

**Mohan Lal and ors. Vs. State**

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**Court :** Delhi

**Decided On :** May-28-1999

**Reported in :** 1999VAD(Delhi)24; 2000(1)ALT(Cri)5; 2000CriLJ3762; 79(1999)DLT758; II(1999)DMC217; 2000(56)DRJ652

**Judge :** J.B.Goel, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498-A

**Appeal No. :** Crl. M. (M) No.3480 of 1997

**Appellant :** Mohan Lal and ors.

**Respondent :** State

**Judgement :**

**J.B. Goel, J.**

1. This petition under Section 482 of the Code of Criminal Procedure (for short 'the Code) seeks to quash the proceedings and also the order dated 23.6.1995 passed by the learned M.M., Delhi and order dated 27.8.96 passed by the learned A.S.J. in revision on the ground of lack of territorial jurisdiction.

2. Briefly facts giving rise to the present petition are that one Smt.Poonam Sharma had lodged a complaint dated 30.7.1992 with the Crime Against Women Cell, New

Delhi (for short CAW). On the said complaint being forwarded by the latter FIR No.480/92 under Section 406,IPC was registered at P.S. Vikas Puri, New Delhi. After completing investigation, charge-sheet under Section 173, Cr.P.C. was submitted against all the petitioners for offences under Section 498-A and 406, IPC. The learned M.M. took cognizance and summoned the petitioners-accused. Petitioner Nos.1 to 6 respectively are the husband, the mother-in-law, brother-in-law (Jeth), father-in-law, sister-in-law (Jethani) and the brother-in-law (Dewar) of the complainant. After hearing the parties learned M.M. vide order dated 23.6.1995 held that the charges under Sections 498-A and 406, IPC were made out against the petitioners. In revision under Section 397, Cr.P.C. against that order the learned A.S.J. partly allowed the revision petition vide his order dated 27.8.1996, holding that offence under Section 406, IPC was not made out but offence under Section 498-A/34, IPC only was made out against all the petitioners. One of the objection taken before the learned A.S.J. was that the Courts at Delhi had no territorial jurisdiction to entertain and try the offences alleged. This objection has been overruled by the learned A.S.J. The petitioner-husband had also filed petition for divorce before the Court of District Judge, Dharamshala. That petition was allowed and a decree of dissolution of marriage was passed on 4.8.1994. That decree has been upheld in appeal by the High Court of Himachal Pradesh on 25.4.1995.

3. Learned Counsel for the petitioner has raised the following contentions.

4. Firstly, that Courts at Delhi has got no territorial jurisdiction on the allegations made in the complaint as the alleged acts of cruelty had taken place at Village Jawali, Distt. Kangra, Himachal Pradesh where the Marriage had taken place and parties had lived together after the marriage. Secondly, the allegations made in the complaint are false, mala fide and misconceived and no notice there of should have taken in the facts and circumstances. In any case the matter and the controversy involved has now been adjudicated and decided by the Civil Court who has passed a decree of divorce and the findings of that Court are binding on the Criminal Court.

5. These contentions have been disputed by the learned Counsel for the State. He has contended that the act of cruelty has also taken place at Delhi where demand for sale and share in sale proceeds of the Properties left by the father of the complainant in respect of share of the complainant has been made. He has also contended that the decree of Civil Court has no relevance in the facts and circumstances.

6. The wife-complainant in her complaint dated 30.7.1992 had alleged that her marriage with Mohan Lal, petitioner No. 1 had taken place on 17.7.1991 and for next 15 to 20 days she lived in the matrimonial home in the normal way, when her brother had brought her to Delhi as she had to take 12th class examination. Her husband had also visited her parents house in Delhi at that time and as desired by him by efforts made by members of her family he got employment in a factory at Gurgaon when he had stayed at her parents house; but in the meantime, her brother-in-law (Jeth) took her to the matrimonial home. Her husband after sometime left the job and he joined her in his village. It is alleged that thereafter sometime left the job and he joined her in his village. It is alleged that thereafter the husband and other in-law (petitioners herein) have been harrasing and treated her with cruelty both physically and mentally; her brother had visited her at her matrimonial home and he was also insulted and due to cruelty caused to her she came with her brother and since then has been living with her mother at Delhi. On the basis of this complaint FIR No. 480/92 was registered under Section 406, IPC and in due course report under Section 173, Cr. P.C. was submitted on which the learned M.M. took cognizance and held that offences under Sections 406 and 498-A, IPC are made out. But the learned A.S.J. in revision has held that charge under Sections 498-A/34, IPC also is made out against all the petitioners but not under Section 406, IPC. The State has not filed any revision or other proceedings against that order.

7. The question is whether on the material available on the record, Delhi Court has territorial jurisdiction to entertain and try the offence(s).

8. The venue of injury or trial is primarily determined by the averments made in the complaint or charge-sheet. It is not disputed that the marriage between the parties

had taken place at Village Jawali, Distt. Kangra, Himachal Pradesh and the parties had also lived together in the matrimonial home there. In the complaint also it is alleged that the acts of cruelty had taken place at the matrimonial home. The complaint does not show that acts of cruelty had taken place at Delhi, not the report under Section 173, Cr.P.C. disclosed if any cause of action or any act of cruelty had taken place at Delhi. It is thus not the case of the prosecution in the chargesheet that the husband or any member of his family had actually caused any act of cruelty at Delhi. The learned M.M. in his order dated 23.6.1995 has not dealt with this respect. The learned A.S.J. has noticed that though the marriage was solemnised at Himachal Pradesh and the wife was also subjected to cruelty there but the offence of cruelty is a continuing offence and as such the part of the cruelty had continued in Delhi.

9. An act will be a continuing offence where the act is an offence and by continuing that act from day to day a fresh offence is committed by the accused. In the present case the alleged act or acts of cruelty had taken place in (District Kangra) Himachal Pradesh at the matrimonial home of the complaint. These acts of cruelty came to end as soon as the complaint left her matrimonial home and came to Delhi and started living at her parents's house. The alleged acts of cruelty committed at her matrimonial home cannot be said to have continued at Delhi. Section 178 of the Code does not apply to case where the whole offence is committed within one jurisdiction. The learned A.S.J. thus was not right in his view that the cruelty in this case was a continuing offence. the impugned order to this extent is not legal and valid and is not sustainable.

10. Smt. Sujata Mukherjee v. Prashan Kumar Mukherjee, relied on by the learned Counsel for the State is of no help as in that case the allegations were that the complainant had been maltreated and humiliated not only in the house of the in-laws at Raigarh, but thereafter the husband came to the house of her parents at Raipur and had assaulted her. It was in those facts that it was held that as the cruelty had continued at her parents house at Raipur it was continuing offence which gave jurisdiction to Courts at Raipur which is not the case here.

11. In that view of the matter the learned M.M. has no territorial jurisdiction to take cognizance of the offences arising out of the aforesaid FIR No. 480/92. The order dated 23.6.1995 passed by the learned M.M. and order dated 27.8.1996 of learned A.S.J. are not valid and as such not sustainable. The result is that the Court at Delhi has no territorial jurisdiction to entertain and try the offences arising out of this FIR. This petition is accordingly allowed, proceedings arising out of FIR No. 480/92, P.S. Vikas Puri and the order dated 27.8.1996 of the learned A.S.J. and also order dated 23.6.1995 of learned M.M. are quashed.

12. In that view, it is not necessary to go into the merits of the case.

13. The bail bonds of the petitioners stand discharged.

14. The trial Court record shall be sent back forthwith.

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