

(2014) 3 AD 693 : (2013) 202 DLT 79 : (2013) 3 DMC 367

Delhi High Court

Case No: Writ Petition (Criminal) 1455 of 2012 and Criminal M.A. No's. 17692 of 2012 and 557 of 2013

Pankaj Dhiman

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: July 23, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 179, 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 326, 34, 406, 498A, 506

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Hon'ble Judges: Sunita Gupta, J

Bench: Single Bench

Advocate: Shailendra Bhardwaj and Ms. Aromas Bhardwaj, for the Appellant; Yashpal Rangi, Advocate for R-1 and 2, for the Respondent

Judgement

Sunita Gupta, J.

By virtue of this writ petition filed under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of FIR No. 43 dated 29th November, 2011 registered u/s 498A/406/326/506/34IPC at PS Mahila Thana, Sonapat primarily on the ground that the alleged crime was committed outside the jurisdiction of Sonapat police and the Sonapat police, at the most, should have transferred it to the concerned Police Station in Delhi for necessary action. In the reply by way of affidavit filed by respondents No. 1 & 2, an objection was taken as to the maintainability of the writ petition in this Court on the ground that the FIR was registered at Sonapat. In matrimonial cases, the jurisdiction of registering the cases falls where the bride resides. Moreover, the dowry articles are also liable to be returned, therefore, since

the complainant was forced to live at Sonapat where her parents are residing, as such, the case was rightly registered at Sonapat. Furthermore, if the petitioner has any grievance regarding registration of FIR, in that eventuality, he has a remedy to file a petition before Punjab and Haryana High Court, Chandigarh. After completing investigation, charge sheet has already been submitted in the Court of learned Magistrate, Sonapat and now the case is fixed for framing of charge. As such, the petition is liable to be dismissed.

2. I have heard Mr. Shailendra Bhardwaj, Advocate for the petitioner and Mr. Yashpal Rangji, Advocate for respondents No. 1&2.

3. It was submitted by learned counsel for the appellant that even if the averments made by the complainant in the complaint are taken on their face value, even then the entire cause of action has arisen at Delhi, that being so, the police station at Sonapat had no jurisdiction to register the case. Reliance was placed on [Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another](#), and [Niraj Trivedi Vs. State of Bihar and Others](#).

4. Per contra, it was submitted by the learned counsel for the respondent that since the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Sonapat, learned Magistrate at Sonapat has jurisdiction to proceed with the criminal case instituted therein. Reliance was placed on [Sunita Kumari Kashyap Vs. State of Bihar and Another](#), and [Kushal Kumar Gupta and Another Vs. Mala Gupta](#). It was further submitted that, even otherwise, if according to the petitioner no cause of action has arisen at Sonapat, since the FIR has been registered at Sonapat, therefore, the appropriate remedy was to file the petition before the Punjab and Haryana High Court and not in this Court.

5. Rebutting the submission of learned counsel for the respondent, learned counsel for the appellant placed reliance on [Navinchandra N. Majithia Vs. State of Maharashtra and Others](#), and [Om Prakash Srivastava Vs. Union of India \(UOI\) and Another](#), for contending that writ petition for quashing of the FIR registered at Sonapat is maintainable even in this Court by virtue of Sub-clause 2 of Article 226 of the Constitution of India.

6. Before going to the rival contentions of the learned counsel for the parties, it will be in the fitness of things to have a glance on the complaint made by the complainant which led to registration of FIR 43/2011 at PS Mahila Thana, Sonapat. It was alleged that marriage of the complainant was performed with the petitioner-Pankaj on 9th March, 2008 according to Hindu rites and ceremonies. After few days of her marriage, her husband told her that he has got Government service in Delhi High Court. After some time, behaviour of her husband Pankaj and that of her mother-in-law Bimla changed towards her suddenly and they used to torture her often for dowry and car used to be demanded. Her father had given sufficient articles in the marriage as per his capacity but the petitioner and his parents were not satisfied with the same. Whenever her two

sister-in-laws, namely, Seema and Annu used to come from Village Chulkana to Alipur, they used to pick up quarrel. They used to abuse and taunt her as to what she had brought in dowry. Her husband and in-laws used to start beating her. She used to bear all this because she had a child in her womb, which was born in the shape of a girl. After this, they crossed all limits and pushed her after holding her hair as to why she gave birth to a girl. On 23rd October, 2010, during night, Pankaj, his mother Bimla Devi and father-in-law after closing her in a separate room started beating her and told her to demand money for car otherwise she would be finished and nobody will suspect about it. Pankaj told her that he will re-marry and nothing will happen to him because he had been appointed in High Court and has relations with judges. She saved her life after keeping quite. On 24th October, 2010, after informing her father on phone, she requested him to reach in the house of her father-in-law. Her father arrived at Alipur. Members of the house of her father-in-law abused him, fought with him and attempted to kill him. She, somehow, reached Sonapat along with her father and went to Police Station. Police called the members of her father-in-law in the police station at Sonapat. A meeting of Panchayat was held. Pankaj assured her before the Panchayat that in future he will not beat her and do any objectionable behaviour. As such, she went back to Alipur with him. After keeping her well for few days, again the members of the family started beating her and this time, mainly her sister-in-law Annu of Chulkana and brother-in-law Rajkumar became instrumental in destroying her family. They used to provoke her husband and his parents against her. She continued to bear keeping in view her little daughter. One day, husband of Pankaj's sister, namely, Rajkumar and Pankaj's sister Annu came at Alipur during night time. Her mother-in-law started abusing her that after giving birth to a girl she had enhanced household expenditure. She told her that she also had three daughters. Thereupon, Rajkumar kicked her with his leg, Pankaj slapped her and her sister-in-law caught hold of her hair. She fell down. They brought her in the inner room. Her father-in-law also came. Pankaj threatened her that he will make her father to leave the government job in case she makes complaint against him. On 2nd September, 2011, she was sent to a rented house at 5/123, Nirankari Colony, Delhi. They stopped her visits to Alipur. Pankaj used to go to his parents' house and used to come to the tenanted room late night and used to harass her mentally, pull her hair and used to kick at her head with his fist. She started suffering from headache. In this rented accommodation, husband of his sister, namely, Raj Kumar started visiting and he also kicked her twice. On 5th November, 2011, she was compelled to sign some papers in Hindi and English. Thereafter, she called police on 100 number and also called her father from Sonapat to whom she narrated all the facts and came back to Sonapat where she lodged the complaint, on the basis of which the FIR was registered.

7. The basic submission of learned counsel for the petitioner is that no part of the alleged offence was committed within the jurisdiction of Sonapat, as such, even if all the allegations made in the FIR are accepted on the face value, the Sonapat police had no jurisdiction to investigate the matter.

8. Chapter XIII of the Code of Criminal Procedure, 1973 (in short "Code") deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 are relevant which are as follows:

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.

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 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.

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.

9. From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

10. The crucial question is whether any part of cause of action arose within the jurisdiction of the Court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

11. While in civil cases, normally the expression "cause of action" is used, in criminal cases, reference is to the local jurisdiction where the offence is committed. These variation in etymological expression do not really make the position different. The

expression "cause of action" is, therefore, not a stranger to criminal cases.

12. As held in [Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others](#), by "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.

13. In a generic and wide sense, (as in Section 20 of the Code of Civil Procedure, 1908), "cause of action" means every fact which it is necessary to establish to support a right to obtain a judgment. As held in [South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Others](#), "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts which taken with law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.

14. Applying the aforesaid legal principles, to the factual scenario as disclosed by the complainant in the complaint, it is to be seen whether no part of cause of action arose in Sonapat so as to oust the jurisdiction of the concerned Magistrate to deal with the matter.

15. The averments made in the complaint made by the complainant which led to the registration of case FIR against the petitioner reflects that she had levelled allegations of ill treatment and cruelty at the hands of the petitioner and his family members at Delhi. There is further averment that due to ill-treatment, on 24th October, 2010, she went along with her father to Sonapat and went to police station, Sonapat where family members of the petitioner were called. A Panchayat took place. The petitioner assured before the Panchayat that in future he will not beat her and do any objectionable behaviour. Thereupon she returned back with him to Alipur. However, again the things did not move smoothly, with the result she again had to return back to her father's house at Sonapat. As such, part of cause of action arose at Sonapat. Moreover, in view of Section 178 and 179 of the Code, the offence in this case was continuing one having been committed in more local area and one of the local area being Sonapat, the FIR was registered there.

16. In Sunita Kumari Kashyap (supra), relied upon by learned counsel for respondent, the Appellant got married to Sanjay Kumar Saini-Respondent No. 2 on 16.04.2000 as per the Hindu rites and ceremonies at Gaya. According to the Appellant, at the time of marriage, her father gifted all the household utensils, Almirah, Double Bed, Dining Table, Fridge, Television and an amount of Rs. 2,50,000/- in cash. In spite of the same, immediately after the marriage, she was blamed for bringing less dowry by her in-laws and they started harassing and torturing her. Her husband also used to support his family members to torture her. When she was pregnant, she was forcibly taken out of her matrimonial home at Ranchi and brought to her parental home at Gaya. After giving birth to a girl child the circumstances became even worse and everyone started blaming her that she had brought an additional burden on them. After some time, her husband came

out with a new demand that unless her father gives his house at Gaya to him she will not be taken back to her matrimonial home at Ranchi. Having continuous torture and unbearable nature of treatment by her husband and in-laws for years and years, having no other option, the Appellant lodged a First Information Report, being No. 66 of 2007 under Sections 498A and 406 read with Section 34 of Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 at Magadh Medical College Police Station, Gaya.

17. The Chief Judicial Magistrate, after perusal of the charge sheet, found a prima facie case against the accused persons, accordingly, took cognizance of offences punishable under Sections 498A and 406 read with Section 34 IPC and Sections 3 and 4 of the D.P. Act against all of them and transferred the case to the Court of sub-Divisional Judicial Magistrate, Gaya for trial. Though an objection was raised stating that the Court at Gaya has no jurisdiction, the learned Magistrate, after considering all the relevant materials including the allegations in the complaint, rejected the said objection.

18. Aggrieved by the said order, the accused persons preferred Criminal Miscellaneous No. 42478 of 2009 before the High Court of Judicature at Patna. By order dated 19.03.2010, the High Court found that the proceedings at Gaya are not maintainable for lack of jurisdiction and quashed the entire proceedings in Magadh Medical College Police Station Case No. 66 of 2007 with liberty to the Appellant to file the same in appropriate Court and quashed the criminal proceedings lodged against the husband.

19. Aggrieved by the impugned orders passed by the High Court, the Appellant-wife filed the appeals before Hon"ble Supreme Court by way of special leave petitions. It was held that in view of the specific assertion by the Appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill-treatment meted out to the complainant, Clause (c) of Section 178 is attracted.

20. Reference was made to [Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee](#), , where similar issue was considered by the Supreme Court and it was found that Clause (c) of Section 178 of the Code is attracted and the Magistrate at wife's parents' place has also jurisdiction to entertain the complaint. In the said decision, wife was the Appellant and the Respondents were the husband, parents-in-law and two sisters-in-law of the Appellant Sujata Mukherjee. The gist of the allegation of the Appellant, Sujata Mukherjee was that on account of dowry demands, she had been maltreated and humiliated not only in the house of her in-laws at Raigarh but as a consequence of such events, the husband

of the Appellant had also come to the house of her parents at Raipur and assaulted her. On behalf of the Respondents therein, it was contended before the learned Chief Judicial Magistrate, Raipur that the criminal case was not maintainable before the said learned Chief Judicial Magistrate because the cause of action took place only at Raigarh which was outside the territorial jurisdiction of the learned Magistrate at Raipur. A prayer was also made to quash the summons issued by the learned Chief Judicial Magistrate by entertaining the said complaint of Smt. Mukherjee. As the Chief Judicial Magistrate was not inclined either to quash the summons or to transfer the criminal case to the competent court at Raigarh, the criminal revision petitions were filed before the High Court, one by all the five Respondents and another by four of the Respondents excluding the husband presumably because there was specific allegation against the husband that the husband had also gone to Raipur and had assaulted the Appellant and as such the husband could not plead want of territorial jurisdiction. Both the said criminal revision cases were disposed of by a common order dated 31.08.1989 by the High Court holding that the case against the husband of the Appellant alone is maintainable and in respect of other Respondents related to the incidents taking place at Raigarh, hence, the criminal case on the basis of complaint made by the Appellant is not maintainable at Raipur. The said order of the High Court was challenged by the Appellant-Sujata Mukherjee in the Supreme Court. By placing reliance on Section 178 of the Code, in particular Clauses (b) and (c), it was held that in view of allegations in the complaint that the offence was a continuing one having been committed in more local areas and one of the local areas being Raipur, the learned Magistrate at Raipur had jurisdiction to proceed with the criminal case instituted in such Court.

21. The authorities relied upon by learned counsel for the petitioner has no application to the facts of the case in hand inasmuch as in those cases, on peculiar facts and circumstances of those cases, it was found that Court concerned has no territorial jurisdiction to try the case. In *Y. Abraham (supra)*, it was found that the complainant left the place N (where she was residing with her husband) and came to the city C, as such it was held that since all the alleged acts as per the complainant took place at N, the Courts at C did not have the jurisdiction to deal with the matter. Similarly, in *Niraj Trivedi (supra)*, wife had either lived at Delhi or U.S.A. where the alleged atrocities took place as such, it was held that the Court at Patna (where her parents were living) had no jurisdiction but things are entirely different in the instant case as seen above.

22. Having observed that Sonapat Court has jurisdiction to try the matter, it is not required to go into the fact whether this Court is competent to quash the proceedings pending in Sonapat Courts.

23. In view of the above discussion, since part of cause of action arose at Sonapat, and the offence is continuing one, as such, the Magistrate concerned has jurisdiction to deal with the matter. That being so, the petition and all the pending applications are accordingly dismissed. It is made clear that nothing has been expressed on merits and claims of both the parties. The conclusion is confined to the territorial jurisdiction of the

Court at Sonapat.