

(2007) 12 CAL CK 0067**Calcutta High Court****Case No:** C.R.R. No. 1178 of 2007

Amardeep Sinha

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Dec. 14, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 306, 326, 406, 498
- Criminal Procedure Code, 1973 (CrPC) - Section 178, 179, 181, 181(4), 220

Citation: (2008) 2 CHN 752**Hon'ble Judges:** Partha Sakha Datta, J**Bench:** Single Bench**Advocate:** S.K. Sadhukhan, for the Appellant; Sanjay Chakraborty, for opposite party No. 2 and S. Pachhal, for the Respondent**Final Decision:** Dismissed**Judgement**

Partha Sakha Datta, J.

This revisional application dated 23.3.07 has been filed to quash a proceeding being C-524 of 2003 u/s 498/406/120B/506/326, IPC pending before the learned Metropolitan Magistrate, 7th Court, Calcutta.

2. The opposite party No. 2 de facto complainant lodged a petition of complaint to the learned C.M.M., Calcutta, being Case No. C-524 of 2003 against her husband and other in-laws alleging offences u/s 498A/406/120B/506/306, IPC with the facts that after solemnization of marriage which took place in the year 1992 she had been living in her matrimonial home and she was subjected to constant physical and mental torture on demand of dowry in the sum of Rs. 1 lac. She was harassed and coerced for fulfilling the demand of husband and other in-laws and to bring the peace her father paid Rs. 25,000/- It has been alleged in the complaint that at the time of marriage a cash of Rs. 50,000/- was provided to the accused petitioner along

with presentation of gold ornaments, almirah, silver ornaments and other valuable articles and all these were delivered to the petitioner at the time of marriage at 28, Vivekananda Road, Calcutta-6 and all these articles were carried to the matrimonial home. Still then the greed of the accused person continued and the complainant wife came to be subjected to physical and mental torture, abused by filthy words over the demand of money which however cannot be fulfilled and several events of assault and torture have occurred and at long last on 3.5.03 she was driven out from matrimonial home at New Delhi and she was forced to come back to Kolkata to reside with her parents where she was medically treated after she was assaulted. Even when she was in Kolkata she came to be threatened over telephone with dire consequences and was abused filthy words.

3. This proceeding is sought to be quashed on the sole ground that the learned Metropolitan Magistrate in Calcutta had no territorial jurisdiction because the alleged incidence of cruelty and torture took place which was the matrimonial home of the petitioner. The learned Advocate for the petitioner takes me to a decision Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, , wherein Their Lordships of the Hon'ble Supreme Court held that when acts complained of had taken place at a certain place and complaint was filed in another place the application of Section 178(c), Cr. PC does not apply because no part of the cause of action arose at the place where the complaint was filed.

4. The learned Advocate for the de facto complainant takes me to a number of decisions namely the State of Kerala and Ors. v. O.C. Muttan and Ors. reported in 1999 C Cr. LR (SC) 228, where Their Lordships held that power of quashing a criminal proceeding should be exercised very sparingly and with reference to the decision in State of Karnataka v. M. Devendrappa and Anr. reported in 2002 C Cr. LR (SC) 324, it is submitted by the learned Counsel of the opposite party No. 2 that where there is legal evidence on the basis of which a trial can be held the Revisional Court must not sit to judge whether such legal evidence is believable or not. Now these two decisions really bear no mentioning because the question is whether the Trial Court has jurisdiction to try offence or not. I am taken to Arun Vyas and Anr. v. Anita Vyas reported in 1999 C Cr. LR (SC) 297, where it has been held that the offence u/s 498A is a continuing one. In paragraph 3 of the petition of complaint the complainant stated that the present petitioner and others started torturing the complainant physically and mentally over demand of money and her father paid Rs. 25,000/- and she was ultimately driven out of the matrimonial home. In the case of Y. Abraham Ajith (supra) it was found by Their Lordships of the Hon'ble Supreme Court that the complainant herself left the house of the husband on 15.4.97 and there was no whisper of allegation about any demand of dowry or colour of any act constituting an offence which was alleged at Chennai. But here the facts are different. Having gone through the petition of complaint as a whole, it appears that (i) that dowry was paid in Calcutta at the time of marriage (ii) she was allegedly driven out of the matrimonial home after being beaten and having come to Calcutta she was

medically treated and (iii) as per petition of complaint she was continued to be threatened with dire consequences over telephone at Calcutta. Importantly in the petition of complaint it has been alleged that at the time of marriage her father paid to the accused No. 1 a sum of Rs. 50,000/- by cash and gold ornaments and other articles. Along with the charge u/s 498A, IPC a charge u/s 406, IPC has been laid. Sub-section (4) of Section 181, Cr. PC provides that any offence of criminal misappropriation or of criminal breach of trust may be enquired into or tried by a Court within whose legal jurisdiction the offence was committed or any part of the property which is the subject-matter of the offence was received or retained or was required to be returned or accounted for by the accused persons. The charge u/s 406, IPC is clearly triable by the Court of the learned Magistrate in Calcutta and this charge u/s 406, IPC can be said to be correlated to the charge u/s 498A, IPC. So far as the charge u/s 498A, IPC is concerned the petition of complaint if read as a whole clearly reveals that the offence has become a continuing one and even in Calcutta the offence continues to be committed. Therefore, the decision in *Arun Vyas v. Anita Vyas*, is applicable to the facts and circumstances of the present case.

5. The learned Advocate for the O.P. No. 2 also takes me to some decisions in Vijai Ratan Sharma and Others Vs. State of U.P. and Another, wherein Allahabad High Court held that in view of Sections 179, 181(4) and 220, Cr. PC the Court within whose legal jurisdiction the wife has been residing has jurisdiction to try the offence because part of the cause of action took place within the local jurisdiction of the Court under whom the complainant had been residing. Here it was held by the Allahabad High Court that offence can be tried at the place in accordance with Section 181(4), Cr. PC, where stridhan properties were received at the place of bride's father. My attention has been drawn to the 3-Judge Bench decision of the Supreme Court in the case of State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, and now this decision is an elaborate exposition of the provision of joinder of charges and persons and it has been held that on a plain construction of a provision of Section 239, Cr. PC (old) it is open to the Court to avail itself cumulative of the provisions of the different clauses of Section 239 for the purpose of framing charges and charges so framed by it will not be in violation of the law. A decision of Rajasthan High Court namely 1998 Cr. LJ 554 is that where the wife is compelled to live at her parents house to satisfy unlawful demands, amounts to cruelty.

In view of what has been discussed above, I hold that the learned Magistrate in Calcutta has jurisdiction to try the offence.

The revisional application is dismissed.