal, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

Mr. Ashwani Kumar Singh, J. (Oral)—Be it noted that vide order dated 29.1.2016, this Court had issued notice to respondent No.4 Vishwanath Prasad Sah. Since the process server reported that Vishwanath Prasad Sah had already died, his name was deleted from the cause title and by order dated 5.5.2016, the victim Manisha Sah, the daughter of the informant, was permitted to be impleaded as respondent no.4 in the case. Despite valid service of notice upon Manisha Sah, she has chosen not to appear either in person or through counsel.

2. Heard Mr. Anil Jaiswal, learned counsel for the petitioners and Mr. Naushad Hussain Khan, Standing Counsel No.1, for the State.

3. In the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for quashing of Motihari Town P.S. Case No.76 of 2000 dated 28.3.2000, as contained in Annexure-1 to the present application, and the entire police investigation made upon it after institution of the police case lodged by Vishwanath Prasad Sah.

4. Initially, a complaint case being Complaint Case No.251 of 2000 was instituted by the aforesaid Vishwanath Prasad Sah in the court of Chief Judicial Magistrate, Motihari, East Champaran on 1st March, 2000. The aforesaid complaint was referred to the police under Section 156 (3) of the Code of Criminal Procedure for investigation pursuant to which East Champaran Town P.S. Case No.76 of 2000 was registered on 28th March, 2000 under Sections 498A, 420 and 406 of the Indian Penal Code as also under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

5. The prosecution case, in short, is that marriage of the informant's daughter Manisha Sah was performed on 30th May, 1997 with petitioner no.1 at Varanasi in Uttar Pradesh in which the informant and his relatives gave cash, ornaments and other articles mentioned in the FIR. After marriage, the informant's daughter went to her "Sasural" at Pratapgarh (U.P.) and lived there for twenty days. Then, she came to her "Maikey" at Motihari in Bihar and after a month's stay over there she again went to her "Sasural" with her husband. On the second visit to her "Sasural", she, without any reason, was abused by the accused persons, who also pressurised her to bring rupees two lakhs as dowry.

6. It is further alleged that in March, 1998, the informant's daughter came to know that her husband had married another girl named Purnima and he also had a son from her. The informant's daughter informed about this fact to the informant and on coming to know about this, the informant went to his daughter's "Sasural" with his son and scolded the accused persons. Then, the informant, after staying at his daughter's "Sasural" for a week, returned to his home at Motihari in Bihar.

7. It is further alleged that in June, 1998 the petitioner no.1 told the informant's daughter that he would keep his beloved Purnima throughout his life and when it was protested by the informant's daughter she was beaten up by the accused persons with fists, slaps and Danda. Thereafter, on getting opportunity, Manisha Sah informed the informant, who again went to her "Sasural" on 8th June, 1998 with his son Ravi Kumar and got her treated in the Hospital at Pratapgarh (U.P.) and also got her X-Ray done on the advice of the doctor. It is also alleged that while coming to her "Maikey", the accused persons coerced Manisha Sah and got it written by her that she is taking away all her ornaments and belongings. It has been alleged that all her belongings were retained by the accused persons. The informant went to his daughter's "Sasural" several times and asked the accused persons to return her daughter's ornaments and belongings, but they declined to return the same.

8. It is submitted by the learned counsel for the petitioners that petitioner no.1 is husband, petitioners no.2 and 3 are father-in-law and mother-in-law respectively, petitioners no.4 and 5 are brothers-in-law of the victim Manisha Sah and petitioner no.6 is wife of petitioner No. 4 of the present case.

9. It is submitted that taking the entire allegations in the FIR to be true, from the FIR it would be obvious that all the cause of action, whatever they may be, took place

either at Varanasi (U.P.) or at Pratapgarh (U.P.) and no cause of action of any kind occurred in Bihar; much less, at Motihari within the territorial jurisdiction of the court at Motihari. As such, the officers of the Town Police Station at Motihari have got no jurisdiction to investigate the case and, on this ground alone, the entire investigation in the police case is fit to be quashed.

10. Advancing the argument, it is also submitted that petitioner no.1 was married to Manisha Sah on 30th May, 1997, but the marriage was never consummated, as she never allowed the petitioner no.1 to share her bed. Then, in the year 1998 itself petitioner no.1 filed a divorce case bearing Original Case No.179 of 1998, in the court of Additional Civil Judge, Pratapgrah (U.P.) for decree of divorce under Section 13 of the Hindu Marriage Act on the ground of mental cruelty for having refused to cohabit with him without any reason. In that case, even after due service of court's summons, Manisha Sah did not appear. Thereafter, that case was decided ex-parte in favour of petitioner no.1 on 1.5.2012 and he was granted decree of divorce.

11. It is also urged that during pendency of the divorce case, Manisha Sah has married another person and petitioner no.1 has also remarried after his divorce.

12. Per contra, learned counsel for the State has submitted that the petitioners are not co-operating with the investigation of the case and because of their non-co-operation, the investigation of the case could not be completed till date. He has submitted that steps are being taken to arrest the accused persons so that charge-sheet may be filed before the court. However, he concedes that no part of cause of action ever took place in Bihar.

13. Having heard learned counsel for the parties and perused the records, I find substance in the arguments advanced by the learned counsel for the petitioners. The facts stated in the FIR arising out of complaint would clearly show that all the alleged acts, as per the informant, had taken place in the State of Uttar Pradesh.

14. It appears that the informant has lodged the complaint at Motihari because of his residence at Motihari and his daughter Manisha Sah resided together with him after she left her matrimonial home.

15. In a criminal case, the territorial jurisdiction is not decided on the basis of place of residence. It is on the basis of place where the alleged offence occurred.

16. Section 177 of the Code of Criminal Procedure (for short ("CrPC")) clearly lays down that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

17. Section 178 of the CrPC further lays down:

- (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 a 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, then such offence may be inquired into or tried by a court having jurisdiction over any of such local areas.

18. Thus, it would be evident from a reading of Sections 177 and 178 of the CrPC that there are certain rules with regard to where the FIR for an offence may be registered and the trial for such an offence may be conducted. The FIR has to be registered where the offence took place or where at least a part of the offence took place. The place of residence of the complainant or of the accused is irrelevant in this regard.

19. In an identical case, in the matter of **Bhura Ram and Ors. v. State of Rajasthan and Anr., since reported in AIR 2008 SC 2666**, the Supreme Court had quashed the entire criminal proceedings, which was instituted at Sri Ganganagar, Rajasthan; whereas all the alleged acts, as per the complaint giving rise to FIR, had taken place in the State of Punjab. The operative part of the order of the Supreme Court in Bhura Ram and others (supra) reads as under:

"4. The facts stated in the complaint disclose that the complainant left the place where she was residing with her husband and in laws and came to the city of Sri Ganganagar, State of Rajasthan and that all the alleged acts as per the complaint had taken place in the State of Punjab. The Court at Rajasthan does not have the jurisdiction to deal with the matter. On the basis of the factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter. As a consequence thereof, the proceedings before the Additional Chief Judicial Magistrate, Sri Ganganagar are quashed. The complaint be returned to the complainant and if she so wishes she may file the same in the appropriate court to be dealt with in accordance with law.

5. The appeal is accordingly allowed."

20. Keeping in mind the facts and circumstances of the present case and the ratio laid down by the Supreme Court in the matter of Bhura Ram and others (supra), the first information report of Motihari Town P.S. Case No.76 of 2000 dated 28.3.2000 and the consequential ongoing investigation of the said case are hereby quashed.

21. The application stands allowed.

22. The victim Manisha Sah would be at liberty to take steps in accordance with law at the place where the alleged offence is said to have taken place or where at least a part of the offence is alleged to have taken place.