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Court : Madhya Pradesh

Decided On : Mar-20-2009

Reported in : 2009(4)MPHT175

Judge : N.K. Mody, J.

Appellant : Jitendra and ors.

Respondent : State of M.P.

Judgement :
ORDER

N.K. Mody, J.

1. Being aggrieved by the order dated 31-1-2009 passed by Sessions Judge, Neemuch in Cr. Rev. No. 03/2009, which is arising out of the order dated 25-11-2008 passed by JMFC, Neemuch in Cr. Case No. 1182/06 whereby the applications filed by the petitioners under Sections 177 and 178, Cr.PC was dismissed, was maintained the present petition has been filed.

2. Short facts of the case are that respondent prosecuted the petitioners for the offence punishable under Section 498A, IPC and under Section 3/4 of Dowry Prohibition Act before JMFC, Neemuch. After taking the cognizance the petitioners made appearance before the learned Court below and moved an application under Section 177/178 of Cr.PC, wherein it was alleged that as per the complaint lodged

by the complainant Smt. Varsha Rizwani the alleged offence has taken place at Jaijagat Colony, Indore, therefore the application filed by the petitioners be allowed and criminal case pending against the petitioners be dismissed holding that Court at Neemuch has no jurisdiction. The application was contested by the respondent. After hearing the parties learned Trial Court dismissed the application against which a revision petition was filed which was dismissed, hence the present petition.

3. Learned Counsel for petitioner argued at length and submits that impugned order passed by the learned Court below is illegal and deserves to be quashed. It is submitted that petitioner No. 1 is husband while petitioner Nos. 2 and 3 are parents of petitioner No. 1. It is submitted that petitioner No. 4 is brother of petitioner No. 1 while petitioner No. 5 is grand-father aged 90 years and the petitioner No. 6 is aunt of petitioner No. 1 residing at Gujrat. It is submitted that in the complaint lodged by the complainant it is nowhere stated that any part of the offence has taken place at Neemuch. It is also submitted that in the FIR itself it is mentioned that place of offence is at Indore where the petitioner No. 1 is residing and which is the matrimonial house of the complainant. It is submitted that in the facts and circumstances of the case there was no justification in dismissing the application and revision filed by the petitioners. Learned Counsel further submits that Neemuch is a place which is far away from Indore. It is submitted that parents of the petitioner No. 1 are quite old while grand-father of petitioner No. 1 who is petitioner No. 5 herein is of 80 years of age. Reliance was placed on a decision of Hon'ble Apex Court in the matter of Y. Abraham v. Inspector of Police : (2004) 8 SCC 100, wherein Hon'ble Apex Court has observed that - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed, held, is the general rule - However, the said rule is subject to several exceptions - No such exception applicable to the case at hand - Held the Magistrate concerned had no jurisdiction to deal with the matter as no part of cause of action for initiation of proceedings against accused arose within his local jurisdiction. It was further held that lack of jurisdiction of the Magistrate concerned to deal with the matter in a complaint filed under Sections 498A and 406, IPC and Section 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at place C where she came to stay after leaving her husband's house at place

N - All the offence alleged to have taken place at N - Said offences not continuing ones - No part of cause of action arose at place C - Hence, considering Sections 177 and 178, Cr.PC, held, the Magistrate at C had no jurisdiction to deal with the matter and quashed the proceedings and complainant was given liberty to file complaint in Appropriate Court.

4. Further reliance was placed on a decision of Apex Court in the matter of Manish Ratan v. State of M.P. : 2007(1) M.P.H.T. 14 (SC) : 2007 (1) JLJ 198, wherein Hon'ble Apex Court has held that - No part of offence under Section 498A, IPC occurring at parents' house - Court at parents' house has no territorial jurisdiction because complainant was forced to leave matrimonial home - Term ordinarily has to be considered having regard to provision under Section 178(c).

5. Learned Counsel for State submits that no illegality has been committed by the learned Courts below in dismissing the application filed by the petitioners as part of cause of action has accrued within the territorial jurisdiction of Neemuch. It is submitted that in the statement of the complainant it has been specifically mentioned that petitioners have threatened the complainant and demanded Rs. 5 lacs as dowry telephonically. It is submitted that since part of cause of action has accrued at Neemuch, therefore, Court at Neemuch was also having the jurisdiction. It is submitted that petition filed by the petitioners be dismissed.

6. From perusal of record it appears that Section 177, Cr.PC deals with the jurisdiction where the criminal case has to be tried according to which every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. In the present case, a handwritten complaint was lodged by the complainant wherein it is specifically mentioned that a demand of dowry was made by the petitioners at Indore. In the said complaint, nowhere it is stated that any offence was committed by the petitioners at Neemuch. In the complaint it is also stated that complainant was married to the petitioner No. 1 on 22-12-2002 while the complaint was lodged on 15-2-2006 wherein it was further alleged that petitioner No. 1 remarried on 16-2-2006. Upon the complaint, FIR was lodged at Crime No. 97/2006 and in column No. 5 (a) the distance of the place of offence from P.S. Neemuch is mentioned as 250 kms. And in Clause (b) of Para 5,

the place of occurrence is mentioned as matrimonial house of the complainant, i.e., Jaijagat Colony, Indore. It is true that in the statement which was recorded by the police, it has been stated by the complainant that petitioners threatened the complainant for demand of dowry telephonically, but in view of the clear-cut complaint made in writing and in the FIR where it is specifically mentioned that offence has taken at a place which is 250 kms. away from Neemuch and the place is matrimonial house of the complainant, one can safely reach on the conclusion that no part of offence was committed at Neemuch. In the circumstances there was no justification on the part of learned Courts below in dismissing the application filed by the petitioners.

7. In view of this, the petition filed by the petitioners is allowed and impugned orders passed by the learned Courts below whereby the application filed by the petitioners was dismissed, is set aside with a direction to the learned Court below to return the complaint to the respondent/police with a liberty to file the same before the Competent Court.

With the aforesaid observation, the petition stands disposed of.

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