

(2010) 08 CAL CK 0016

Calcutta High Court

Case No: C.R.R. No. 358 of 2009

Narendra Kumar Sharma alias
Narendra Sharma

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: Aug. 25, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178
- Penal Code, 1860 (IPC) - Section 498A

Hon'ble Judges: Mrinal Kanti Sinha, J

Bench: Single Bench

Advocate: Sabyasachi Banerjee and Mrs. Koeliya Banerjee, for the Appellant; Abhijit Adhya, for the Respondent

Final Decision: Allowed

Judgement

Mrinal Kanti Sinha, J.

Heard the learned counsel appearing for the parties.

This revisional application has been directed against the order passed by learned J.M. 2nd Court, Jalpaiguri, on 15.12.08 in G.R. Case No. 1197 of 2004, whereby the learned J.M. 2nd Court, Jalpaiguri, has rejected the prayer of the accused for discharging him.

2. It is the case of the petitioner that a complaint was filed u/s 498A IPC before the Officer-in-charge of Matelli Police Station alleging therein that the Opposite Party No.2 Suman Sharma is the legally married wife of the petitioner and their marriage was solemnized on 26.05.03 by observing Hindu Rites and Customs, but the petitioner used to torture her both physically and mentally and did not allow the Opposite Party No.2 to speak to her son and deprived them from food and clothes. After receiving the complaint from the Opposite Party No.2, Police registered Matelli

P.S. Case No. 44/04 dated 28.07.04 u/s 498A of the IPC. The matter was investigated by the Police treating the complaint of the Opposite Party No.2 as First Information Report.

3. Thereafter, the petitioner was arrested in connection with that case and was released on bail. After completion of investigation, police submitted a charge-sheet bearing No. 79/04 dated 31.12.04 u/s 498A of the Indian Penal Code against the petitioner in G.R. case No. 1197 of 2004. As the cause of action for the said case arose at Sikar, Rajasthan, and no part of cause of action arose within the jurisdiction of Matelli P.S., so the petitioner filed the said application praying for his discharge on the ground of non-maintainability of the proceedings due to lack of territorial jurisdiction. Hearing the learned counsel for the parties learned J.M., 2nd Court, Jalpaiguri, rejected the said application of the petitioner.

4. Being aggrieved by and dissatisfied with the aforesaid order of the learned J.M., 2nd Court, Jalpaiguri, the present petitioner has filed this revisional application praying for setting aside the impugned order and passing necessary order.

5. The Opposite Party No.1, State of West Bengal, and the Opposite Party No.2 Suman Sharma, wife of the petitioner Narendra Kumar Sharma are contesting the matter, but none of them has filed any affidavit-in-opposition in this case.

6. It appears that on the basis of a written complaint of the Opposite Party No.2, Police of Matelli P.S. initiated Complaint case No. 44/04 dated 28.07.2004. Then police investigated into the case and submitted a charge-sheet against the present petitioner u/s 498A of the Indian Penal Code. Hearing the parties learned Judicial Magistrate, 2nd, Court, Jalpaiguri, rejected the prayer of the petitioner for his discharge from the said case and the learned J.M., 2nd Court, Jalpaiguri, fixed date for consideration of charge.

7. It is to be considered now as to whether the learned J.M., 2nd Court, Jalpaiguri, was legal, correct, proper and justified in passing the impugned order, and whether there was any perversity or abuse of the process of the Court thereby or not.

8. It has been submitted by Mr. Sabyasachi Banerjee, learned counsel for the petitioner that the Opposite Party No.2/Defacto-complainant in her application never alleged that any part of torture, either physical or mental, was ever inflicted upon her within the jurisdiction of Matelli PS, and no part of cause of action ever arose within the jurisdiction of Matelli PS, and as per the complaint the alleged incident of torture, if any, took place in the residence of the petitioner at Bijoy Colony, Plot No. 14, Ward No. 17, PS & PO - Sikar, Rajasthan, and as per FIR No. 44/04 dated 28.07.04 also place of occurrence was at Bijoy Colony, Plot No. 14, Ward No. 17 PS & PO - Sikar, Rajasthan, outside the territorial jurisdiction of Matelli PS and Court of Jalpaiguri. For that reason the petitioner filed an application before the learned J.M., 2nd Court, Jalpaiguri, on 31.01.2008 praying for his discharge on the ground of non-maintainability of the proceedings due to lack of territorial

jurisdiction. But learned J.M. concerned rejected the said application of the petitioner on 15.12.2008, and as such the impugned order requires to be set aside and the proceedings require to be quashed for lack of territorial jurisdiction of the Court concerned. In support of his submissions the learned counsel for the petitioner has relied upon the decisions reported in 2004 C.Cr. L.R. (SC) 972 [Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai & Anr.] and (2007) 2 C Cr L R (SC) 46 [Manish Ratan & Ors. v. State of MP. & Anr.].

9. Mr. Abhijit Adhya, learned counsel for the Opposite Party No.1 State has contended that as per the FIR and the materials of the CD the Place of Occurrence was at Sikar, Rajasthan, which is outside the territorial jurisdiction of Jalpaiguri Court, and most of the charge sheeted witnesses are also residents of Churu District of Rajasthan, which is not within the territorial jurisdiction of Jalpaiguri Court.

10. None has made any submission on behalf of the Opposite Party No.2.

11. It is not disputed that the Opposite Party No.2 is the legally married wife of the petitioner and their marriage was solemnized according to Hindu Rites on 26.05.03, and presently the Opposite Party No.2, wife of the petitioner, is residing at Soongachi Tea Estate P. S. Matelli, Jalpaiguri, West Bengal, under the care of her father Radheshyam Khandelwal. It has not also been disputed that on the basis of a complaint of the Opposite Party No.2, Matelli PS FIR 44/04 dated 28.07.04 was initiated u/s 498A of the Indian Penal Code, and in the said FIR the place of occurrence has been mentioned as "Bijoy Colony, Plot No. 14, Ward No.17, Jaipur Road, PS & PO - Sikar, Rajasthan", and the details of the accused of the present petitioner has been mentioned therein as "Narendra Kumar Sharma, Bijoy Colony, Plot No.14, Ward No.17, Jaipur Road, PS & PO - Sikar, Rajasthan". From the Charge-Sheet No. 79/04 dated 31.12.04 submitted by Officer-In-Charge, Matelli P.S., also it appears that most of the witnesses mentioned therein are residents of district - Churu, Rajasthan. Apparently, according to FIR and charge-sheet the P.O. was at Sikar, Rajasthan, within Kotowali PS, which is outside the territorial jurisdiction of Matelli P.S. of Jalpaiguri or Jalpaiguri Court. It also appears from the CD from the statement of the witnesses that the alleged incident of torture upon the Complainant/Opposite Party No.2, if, any, was inflicted at Sikar, Rajasthan, not within the jurisdiction of Matelli PS, Jalpaiguri, and there is no such specific allegation in the CD that the alleged incident of torture upon the Defacto-complainant/Opposite Party No.2, ever happened within the Matelli PS. Jalpaiguri. Rather it is apparent therefrom that the Defacto-complainant/Opposite Party No.2 came to Soongachi Tea Estate, Matelli, Jalpaiguri, West Bengal, on 09.06.04, and there is no such statement that the Defacto-complainant/Opposite Party No.2, was ever tortured after she came to Soongachi Tea Estate on 09.06.04. It also appears from the statements of the parents of opposite party No.2 in the case diary that after their daughter came before them at Soongachi Tea Estate, Jalpaiguri, on 9.6.2004, themselves and their daughter attempted to contact their son-in-law or

the present petitioner, but could not contact him. So it cannot be said that any cause of action due to said torture upon the Defacto-complainant/Opposite Party No.2, ever arose within the jurisdiction of Matelli P.S. of Jalpaiguri, and whatever cause of action, if any, arose in connection with alleged torture upon the Defacto-complainant/Opposite Party No.2, arose at Sikar in the State of Rajasthan, which is outside the territorial jurisdiction of Matelli Police Station or Jalpaiguri Court.

12. It has also been observed by the learned Judicial Magistrate in the impugned order that:

By and between rival contentions the admitted position is that none of the witnesses stated before the police that the defacto-complainant was tortured at her parent's house at Jalpaiguri by the accused. Most of their statements referred to the incidents which allegedly occurred at the matrimonial house of the defacto-complainant at Sikar, Rajasthan.

13. But in spite of the aforesaid observation learned J.M., 2nd Court, Jalpaiguri, has rejected the prayer of the accused for discharge as according to him "Since there is specific allegation of torture within the jurisdiction of this Court, in the FIR, I must say in all fairness, in agreement with the learned A.P.P. that the prosecution should be given a chance to prove the same".

14. The observations of the learned Judicial Magistrate in this regard appear to be same what confusing and contradictory. When it has already found by the learned Magistrate concerned that it is an admitted position that none of the witnesses stated before the police that the defacto-complainant was tortured at her parent's house at Jalpaiguri by the accused and most of their statements referred to the incidents which allegedly occurred at the matrimonial house of the defacto-complainant at Sikar, Rajasthan, and as per the First Information Report also the place of occurrence has been mentioned at Sikar, Rajasthan, then there can be no hesitation to hold that the alleged incident of torture, if any, took place at the matrimonial home of the petitioner at Sikar, Rajasthan, which is beyond the territorial jurisdiction of Matelli Police Station or learned Magistrate's Court, Jalpaiguri.

15. Section 177 of the Criminal Procedure Code deals with the ordinary place of inquiry and trial. The provision of section 177 of the Criminal Procedure Code reads as follows:

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.

16. It has also been held by the decision reported in 2004 C Cr LR (SC) 972 (Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai & Anr. In para 9 that: "All crime is local, the jurisdiction over the crime belongs to be country where the crime

is committed" as observed by Blackstone. A significant word used in section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code."

17. It has also been observed by the Hon"ble Supreme Court in the decision reported in (2007)2 C. Cr. LR (SC)46 that:

8. "Interpretation of the term "ordinarily" will have to be considered having regard to the provisions contained in section 178 thereof which reads as under:

"178. Place of inquiry or 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. Clause (c) of the said provision, thus, has been applied in the instant case.

10. Whether the allegations made in the complaint petition would constitute a continuing offence, thus, is the core question.

11. In a case of this nature, an offence cannot be held to be a continuing one, only because the complainant is forced to leave her matrimonial home."

18. In this case also the alleged offence cannot be said to be a continuing offence only because the defacto-complainant was forced to leave her matrimonial home and to come to her father"s house, as there is no specific allegation of torture in her father"s house by her husband.

19. In the instant case it appears that there can be no uncertainty regarding local area where the alleged offence was committed in view of the fact that the place of occurrence has been mentioned in the FIR as well as in the address of the present petitioner and other witnesses mentioned in the charge-sheet, and apparently the alleged incident took place within the local jurisdiction of Sikar, Rajasthan, and not within the jurisdiction of Matelli PS of Jalpaiguri Court, and cause of action, if any, also arose within the local jurisdiction of Sikar, Rajasthan, and not within the local jurisdiction of the Matelli PS of Jalpaiguri. As such it appears the Matelli PS of Jalpaiguri District of West Bengal had no territorial jurisdiction to investigate into the said allegation of the FIR or to file chare-sheet and the said 2nd Court of learned Judicial Magistrate, Jalpaiguri, West Bengal, had no territorial jurisdiction to try the said case.

20. Having regard, to the submission of the learned counsel for the parties, the aforesaid decisions of the Hon"ble Supreme Court, CD and other materials on

record, and other circumstances, it appears that the Matelli PS of Jalpaiguri of West Bengal and Jalpaiguri Court had no local or territorial jurisdiction to deal with the said case, as no part of the alleged cause of action arose at Soongachi Tea Estate under Metalli Police Station of Jalpaiguri, and consequently learned Judicial Magistrate concerned of Jalpaiguri, West Bengal, had no local or jurisdiction to deal with the matter or to pass the impugned order taking cognizance of the alleged offence. As such the learned Judicial Magistrate, 2nd Court, Jalpaiguri, was not legal, correct, proper and justified in passing the impugned order and the said order was perverse, and it would be abuse of process of the Court to continue with the said proceeding. Hence, the impugned order dated 15.12.2008 passed by the learned Judicial Magistrate, 2nd Court, Jalpaiguri in G.R. Case No. 1197 of 2004 is hereby set aside, and the accused/petitioner be discharged and the said proceedings are quashed. The written complaint be returned to the opposite party No.2, who if so chooses or advised, may file the same in the proper Court for dealing with the same in accordance with law.

21. The CRR No. 358 of 2009 stands allowed accordingly.

22. A copy of this order along with the lower Court record be sent to the Court of learned Judicial Magistrate 2nd Court, Jalpaiguri, through the learned Chief Judicial Magistrate, Jalpaiguri, immediately for information and compliance.

Urgent xerox certified copy of this judgment and order, if applied for, be supplied to the parties expeditiously.