

(2006) 03 CAL CK 0010

Calcutta High Court

Case No: C.R.R. No. 2158 of 2005

Sri Nakul Chandra Mondal and
Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: March 17, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(1), 156(2), 157, 178, 179
- Penal Code, 1860 (IPC) - Section 120B, 307, 34, 406, 498A

Citation: (2007) 1 ILR (Cal) 83

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Sekhar Basu and Tapas Kumar Ghosh, for the Appellant; Kazi Safiullah and Sk. Abdus Salam, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Sinha, J.

This revisional application u/s 482 of the Code of Criminal Procedure (in short the Code) filed by the Petitioners is aimed at quashing the criminal proceeding being G. R. Case No. 602/ 04 arising out of Pandaveswar Police Station (in short P.S.) Case No. 42/04 dated June 23, 2004 under Sections 498A / 307 of the Indian Penal Code (In short I.P.C.) which is now pending before the Court of the learned Additional Chief Judicial Magistrate (hereinafter called the ACJM), Durgapur.

2. Before entering into the merit of the revisional application, it would be fruitful to mention the facts as disclosed in the First Information Report (in short FIR) lodged by the wife Chaitali Ghosh, the de facto complainant, who was not made a party in this revisional application.

3. The facts as disclosed in the FIR, in short, is that the de facto complainant Chaitali Ghosh was married with one Amitava Ghosh, son of Gourisankar Ghosh of Suri,

West Khottabazar on June 28, 1999. At the time of marriage, father of the de facto complainant paid Rs. 2 lakhs in cash, gold ornaments weighing about 20 bhories and other articles and furnitures worth about Rs. 50000/- as "joutuka" in the marriage to the husband party. After marriage the de facto complainant was staying with her husband in her matrimonial home. A few months after the marriage, her father-in-law told her to bring a diamond ring and a scooter for the journey of his son Amitava Ghosh for his profession. Amitava Ghosh, husband of de facto complainant is a lawyer in Suri Court. Father of the de facto complainant expressed his inability to pay the diamond ring and scooter and the said refusal paved the way of torture on de facto complainant in various ways.

4. She was not given food sometimes and was tortured both physically and mentally. She was not only tortured by her husband, father-in-law, mother-in-law, brother-in-law, but also by married sister-in-law and her husband when the sister-in-law and her husband used to visit her matrimonial home. De facto complainant informed her father, mother, relatives and some other persons as named in the FIR relating to physical and mental torture on her by the accused persons named in the FIR. It was also alleged by the de facto complainant that her husband was involved with one Pritilata Das filed an application before the Marriage Registrar, Bakreswar to marry the said Pritilata Das, On April 14, 2002 at about 10 P.M. when she was sleeping in her bedroom she awoke from sleep feeling her body wet with smell of kerosene and found that her brother-in-law was pouring kerosene on her body and her parents-in-law were instigating her brother-in-law to set fire on her body. Her husband then went to bring a match box to set fire on her body but, at that time there was sound of knocking at the outside door and the accused persons went to see who was knocking the door and, taking this advantage the complainant managed to escape from her father-in-law's house and took shelter in her maternal uncle's house.

5. Next morning her maternal uncle came to her matrimonial home for settling the matter but he was abused and insulted by her inlaws and her husband. Next day, she was sent to her father's house at Pandaveswar by her maternal uncle. The de facto complainant is also lawyer of Suri Bar Association and she intimated the matter to the senior members of the Bar for settlement but, the Bar Association could not solve the dispute. On March 12, 2004 mother of the de facto complainant came to her matrimonial home to request her husband and other in-laws to tack back her but her husband and other in-laws insulted her mother using filthy languages and drove out her mother. Her mother felt insulted and after returning to home at Pandaveswar became ill and expired on March 13, 2004 due to heart attack. In the FIR it was alleged by the de facto complainant that her husband and other in-laws are responsible for the untimely death of her mother. Thereafter, she lodged the FIR on June 23, 2004 at Pandaveswar P. S. and on the basis of it, the Pandaveswar P. S. Case No. 42 dated June 23, 2004 under Sections 498A / 307 of the I.P.C. was started against six accused persons including the present two accused

Petitioners. After completing investigation the Pandaveswar P. S. submitted charge-sheet in the Court of learned ACJM, Durgapur who took cognizance of offence. Being aggrieved by and dissatisfied with the investigation by Pandaveswar P. S. and taking of cognizance by the learned ACJM, Durgapur, the Petitioners have approached this Court in this revisional application for quashing the said criminal proceeding.

6. Mr. Sekhar Basu, the learned senior advocate appearing for the Petitioners submitted that, if the whole body of the FIR is construed properly and read carefully, it would be clear that no part of incident took place within the jurisdiction of Pandaveswar P. S. The entire incident alleged in the FIR will reveal that everything happened within the jurisdiction of Suri P. S. and no part of incident took place within Pandaveswar P. S. Even in the formal FIR filled up by the police officer of Pandaveswar P. S. receiving the original FIR from the de facto complainant, the place of occurrence has been shown as Suri West Khottabazar, P. S. Suri, District. Birbhum. The mother of the complainant died a natural death at Pandaveswar and over that matter no separate case was started. Accordingly, in order to attract jurisdiction of Pandaveswar P. S. as a consequence concerning death of mother of de facto complainant, the Pandaveswar P. S. had no authority to take up investigation in this case which is mainly a case u/s 498A of I.P.C. Though, Section 307 of I.P.C. has been added in the FIR there is no element of Section 307 of I.P.C. in the present case. There was no FIR or investigation concerning death of mother of the complainant.

7. Mr. Basu further submitted that Section 156(1) and Section 157 of the Code prescribes the police officers power to investigate and procedure for investigation. Section 156 (1) of the Code lays down that, any officer-in-charge of a police station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into to try under the provisions of Chapter XIII. Section 157 of the Code prescribes the procedure for investigation and Section 157 is controlled by Section 156. Section 156 of the Code clearly reveals that any officer of a police station can investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into to try. In the present case the entire incident as alleged in the FIR took place within jurisdiction of Suri P. S. and no part of incident concerning physical and mental torture on the wife to attract elements of Section 498A of the I.P.C. took place within jurisdiction of Pandaveswar P. S. The Pandaveswar P. S. had, therefore, no jurisdiction to investigate concerning the FIR lodged by the de facto complainant Chaitali Ghosh and learned ACJM, Durgapur had no authority to take cognizance on the basis of charge-sheet submitted by Pandaveswar P. S. after investigation. The investigation was conducted by pandaveswar P. S. beyond the territorial jurisdiction concerning the offence and being so taking of cognizance by the learned ACJM, Durgapur was bad in law. Mr. Bose submitted that only the Suri P. S. had the

authority to investigate into the matter and, if after investigation by Suri P. S. the police found any material final report as envisaged u/s 173 of the Code would have been submitted before the learned Magistrate at Suri. Accordingly, the investigation was bad in law and taking of cognizance by the learned Magistrate on the basis of police report which was not in accordance with law was also bad in law. The entire proceeding requires to be quashed and in support of his contention Mr. Basu placed a decision in 2004 C Cr LR (SC) 972

8. Mr. Kazi Safiullah, the learned Public Prosecutor appearing for the State of West Bengal submitted that some part of incident took place within the jurisdiction of Pandaveswar P. S. Death of Mother of the de facto complainant is a consequence of the act of the accused persons and it resulted into mental shock and torture on the de facto complainant while she was staying in her father's house at Pandaveswar. Mr. Safiullah submitted that provisions of Section 179 of the Code is squarely applicable in the present case and the Pandaveswar P. S. had territorial jurisdiction to investigate into the alleged offence on the basis of the FIR and the learned Magistrate at Durgapur had territorial jurisdiction to take cognizance of offence.

9. Mr. Safiullah further submitted that objection concerning territorial jurisdiction cannot be a ground to quash the criminal proceeding when the FIR clearly discloses elements of cognizable offence against all the accused persons. Quashing of a criminal proceeding is completely different from lack of territorial jurisdiction. If during trial it is found that due to the lack of territorial jurisdiction investigation was not in accordance with law which amounted to serious prejudice, then only, during trial the learned Magistrate can consider whether lack of territorial jurisdiction can be a ground for discharge. But that cannot be a ground for quashing the criminal proceeding in the present case when the FIR without adding anything to it or subtracting anything from it clearly discloses sufficient elements of cognizable offence against all the accused persons including the present two Petitioners. Mr. Safiullah accordingly submitted that there is no ground to quash the criminal proceeding and in support of his contention he cited the decision in [Satvinder Kaur Vs. State \(Govt. of N.C.T. of Delhi\) and Another](#),

10. I have given my. due considerations on the submissions made by the learned advocates for the parties and carefully perused the revisional application and the annexures made with the said revisional application particularly the FIR and the order of the learned Magistrate dated June 30, 2005 rejecting the applications filed by the Petitioners for quashing the proceeding. At the outset, I observe that the learned ACJM, Durgapur rightly rejected the contention of the Petitioners by passing the order that he has no power to quash a criminal proceeding and only High Court in exercise of its power u/s 482 of the Code can quash a criminal proceeding.

11. After going through the contents of the FIR I find, FIR prima facie discloses elements of Section 498A of I.P.C. against all the six accused persons including the present two accused Petitioners. Whether Section 307 of I.P.C. would be established

or not is a matter of trial or at least a matter to be considered during the stage of Section 227 or 228 of the Code, but charge-sheet has been submitted u/s 307 of I.P.C, also, and not only that, the order of the learned Magistrate reveals that charge-sheet has been submitted under Sections 406 and 120B of I.P.C. along with Sections 498A and 307 of I.P.C. In this connection I make it clear that Section 406 of I.P.C. was not initially in the FIR, but the said section has been added in the charge-sheet. It is well-settled law now that, FIR need not be in minutest details and a lengthy FIR containing whole narration of entire history is not required. The purpose of FIR is only to set the law in motion. Even one sentence, if discloses elements of cognizable offence may be ground of registration of FIR and starting of investigation. If during course of investigation the police officer in charge of the investigation finds materials of other offence also, the said Investigating Officer is not debarred from proceeding with investigation in respect of other offence that transpired during course of investigation and can submit report in final form disclosing the materials transpired during investigation and in the charge-sheet can include the offences which also transpired during investigation though initially at the time of FIR those sections were not in the formal FIR.

12. Section 406 of I.P.C. is not a continuing offence and Section 406 of I.P.C. is confined to the place where the articles during marriage was delivered to the husband in a case of such nature or where the entrustment of properties were made. There is nothing to show that marriage between the de facto complainant and her husband Amitava Ghosh was solemnised at Suri and generally marriages are solemnised in the house of the bride. If it is considered that the marriage between the de facto complainant and her husband Amitava was solemnised at Pandaveswar and there the "stridhan" articles and other articles were delivered, the Pandaveswar P. S. had the jurisdiction to investigate the case at least in respect of offence u/s 406 of I.P.C. The Supreme Court in several decisions including the decision in ArunVyas v. Anita Vyas 1999 SCC (Cri) 629 observed that offence u/s 498A of I.P.C. is a continuing offence.

13. It would be a fallacious argument, if we read only 156 (1) of the Code to ascertain the jurisdiction of investigation. In this connection provisions of Section 156(2) of the Code is also important. Section 156 (2) of the Code runs as follows:

No proceeding of a police officer in any case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

14. In this connection to give proper answer to the question raised by the Petitioners, provisions of Sections 178 and 179 of the Code are also important which are reproduced as follows:

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 a continuing one, and continues to be committed in more local areas than once, 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.

179. Offence triable where act is done or consequence ensues. - 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.

16. Section 178 (c) is important in this case as it shows that where an offence is a continuing one, and continues to be committed in more local areas than one it may be inquired into or tried by a Court having jurisdiction over any of such local areas. I have already expressed the view of the Supreme Court in *Arun Vyas V. Rani Vyas* (supra) that offence u/s 498A of I.P.C. is a continuing offence. In the present case the de facto complainant wife was compelled to leave the matrimonial home when on 14.4.02 night there was an attempt to burn her by fire. The insult and abusive language used by the husband and other in-laws on the mother of the de facto complainant on 12.3.04 is to some extent the consequence of the act of the accused persons causing mental torture on the de facto complainant wife. FIR already disclosed about torture demanding dowry, i.e. demand of diamond ring and scooter such torture culminated in attracting prima facie elements of Section 498A of I.P.C. which is a continuing offence and it still continues. Therefore, a combined reading of the effect of Sections 178(c) and 179 of the Code would make it clear that at least some part of the incident took place within the jurisdiction of Pandaveswar P. S. The advancement of argument by Mr. Sekhar Basu that Pandaveswar P. S. had no jurisdiction to take up investigation, therefore, is unacceptable. At the same time, the argument that the learned ACJM, Durgapur had no authority and jurisdiction to take cognizance is also unacceptable.

17. Section 498A of the I.P.C. in explanation describes what the term "cruelty" means and it includes injury to her health or limb whether mental or physical as embodied in explanation (a). Explanation (b) also prima facie is attracted as it is reflected in the FIR. So prima facie elements of Section 498A of I.P.C. are there and when prima facie elements are there no question of quashing the criminal proceeding arises. There are catena of decisions of the Supreme Court in this respect and it is not necessary to refer so many decisions but, I refer only a few decisions namely, [R.P. Kapur Vs. The State of Punjab, State of Haryana and others Vs. Ch. Bhajan Lal and others](#), *State of Kerala v. O.C. Kuttan* 1999 AIR SCW 679 : [State of Kerala and Others Vs. O.C. Kuttan and Others](#), *State of Karnataka v. M. Devendrappa* 2002 SCC (Cri) 539 and *M. Narayandas v. State of Karnataka* 2004 SCC

(Cri) 118. When in the present case FIR discloses prima facie elements of cognizable offence there is no ground of quashing the criminal proceeding.

18. The decision in AIR 1944 73 (Privy Council) cited by Mr. Basu for the Petitioners are not applicable properly as facts and circumstances as well as offences alleged in that reported case are different from the facts and circumstances of the present case before us and offences under which charge-sheet has been submitted. The decision cited by Mr. Kazi Safiullah gives interpretation of law in this decision cited by Mr. Kazi Safiullah is to some extent different from the decision cited by Mr. Sekhar Basu. For the said purpose in order to arrive at correct position of law I like to cite some decisions of the Hon"ble Supreme Court which would make the position clear in the present case concerning jurisdiction of Pandaveswar P. S. to investigate the case.

19. Territorial jurisdiction at this stage cannot be a ground for quashing proceeding in view of the observations made above considering provisions of Sections 156(2) and 178(3) and 179 of the Code. In this connection I rely upon the observations of the Supreme Court in [H.N. Rishbud and Inder Singh Vs. The State of Delhi](#). In H.N. Rishbud v. State of Delhi (supra) it was held by the Supreme Court that, a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. The Supreme Court further observed that, "If therefore cognizance is in fact taken, on a police report vitiated by the breach of mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in AIR 1944 73 (Privy Council) and Lumbhardar Zutshi v. The King" 1950 PC 26 (D).

20. I also like to refer another decision in State of M.P. v. Suresh Kaushal 2004 SCC (Cri) 1185. In that decision the question that was raised before the Supreme Court was relating to territorial jurisdiction of Court for trial of offence where consequence ensued. In the said reported case a criminal case was registered at the instance of the respondent complainant against her husband and husband's sister for offences under Sections 313 and 498A read with Section 34 of the I.P.C. It was found that most of the acts alleged against the accused including physical torture to complainant when she was in the family way took place in the nuptial home at Indore where the couple resided after marriage, but later on she had been taken back to her parental house at Jabalpur. The miscarriage took place while she was at Jabalpur. The High Court in revision held that Sessions Court at Jabalpur lacked territorial jurisdiction to try the case and quashed the entire criminal proceeding.

21. In appeal the Supreme Court set aside the order of the High Court and held that, Court of Sessions at Jabalpur had jurisdiction to try the case and in deciding the

appeal the Supreme Court placed reliance on Section 179 of the Code. The Supreme Court also observed that High Court made error by quashing the criminal proceeding when the FIR and other materials disclosed sufficient materials against accused persons. The Supreme Court indicated that in such a situation the High Court should have transferred the case to the Court which the High Court found to be vested with jurisdiction. In interpreting Section 179 of the Code the Supreme Court held that, "The above section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two Courts. One is the Court within whose local jurisdiction the act has been done and the other is the Court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the Court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at India.

22. In the instant matter no doubt from the FIR it appears that most of the incident of alleged torture and torture demanding dowry took place in her matrimonial home at Suri but, it is Clear that a part of the consequence of the act of the accused persons also took place within the jurisdiction of Pandaveswar P. S. On March 12, 2004 mother of the de facto complainant came to her matrimonial home but she was insulted by her husband and other in-laws and, mother of the de facto complainant after returning home died on March 13, 2004. It is true that no separate case was started concerning death of mother of the de facto complainant but, the insult and the abusive words used by the accused persons on her mother which caused her death also amounted to mental torture on the de facto complainant and this part of action is a consequence of act of accused persons. Moreover, entrustment of "stridhan" or "joutuka" in the marriage was made within jurisdiction of Pandaveswar and chargesheet has been submitted u/s 406 of I.P.C. along with other sections. Therefore, there is no illegality in investigation and taking cognizance and it cannot be contended that the learned Magistrate of Durgapur has no jurisdiction to proceed with the case.

23. If the accused persons feel that inmates of their house or local neighbours of the house were to be examined during investigation they are at liberty to produce such witnesses during their evidence as defence witness. If the prosecution thinks fit prosecution may also examine any witness and if proper application is made before the learned Magistrate or, the learned Judge, the learned Court below would invoke his jurisdiction u/s 311 of the Code and would give opportunity to both parties to adduce sufficient evidence exercising powers u/s 311 of the Code for the just decision of the case. The learned Magistrate or the learned Judge would consider at the time of final conclusion of trial as to whether there was any serious miscarriage of justice in this case due to investigation by Pandaveswar P. S.

24. When the FIR discloses sufficient materials of offence this Court does not find any ground to quash the criminal proceeding in view of the observations made

above. In the result, the revisional application fails and is dismissed.

25. I make it clear that I have not entered into merits of the case and the observations made by this Court are only for the purpose of the present revisional application and the learned Magistrate or the learned Judge would arrive at his own decision on the basis of evidence and materials on record without being influenced in any way by the observations of this Court.

26. Criminal section is directed to send a copy of this order to the learned Additional Chief Judicial Magistrate at Durgapur for information and necessary action.

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(LATER)

27. Let xerox certified copy of this order be given to the parties within two weeks from the date of making of such application.