

Chitta Ranjan Roy Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Sept. 22, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 173(c), 177, 178, 482

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

Penal Code, 1860 (IPC) â€” Section 307, 323, 325, 34, 498A

Citation: (2012) 3 CHN 622

Hon'ble Judges: Asim Kumar Ray, J

Bench: Single Bench

Advocate: Udan Sankar Chattopadhyay, for the Appellant; Soumik Ganguly for the State and Apurba Kumar Dutta, for the Respondent

Judgement

Asim Kumar Ray, J.

This is an application u/s 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceeding in

connection with G.R. Case No. 1345 of 2010 arising out of Asansol (North) police station case No. 148 of 2010 dated 2.9.2010 u/s

498A/323/325/307/506/34 of the Indian Penal Code read with section 3/4 of the Dowry Prohibition Act pending before the learned Additional

Chief Judicial Magistrate, Asansol. Factual background in connection with the matter in a nutshell is that Sarita Rai, de facto complainant submitted

a complaint before the learned Additional Chief Judicial Magistrate, Asansol alleging therein that she is the legally married wife of petitioner No. 1

Chittaranjan Rai and their marriage was solemnized on 21.11.2009 as per Hindu Rites and Customs at South Dhadka, Asansol. She had been to

her father-in-laws place and started residing there at Collectorate Road, Buxar, P.S. and District-Buxar, Bihar with her husband and others. She

was subjected to torture on the issue of further dowry at her matrimonial home on several occasions and lastly on 7.6.2010. Her father had been

to her matrimonial place on 11.6.2010 and requested the petitioners/accused persons not to torture his daughter making illegal demand but in vain.

He reported the matter before the local police station and finding no alternative the complainant is residing in her father's house at South Dhadka,

Sukanta Pally, Asansol on and from 15.6.2010. It is alleged further that on 20.6.2010 petitioner No. 1/accused China Ranjan Rai and two

unknown persons came to her father's place at Asansol, demanded a sum of Rs. 3 lakhs from her father to buy a car/four wheeler vehicle and

others threatened her and her parents with dire consequences.

2. The learned Magistrate after accepting the petition of complaint sent it to Officer-in-Charge, Asansol (N) police station directing him to treat the

complaint as FIR u/s 156(3) of Cr.P.C. and to investigate the case. The petitioners are on bail.

3. Mr. Uday Shankar Chattopadhyay, learned advocate appearing for the petitioners has contended that the alleged incident took place within the

jurisdiction of Buxar Court, Bihar. The opposite party/de facto complainant left her matrimonial home on her own accord on 12.6.2010 and before

leaving her matrimonial home both parties had been to the Buxar town police station. No FIR was lodged by the O.P./de facto complainant before

Buxar town police station on 10.6.2011. He has further contended that no FIR was lodged in connection with an alleged incident dated 20.6.2010

by the private opposite party/de facto complainant before the Asansol (N) police station. The petition of complaint which was submitted before the

learned Additional Chief Judicial Magistrate, Asansol u/s 156(3) of Cr. PC is after lapse of two months and the same is nothing but to harass the

petitioners. The learned Additional Chief Judicial Magistrate has no jurisdiction to deal with the matter. The proceeding pending before him may be

quashed.

4. He has relied on decisions reported in (2007) 2 C Cr LR (SC) 46 [Manish Platan and others vs. State of Madhya Pradesh and another], 2004

Cr LR (SC) 972 [Y. Abraham Ajith and others vs. Inspector of Police, Chennai and another], (2010) 3 C Cr LR(Cal) 612 [Alok Kumar Mitra

and others vs. The State of West Bengal and another], Pulak Kole and Another Vs. The State of West Bengal and Others and an unreported

decision passed by this Court in CRR No. 1137 of 2009 [Deoki Bazaz, @ Deoki Nandan Bazaz and another vs. The State of West Bengal and

another] to support his contention.

5. Mr. Soumik Ganguly, learned advocate appearing for the O.P./State has contended that the offence is a continuing one. Initially it was started at

Buxar, Bihar and subsequently continued to the jurisdiction of Asansol Court. Therefore, the learned Additional Chief Judicial Magistrate has

jurisdiction to sit over the matter in view of the decision reported in Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee,

6. On perusal of the petition u/s 156(3) of Cr.PC which was submitted before the learned Additional Chief Judicial Magistrate, Asansol by the

opposite party No. 2 Sarita Rai it transpires that Santa got married with Chitta Ranjan on 21.11.2009 at South Dhadka, Asansol according to

Hindu Rites and Customs and thereafter she, her husband Chitta Ranjan Rai and other accused person/rest petitioner Nos. 2 to 5 were residing at

Collectorate Road, Buxar, P.S. and District Buxar, Bihar. It is alleged that petitioners used to demand further dowry in form of cash and gold

ornaments and other valuable articles in various manner and on failure to meet such demand by her father she was subjected to inhuman torture

both physically and mentally on several occasions. She was even assaulted mercilessly by the accused persons last of all on 10.6.2010. There is an

allegation further that Chitta Ranjan Came over to her father's place on 20.6.2010 along with two unknown persons and demanded a sum of Rs. 3

lakhs from her father and those unknown persons threatened her father with dire consequences.

7. The petitioner has annexed copies of application which was submitted before Superintendent of Police, Buxar by Manju Rai/petitioner No. 4.

On perusal of it, it appears that on 12.6.2010 Dinesh Tewary father of the de facto complainant had been to the matrimonial home of his daughter

Santa and wanted to take back his daughter from her matrimonial home. At that time Manju Rai requested him that let Chittaranjan, husband of

Sarita returns who was away from the home and expected to return on 13.6.2010 but without giving any heed to her such request he forcibly took

away his daughter to his home and at the time of leaving her matrimonial home all the stridhon articles were handed over to the de facto

complainant. The de facto complainant's father gave a declaration that he was taking her daughter in heal and hearty condition from the place of

her in-laws house. This shows that the de facto complainant arrived at her father's place following alleged incident at Buxar. There was no FIR at

the instance of the de facto complainant Sarita at Asansol town police station alleging the incident dated 20.6.2010.

8. Now it is pertinent to go through section 177 and section 178 of the Code of Criminal Procedure which deal with the ordinary place of inquiry

and trial and place of inquiry or trial respectively:

Section 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.

Section 178. Place of inquiry of 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.

9. In State of Bihar Vs. Deokaran Nenshi and Another, it was held by the Hon"ble Apex Court:

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 to 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 non-compliance 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 an 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. In Y. Abraham Ajith vs. Inspector of Police (supra), the Hon"ble Supreme Court observed: (para 11)

A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee vs. Prashant Kumar Mukherjee

(supra). There the allegation related to commission of alleged offences punishable under sections 498A, 506 and 323 IPC. On the factual

background, it was noted that though the dowry demands were made earlier, the husband of the complainant went to the place where the

complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of section 178 was attracted. But in the

present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry

demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any

act constituting an offence much less at Chennai. That being so, the logic of section 173(c) of the Code relating to continuance of the offences

cannot be applied.

11. In the above case a point was taken that, ""the appellants moved the High Court u/s 482 of the Code of Criminal procedure challenging the

jurisdiction of the Magistrate to entertain the complaint on the ground that the incidents alleged took place during the stay of the complainant at

Nagercoil and thereafter the complainant came to Chennai where she is staying. It was urged that as no part of the cause of action arose within the

Jurisdiction of the Metropolitan Magistrate, Chennai the case is not maintainable at Chennai.

12. In case of Manish Ratan and others vs. State of Madhya Pradesh and another (supra), the Hon"ble Apex Court observed that, ""it is not defied

or disputed that no part of cause of action within the territorial limits of the jurisdiction of the District Court. Section 177 of the Code ordains that

every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

13. In a case of this nature, an offence can not, be held to be a continuing one, only because the complainant is forced to leave her matrimonial

home.

14. The crucial question is whether any part of cause of action arose within the jurisdiction of the Court of learned Additional Chief Judicial

Magistrate, Asansol. The de facto complainant did not lodge any complaint with the Asansol (N) police station alleging any incident dated

20.6.2010.

15. The record speaks that the de facto complainant left her matrimonial home being accompanied by her father when her husband was away from

home ignoring the request of her mother-in-law to wait/stay there till her husband return. As such the allegation of demand of a further sum by his

son-in-law coming over to his place at Asansol is patently absurd and improbable. Furthermore, if the alleged incident dated 20.6.2010 is taken

for consideration then also except husband rest petitioners can not be brought over to the jurisdiction of Asansol Court. Mere averment in the

complaint adding allegation that one of the petitioners being accompanied with two unknown persons demanded dowry and threatened the father

of the de facto complainant coming over to Asansol on a subsequent date without any supportive prima facie document like G.D. or FIR the same

does not inspire confidence to express that the case is a fit one to sit over it by ACJM, Asansol. The admitted background is that the relation

between the parties were bitter and which is why if there was such subsequent incident, the automatic action of the father of the de facto

complainant would have been "diarising such event for future action." On the basis of factual scenario set forth in the body of the complaint by the

de facto complainant the inevitable conclusion is that the offence cannot be said to be a continuing one and therefore the Magistrate concerned has

no jurisdiction to deal with the matter. As a consequence thereof the proceeding pending before the learned Additional Chief Judicial Magistrate,

Asansol do hereby quashed. The complaint be returned to the complainant and if she so wishes she may file the same in the appropriate Court to

deal with it in accordance with law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties.