

(2009) 11 CAL CK 0003

Calcutta High Court

Case No: C.R.R. No. 4138 of 2008

Sankar Prasad Roy Chowdhury
and Another

APPELLANT

Vs

Smt. Mitali Roy Chowdhury

RESPONDENT

Date of Decision: Nov. 17, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 482, 484
- Penal Code, 1860 (IPC) - Section 323, 34, 406, 498A, 505

Citation: (2010) 5 RCR(Criminal) 185

Hon'ble Judges: Partha Sakha Datta, J

Bench: Single Bench

Advocate: Sekhar Basu and Mr. Madhusudhan Roy, for the Appellant; Debajyoti Deb for the O.P. No. 1, Mr. Kasem Ali Ahmed, for the Respondent

Judgement

Partha Sakha Datta, J.

Whether the learned Judicial Magistrate, 2nd Court at Asansol has territorial jurisdiction to try the case is the subject matter of the application filed by the accused persons. The O.P. No.1 lodged a complaint with the learned Judicial Magistrate, 2nd Court, Asansol against the two petitioners and another alleging offences under sections 498A/323/406/506/34 of the IPC.

2. Marriage was solemnized between the O.P. No.1 and the accused No.1 Suwendu Roychowdhury (not the petitioner) herein at Adconagar in the district of Hooghly on 28.11.2005. Stridhan articles consisting of gold ornaments and other valuable articles were given and entrusted to the accused persons. The complainant started living matrimonial life in the house of her husband Suwendu at Bhadrakali under P.S. Uttarpara and there the two petitioners-accused persons who are the mother-in-law and the father-in-law of the complainant as also the husband started inflicting physical and mental torture upon the complainant and ground of such torture is

primarily that the gifted items/stridhan articles were of inferior quality. In spite of torture having been perpetrated upon her she decided to live in the matrimonial home in the hope that in future everything would be settled but in vain. Complainant conceived and she came down to her father's house as she was denied any medication and the husband said that the child in the womb was not his child. All the accused persons kicked her and severely assaulted her. A child was born in the hospital but seeing the child they made vulgar remarks and on 3.12.2007 the husband paid a visit to the complainant's father's house at Puranhat under P.S. Hirapur and told the complainant that the child did not match his face and she carried the sin of some other person. The complainant and the members of her father's family were traumatized and thereafter the accused No.1 left for his home.

3. Learned Magistrate issued processes under sections 498A/323/406/506/34 of the IPC and proceeded to hold trial.

4. It has been submitted by the learned counsel for the petitioners who are the father-in-law and mother-in-law of the complainant that no part of the cause of action did originate at P.S. Hirapur in the district of Burdwan and as such the learned Magistrate of Asansol has no territorial jurisdiction to try the case. In support of the submission Mr. Sekhar Basu has referred to the decision of the Hon'ble Supreme Court in Y. Abraham Ajith & Ors. v. Inspector of Police, reported in 2004 SCC (Cri) 2134 wherein Their Lordships of the Supreme Court held on the facts of that case that since no part of the cause of action arose at Chennai and the offences having been committed at Nagercoil the Magistrate at Chennai has no jurisdiction to try the case. It was a case under sections 498A/406 IPC. In Y. Abraham Ajith (supra), the Supreme Court considered the scope of sections 177, 178, 482 and 484 of the Cr PC in respect of the offences u/s 498A and 406 of the IPC. In the context of the finding that no part of the cause of action arose at Chennai and the offences to place at Nagercoil Their Lordships observed as follows:

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself Every fact, which is necessary to be proved, as distinguished from every place of evidence, which is necessary to prove such fact, comprised in "cause of action". The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with

the matter.

In the reported decision offence was not solely one u/s 498A IPC.

5. The learned advocate for the O.P./complainant submitted that the averment in the paragraph 14 of the complaint gives the jurisdiction to the learned Magistrate at Asansol. The averment in paragraph 14 is that on 3rd December, 2007 the husband came to the house of the complainant's father and seeing the child he repeated his earlier remark that the child did not match his face and she carried the sin of somebody else. The question is whether this remark allegedly made by the accused No.1/husband in the house of the complainant's father on 3.12.2007 can give jurisdiction to the learned Magistrate at Asansol for the trial of the case u/s 498A/323/505/406/34 of the IPC. In my considered opinion, this single averment which does not introduce a new fact can hardly gives jurisdiction to the learned Magistrate of Asansol. This bare remark is a repetition of what the accused No.1 earlier stated in her matrimonial home. In fact a thorough reading of the petition of complaint revealed that cruelty was perpetrated upon the complainant in her matrimonial house in the district of Hooghly. The solitary expression which is a repetition of what was earlier stated at the time when the child was not born cannot give the Asansol Court of the jurisdiction to try the case. The provision of section 178 Cr PC does not apply here because it is not a case where offence is committed partly in one area and partly in another, nor the said offence can be said to be a continuing one; nor it is the offence consisting of several acts done in different local areas. Further the expression alleged in paragraph 14 does not come within the ambit of section 179 Cr PC because the alleged expression is not an act by reason of anything which has been done and of a consequence which has ensued. As to the charge u/s 406 of the IPC the decision of this Court in Shipra Raj Roy v. State of West Bengal, reported in (2007) 1 C Cr Lr(Cal) 800 squarely applies. That was a case where stridhan articles were allegedly entrusted during solemnization of marriage. This was also a case where it was alleged that the stridhan articles were entrusted at Durgapur when marriage took place but considering the totality of facts of the case a learned single Judge of this Court in this context held that no part of the cause of the action did originate at Durgapur. In this connection, reference may be made to the decision in Ramesh v. State of Tamilnadu, reported in (2005) 1 C Cr Lr(SC) 617. Here a solitary incident took place in a hotel at Chennai but the Supreme Court held that alleged one incident taking place in a hotel at Chennai would not invoke the jurisdiction of the Magistrate at Tiruchirapally. In Sipra Raj Roy (supra) the learned single Judge of this Court further observed that a line in the FIR that "at the time of marriage the relatives of the complainant handed over those things to the accused persons" is not sufficient at all to invoke the jurisdiction of the learned Magistrate at Durgapur to proceed with the trial of the case. Accordingly, it appears that it is learned Judicial Magistrate within whose jurisdiction Uttarpara falls who is competent to try the offence. Accordingly the proceedings being complaint case No. 428 of 2008 under sections 323/498A/406/506 IPC now pending before the Court of

learned Judicial Magistrate, 2nd Court, Asansol stands transferred to the learned Additional Chief Judicial Magistrate of Serampore in the district of Hooghly. Learned ACJM, Serampore will proceed with the trial of the case in accordance with the law.

The application is accordingly disposed of.

Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.