

(2013) 05 DEL CK 0403

Delhi High Court

Case No: Criminal M.C. 1720 of 2013

Amballur Joseph James

APPELLANT

Vs

State of Delhi and Another

RESPONDENT

Date of Decision: May 1, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 482
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 18, 19, 20, 21

Citation: (2013) 201 DLT 601 : (2013) 3 DMC 651

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Pradeep Narula and Ms. Poonam Solanki, for the Appellant; Navin Sharma, APP for State with Satish Kumar, SI, PS New Friends Colony, New Delhi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Kailash Gambhir, J.

Crl. A. No. 5364/2013 (Exemption)

1. Exemption allowed subject to all just exceptions. Application stands disposed of.

Crl. M.C. No. 1720/2013 & Crl. M.A. No. 5363/2013

2. By this petition filed u/s 482 of Cr. P.C., petitioner seeks quashing of the order dated 23rd January 2013 passed by learned Metropolitan Magistrate, (Mahila Court), Saket, New Delhi thereby dismissing the objections raised by the petitioner to challenge the territorial jurisdiction of the said court to try the offences punishable u/s 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act, 2005"). Mr. Narula, learned counsel appearing for the petitioner submits that the learned Metropolitan Magistrate has erred in not

considering the application of Section 28(1) of the D.V. Act, 2005 which envisages that the proceedings u/s 12, 18, 19, 20, 21, 22 and 23 and also the offences punishable u/s 31 of the D.V. Act, 2005 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

3. The contentions raised by the counsel for the petitioner is that the offence in the present case is alleged to have been committed by the petitioner within the jurisdiction of Gurgaon and the same is punishable u/s 31 of the D.V. Act, 2005 and therefore u/s 177 of the Code of Criminal Procedure, the same can be tried by a court within the local jurisdiction of Gurgaon where it was committed. Learned counsel for the petitioner further submits that the trial court has completely ignored the judgment of the Apex Court in the case of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, which has clearly laid down the meaning of the cause of action and the principles for determining the territorial jurisdiction of any court. Counsel for the petitioner argued that the expression "so far as practicable" used in Section 31(2) of the D.V. Act, 2005 cannot have an overriding effect over Section 177 of the Code of Criminal Procedure. Thus, the counsel for the petitioner raised a contention that it is not necessary that the offence should be tried by the same Magistrate who has passed the order u/s 31 of the D.V. Act, 2005, even where the alleged offence has been committed beyond the territorial jurisdiction of this court. Counsel for the petitioner also submits that there is no provision included in the D.V. Act, 2005 to obliterate the overriding effect of Section 177 of the Code of Criminal Procedure, 1973. Counsel for the petitioner also argued that the learned trial court has completely misconstrued in reading the Rule 14(4), 15(5) and 15(8) of the Domestic Violence Rules, 2006 (hereinafter referred to as "the D.V. Rules, 2006"). Counsel for the petitioner also argued that the D.V. Act, 2005 is completely silent with regard to the offence which takes place outside the jurisdiction of the Magistrate trying the offence under the D.V. Act, 2005.

4. Based on these submissions, learned counsel for the petitioner submits that the learned Magistrate has exceeded its territorial jurisdiction for an offence, which was alleged to have been committed within the jurisdiction of Gurgaon courts.

5. I have heard the learned counsel for the petitioner and given my thoughtful consideration to the arguments advanced by him.

6. For better appreciation, Section 28 of Domestic Violence, 2005 and Section 177 of the Code of Criminal Procedure, 1973 are reproduced as under:

28. Procedure.-

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences u/s 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application u/s 12 or under sub-section (2) of section 23.

177. Ordinary place of inquiry and trial.

Every offence shall ordinary be inquired into and tried by a court within whose local jurisdiction it was committed.

7. A reading of Domestic Violence Act reveals that it does not contain any self-contained procedure for its administration. Section 28(1) of the D.V. Act, 2005 deals with the procedural part. The said Section clearly lays down that save as otherwise provided in the said Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences punishable u/s 31 of the D.V. Act, 2005 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974). It would thus clearly mean that the provisions of the Code of Criminal Procedure are applicable to all the proceedings under the aforesaid Sections of the D.V. Act, 2005 and wherever the D.V. Act, 2005 itself provides a procedure then the same shall govern the proceedings under the said Sections and wherever the D.V. Act, 2005 is silent then the procedure with regard to the proceedings under the said Sections shall be governed by the provisions of the Code of Criminal Procedure, 1973. Section 31(2) of the D.V. Act, 2005 clearly provides that the offence under Sub Section (2) of Section 31 -shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused. Rule 15(4) of the D.V. Rules, 2006 also provides that it is the choice of the aggrieved person to make a complaint of breach of protection order or interim protection order directly to the Magistrate or the police, if it chooses to do so.

8. The common law principle of England that all crimes are local and justiciable by local Courts only within whose jurisdiction they are committed find its place in Section 177 of the Code of Criminal Procedure. The competency of a forum to take cognizance of an inquiry into, and trial of an offence, is determined by the place where the offence may have been committed. It is to be borne in mind that Section 177 of Cr. P.C. speaks of an ordinary place of enquiry and trial within whose jurisdiction the offence was committed. "Ordinarily" in section 177 indicates that the Rule is not invariable in all cases. Section 177 of Cr. P.C. itself has been framed by the legislature thoughtfully by using the precautionary word "ordinarily" to indicate that the rule is not unexceptional or unchangeable. Section 177 of Cr. P.C. prescribes general application and will govern a criminal trial held under the provisions of the Criminal Procedure Code.

9. On a conjoint reading of the aforesaid provisions and also considering the fact that the D.V. Act, 2005 is a special legislation, this Court is of the view that the complainant had rightly approached the concerned court of the Magistrate complaining the breach of the protection order and the objection raised by the

petitioner with regard to the territorial jurisdiction of the court of Magistrate has no merit. The learned Magistrate has extensively dealt with the point in controversy and thus, this Court finds itself in complete agreement with the same. The petition is devoid of any merits; and the same is, therefore, dismissed. It is ordered accordingly.