

(2004) 09 CAL CK 0019

Calcutta High Court

Case No: C. R. R. No. 1816 of 2003

Joynab Mirza and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Sept. 28, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 177, 178, 179, 482
- Penal Code, 1860 (IPC) - Section 498A, 506

Citation: (2005) 3 CHN 527

Hon'ble Judges: Sankar Prasad Mitra, J

Bench: Single Bench

Advocate: Milan Mukherjee, for the Appellant; Sk. Kasem Ali Ahmed, for the opposite party No. 1, Sekhar Basu and Tapas Ghosh for opposite party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

Sankar Prasad Mitra, J.

This is an application u/s 482 of the Code of Criminal Procedure filed by the petitioners praying for quashing the chargesheet being No. 48 of 2003 dated 25.7.2003 u/s 498A/506 of the Indian Penal Code submitted in the Court of the learned Sub-Divisional Judicial Magistrate, Bolpur, District-Birbhum in G.R. No. 191 of 2003 arising out of Labpur Police Station Case No. 35 of 2003 dated 5.6.2003.

2. On the basis of a written complaint lodged by Sayeeda Khan against the present petitioners before SDJM, Bolpur, the learned Judge referred the case to Labpur Police Station u/s 156(3) of Cr. PC directing the police to lodge FIR and accordingly the case was started and the I.O. took of investigation of the case and ultimately the chargesheet u/s 498A/506 was submitted against the present petitioners whereupon the learned SDJM took cognizance of the offence and issued warrant of arrest against the present petitioners fixing 8.9.2003 for ER.

3. In the complaint the complainant alleged that taking advantage of absence of her husband the petitioner No. 4 Zohaib Mirza kidnapped her daughter Joynab Parsania and forcibly married her. The complainant came to know about this and she went to the house of the accused Zohaib Mirza when the Zohaib Mirza and inmates of his house threatened the complainant with dire consequence. The complainant being afraid left the house of the accused and after few days the accused persons (petitioners) started torturing her daughter Joynab Parsania both physically and mentally over the issue of non-payment of dowry. So again the complainant went to the house of accused persons (petitioners) at Aligarh, U.P. and tried to meet her daughter but, the accused persons (petitioners) did not allow her to meet her daughter. However, on 9.2.2003 Joynab Parsania daughter of the complainant fled away from the house of her husband and took shelter in the house of her mother (complainant) at Aligarh, U.P. The complainant finding no other alternative to save her daughter's life left Aligarh with her daughter and ultimately started residing in the native village at Brahamarigram, P.S.-Labpur, District-Birbhum. The complainant also alleged that even at Brahamarigram they received threat call from antisocial elements.

4. Learned Advocate Mr. Milan Mukherjee appearing on behalf of the petitioners drawing my attention to a decision reported in [Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another](#), , submits that it is true that the Magistrate directed the police to investigate the case and after investigation the chargesheet was filed by the police against the petitioners u/s 498A/506 of IPC. Even assuming the complaint containing the allegations against the petitioners are accepted in toto still then no part of the cause of action arose within the jurisdiction of Labpur Police Station. It is also submitted by him that the complainant herself disclosed that the offences were committed at Aligarh, U.P. where the petitioners, complainant and her daughter were residing at the relevant point of time. Therefore, all the allegations, which are per se without any basis, took place according to the complainant (O.P. No. 2) at Aligarh, State of U.P. and not within the jurisdiction of Labpur P.S. District-Birbhum in the State of West Bengal. Thus, SDJM Court at Bolpur has no jurisdiction to deal with the matter. Learned Advocate Mr. Mukherjee referring to Sections 177 and 178 of Cr. PC submits that since no part of cause of action arose within the jurisdiction of Labpur P.S., SDJM Bolpur had no jurisdiction to take cognizance of the offence and issue process against the petitioners. It is further submitted by Mr. Mukherjee that since the offences were committed at Aligarh, State of U.P., the proceeding in connection with the offences pending before SDJM., Bolpur should be quashed and a direction be given to SDJM to return the chargesheet to the I.O. who shall file the said chargesheet before any competent Court at Aligarh in the State of U.P.

5. Learned Advocate Mr. Sk. Kasem Ali Ahmed appearing on behalf of the O.P. No. 1 drawing my attention to C.D. as also the complaint filed by the complainant at Labpur P.S. submits that the offences are continuing offences and because of the

existence of torture both physical and mental for non-payment of dowry and threat to kill, the complainant and her daughter became so frightened that they had to leave Aligarh leaving household articles there. Therefore, all the circumstances compelled them to live at village Brahamarigram, P.S.-Labpur, District-Birbhum since 11.2.2003. Learned Advocate Mr. Sk. Kasem Ali Ahmed also drawing my attention to C.D., C.S., Complaint and Section 178 of Cr. PC submits that offence is continuing offence which compelled the complainant and her daughter to leave Aligarh to save their own life and take shelter in the native village at Brahamarigram, P.S. Labpur, District-Birbhum. This fact gives ample jurisdiction to SDJM, Birbhum to try the case against the petitioners. According to him the decision cited by the learned Advocate for the petitioners is not applicable in this case.

6. Learned Advocate Mr. Tapas Ghosh appearing on behalf of the O.P. No. 2 drawing my attention to Section 498A/506 of IPC as also the complainant submitted in this case submits that the incidents of torture and threat upon complainant's daughter for non-payment of dowry compelled them to leave Aligarh on 9.2.2003 and the complainant and her daughter started living in the native village at Brahamarigram, P.S.-Labpur, District-Birbhum. According to him in fact the cruel treatment of accused Zohaib Mirza upon the complainant and her daughter frightened them and actually to save their own life they left Aligarh and started living at the native village since 11.2.2003. Mr. Tapas Ghosh referring to Section 179 of Cr. PC submits that in the circumstances, the offence committed by the accused persons at Aligarh in consequence compelled the complainant and her daughter to leave Aligarh in order to save their own life and as such, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. It is therefore, submitted by Mr. Ghosh that in the circumstances, the SDJM Bolpur, District-Birbhum has ample jurisdiction to try the case instituted against the petitioners u/s 498A/506 of IPC. According to him the decision cited by learned Advocate for the petitioners is not applicable as the fact of the case is otherwise.

7. Section 179 of Cr. PC runs as follows :

"When an act is an offence by reason of anything which has been done, and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

8. The written complaint submitted along with C.S. reveal prima facie materials against the petitioners in respect of offences u/s 498A/506 IPC. It is true that the above offences had been committed at Aligarh, State of U.P. and as a consequence of such offence the complainant and her daughter became so frightened that both of them had to leave Aligarh to save their own life and they ultimately started living at Brahamarigram, Labpur P.S., District-Birbhum. Therefore, it is clear that the complainant's daughter who became a subject of cruelty had to take shelter at her

parents" house at Brahamarigram, P.S.-Labpur, District-Birbhum and therefore, the consequences of cruelty ensued at that place. Thus, the Court at Bolpur, District-Birbhum has territorial jurisdiction to try the case instituted against the petitioners u/s 498A/506 of IPC. In this connection, I may refer to a decision reported in [Nandadulal Dey and Others Vs. Putul Dey,](#) In that case the Court observed that when the wife subject of cruelty living at the house of her parents, consequences of cruelty ensued at that place, the Court of that place has territorial jurisdiction to try wife complainant u/s 498A of IPC. Therefore, although the offences were committed by the petitioners at Aligarh, State of U.P., the consequence ensued at Brahamarigram, P.S.-Labpur, District-Birbhum because complainant and her daughter being frightened had to leave Aligarh under compulsion to save their life, Thus, in view of Section 179 of Cr. PC and the facts and circumstances disclosed in this case, it can be concluded that SDJM, Bolpur, District-Birbhum has jurisdiction to try the case against the petitioners u/s 498A/506 of IPC.

9. Thus, the contention of learned Advocate for the petitioner cannot be accepted and I find no reason to quash the proceedings pending against the petitioners. Thus, the application u/s 482 of Cr. PC filed by the petitioners is considered and rejected.

10. The application is disposed of accordingly. Learned SDJM, Bolpur, District-Birbhum is directed to proceed with a case against the petitioners expeditiously.

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