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Court : Patna

Decided On : Mar-13-1997

Judge : Narayan Roy, J.

Appeal No. : Criminal Misc. No. 4659 of 1983 (R)

Appellant : Bhaskar Mitra and ors.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. P.S. Dayal

Disposition : Application Dismissed.

Judgement :

Narayan Roy, J.

1. Heard counsel for the parties.

2. By this application under Section 482 of the Code of Criminal Procedure, the petitioners have prayed for quashing the entire criminal prosecution including order taking cognizance dated 24.7.1992 for the offence under Sections 498A, 323, 341 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

3. Short facts given rise to this application, are as under:

Opposite party No. 2 Smt. Tripti Mitra, wife of petitioner No. 1 filed, a complaint being Complaint Case No. 123 of 1992 before the Chief Judicial Magistrate, Giridih stating therein, inter alia that her marriage was solemnised according to Vedic and Hindu religious rites on 19.2.1988 with Bhaskar Mitra, accused No. 1 and after some time the accused persons started demanding heavy cash under duress she wrote letter to her brother to fulfill the demand of the accused persons and accordingly her brother paid a sum of Rs. 3, 000 and again a sum of Rs. 5, 000 to the accused persons, Even after payment of money by her brother she was subjected to cruelty. She was subjected to mercilessly assault by her husband, Bhaskar Mitra and regularly she was being tortured by the accused persons for fulfilment of their demands and consequently thereof she was driven out from her husband's house by her husband and father-in-law and mother-in-law and she was threatened with dire consequences and, accordingly, she went to her brother place at Kargali and there also accused persons were chasing her and ultimately she was shifted to Baniadih. For the aforesaid reasons, she therefore, apprehending torture at the hands of the accused persons, lodged the complaint case. On the basis of the complaint petition the complainant was examined on S. A. and accordingly, the learned Chief Judicial Magistrate, Giridih, took cognizance of the offence under Sections 498A, 341, 323 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against the petitioners in Complaint Case No. 123 of 1992.

4. Learned Counsel appearing on behalf of the petitioners submitted that the learned Chief Judicial Magistrate, Giridih, had no territorial jurisdiction to take cognizance of the offence as the complainant after her marriage with petition No. 1 started living at Allahabad and therefore, a Court at Allahabad could have taken cognizance of the offence and the complaint petition was not maintainable before the Chief Judicial Magistrate, Giridih.

5. Learned Counsel appearing on behalf of the opposite party, however, submitted that as the complainant was residing permanently at Baniadih in the district of Giridih with her brother, Giridih was the permanent residence attracting the provisions of Section 182(2) of the Code of Criminal Procedure and in that view of the matter the Chief Judicial Magistrate, Giridih had jurisdiction to entertain the

complaint petition and to take cognizance of the offence.

6. Mr. P.S. Dayal, learned Counsel for the petitioners has placed reliance on Mr. Rajaram Venkatesh and Ors. v. The State of A.P. and Ors. 1993 (1) Cr LJ 707.

7. Before, I proceed to decide the question as argued at the bar with regard to the jurisdiction of the Court at Giridih it would be appropriate to refer to the relevant portion of the complaint, which is as follows:

That thereafter I was forcibly driven out of my husband's house by my husband and the father and the mother-in-law . With open threatening that I will never be spared and would be done to death at any place if I did not obey them and return with the scooter. I had no alternative but to go back to my brother's place and I have been compelled to live there. After some time I alongwith my brother found some unknown persons with cruel faces loitering and moving in suspicious manner near about my residence. On enquiry from them they laughed brutally and told my brother that they were by my husband Bhaskar Mitra to have news about me. I alongwith my brothers became panicky and because of my safety I was secretly removed to Baniadih about three months back and since then I have been residing there permanently at the residence of my brother Sudhir Kumar Sinha. My life is under great danger at the hands of all the accused persons who have already committed several serious offences from time to time. And as such they are fit to be put on trial and eventual punishment may kindly be meted to them according to law.

8. A bare perusal of the complaint petition makes it crystal clear that the accused persons used to treat the complainant with cruelty and they used to torture her by various means and accordingly, the complainant having put to mental harassment and danger shifted to her brouther's place at Giridih, where she started residing and filed the complaint petition for the illtreatment meted out to her at Allahabad.

9. On the basis of the averments made in the complaint petition and on reading the complaint petition as a whole it appears to me that different types of torture and illtreatment were meted out to the complainant opposite party No. 2 at Allahabad as a consequence of which she had to leave matrimonial house and to

shift to her brother's house at Giridih. The complainant could not have left her matrimonial house if she would not have been subjected to illtreatment and torture at the hands of the accused persons and its consequences had ensued at Giridih where the complainant was residing with her brother within the jurisdiction of the learned Chief Judicial Magistrate, Giridih and in that view of the matter, the Court at Giridih had jurisdiction to entertain and try such nature of offences as provided under Section 179 and Section 182(2) of the Code of Criminal Procedure. Section 179 of the Code read as follows:

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.

10. Section 182(2) of the Code of Criminal Procedure also confers jurisdiction upon the Court to try such type of offences where the first married lady has taken up the 'permanent residence.'

11. This question had come up before this Court for consideration and in the case of Sardar Harpal Singh and Ors. v. Balbinder Pal Kaur and Anr. 1991 East CrC 756. The learned Single Judge of this Court has held:

The whole scheme of the Act is to provide relief to the weaker section and it is never expected that she is required to file a case at the place where in-laws are residing from where she is alleged to have been driven out which will frustrate the name of the relief which she is likely to get in the event of her success in the case. Therefore, leaving of the place at Rourkella and residing at Jamshedpur can be taken to include within even the word 'consequence' which resulted in parting company from her wedded life and residing at Jamshedpur in her father's house.

The learned Single Judge of this Court has further held :

Section 182(2) of the Cr.PC has also conferred jurisdiction to courts to try such type of offences where the first married lady has 'taken up' the 'permanent residence'. The present residence of opposite party No. 1 in this case, include the

word 'permanent residence' for the purpose of jurisdiction as she is not expected to go back to her in law's place unless the dispute is settled. In this circumstance, Section 182 of the Code also, confers jurisdiction to Jamshedpur Criminal Court to try the nature of the offence involved in this case for which cognizance has been taken.

12. In case of *Arun Khanna v. The State of Bihar and Anr.* 1994 (1) PLJR 513, a learned Single Judge of this Court has held:

Section 498A Indian Penal Code provides for punishment to husband or relative of husband of a woman subjected to cruelty. Explanation appended to the section defines 'cruelty' to mean:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her any person related to her to meet such demand.

A bare perusal of the provision would indicate that if a person is found guilty of any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or guilty of an act of harassment relating to demand for any property etc. he can be punished for the offence under Section 498A. Regarding of the complaint leaves no room for doubt that the allegations made therein do prima facie constitute the ingredients of the said offence. The only question is regarding territorial jurisdiction or the place of enquiry or trial.

In the instant case, the complainant has alleged that by reason of the conduct of the accused persons, she was forced to leave her matrimonial home. If the act of cruelty had not been committed and there was no danger to her life and health, there perhaps would have been no occasion for her to leave the house. She has

also alleged that as a consequence of the acts of the accused persons she is suffering mental agony at Dhanbad. In other words, the wrong or the offence is still continuing. In my opinion, the term 'cruelty' in Section 498A has to be given an extended meaning. If the woman continues to suffer the mental agony or torture as a result of the acts done to her by the husband or his relatives forcing her to leave the matrimonial home, it must be said that the cruelty is continuing. While construing the question of jurisdiction with respect to offence under Section 498A one should not forget the social background and the object for which the said offence has been created. This new penal provision is intended to provide benefit and relief to the females who constitute the weaker section of the society, the destitutes who have been turned out of the husband's home. If they are to be compelled to file the complaint only at the place where the act was committed, that is, at the place where the husband/in-laws reside, she may not be able to prosecute the complaint properly which will not serve the desired object. A learned Single Judge of this Court in the case of Sardar Harpal Singli (*supra*), relied upon by Mr. M.M. Banerjee on behalf of the opposite party, has taken the same view and I find myself in respectful agreement with the same.

13. In view of the averments made in paragraph 10 of the complaint petition and in view of the legal propositions noticed above, I hold that the complainant resided permanently at Giridih and as a consequence of the acts of the accused persons, the complainant had suffered mental agony at Giridih and in view of the fact that wrong or offence was still continuing, the complaint petition was well maintainable before the Chief Judicial Magistrate, Giridih and it had jurisdiction to take cognizance of the offence.

14. The decision relied upon by Mr. P.S. Dayal, learned Counsel appearing on behalf of the petitioners as referred to above, has no application in the facts and circumstances of the case.

15. For the reasons aforementioned I dismiss this application.