

Sh. Chandra Parkash and Others Vs. State and Another

Sh. Chandra Parkash and Others Vs. State and Another

SooperKanoon Citation : sooperkanoon.com/684218

Court : Delhi

Decided On : Apr-15-1996

Reported in : 1996CriLJ3443

Judge : Usha Mehra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161, 173, 177, 181(4) and 482

Appeal No. : Crl. M.(M) 1797 of 1994

Appellant : Sh. Chandra Parkash and Others

Respondent : State and Another

Advocate for Def. : Ms. Mukta Gupta, amices Curiae and ; Ms. Seema Gulati, Adv.

Advocate for Pet/Ap. : Kulwant Swarup Sharma, Adv

Judgement :

ORDER

1. Sh. Chander Prakash and others are aggrieved by the registration of FIR No. 204/94 under S. 406/498-A, I.P.C. against them by the Police of Police Station, Paharganj. They want the FIR registered against them to be quashed. Quashing of the FIR has been sought on the grounds that (i) Delhi Police has no jurisdiction to

register this case; (2) that complaint under S. 406/498-A, IPC is barred by limitation; (3) on the basis of contents of FIR no case under S. 406/498-A, IPC has been made out and finally; (4) no mention of demand of dowry had been made in the petition for divorce filed by respondent No. 2, therefore, the present complaint is an afterthought. Moreover, before leaving the matrimonial home she did not lodge any police report.

2. Briefly the facts of the case are that complainant Smt. Rekha Thakur was married to petitioner No. 1 at Nazibabad, District Bijnaur, U.P. After marriage the parties resided at their matrimonial home at Mohalla Singhan, Kashipur, Distt. Nainital, U.P. The marriage took place on 9th July, 1989. However, within a few days respondent No. 2 filed a petition under S. 12 read with S. 13 of the Hindu Marriage Act for declaring the marriage null and void alternatively for dissolution of the marriage in the Court of Civil Judge at Bijnaur, U.P. Thereafter on 15th March, 1993 respondent No. 2 withdrew that petition. It is the case of petitioners that after coming to Delhi to the house of her brother complainant she has filed the present complaint with the Crime Against Women Cell on the basis of which the present FIR No. 204/94 was registered under S. 406/498-A, IPC.

3. Now adverting to the first objection regarding the territorial jurisdiction taken by petitioners, we must keep in mind that marriage was solemnised at Nazibabad (U.P.). The articles of dowry i.e. stridhan was also given at Nazibabad where marriage took place. Taking these factors into consideration Mr. K. S. Sharma, counsel for the petitioners contended that merely shifting to Delhi by the respondent No. 2 will not clothe Delhi Courts with the jurisdiction to the police to register a case against the petitioners. Under S. 181(4) of the Criminal Procedure Code (in short the Cr.P.C.) provisions have been made to take out proceedings against offences of criminal misappropriation or of criminal breach of Trust. Section 181(4) provides that the said offences may be enquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which was the subject of the offence was received or retained or was required to be returned or accounted for by the accused person. therefore, relying on this provision, Mr. Sharma contended that neither the offence of receiving the dowry was committed at Delhi nor articles were returned or required

to be accounted for at Delhi, therefore, Delhi Court has no jurisdiction. In this regard he placed reliance on the decision of *Harjeet Singh Ahluwalia v. State of Punjab* AIR 1986 Cri LJ 2070, where the question involved was whether the complaint could be filed for the misappropriation of property by the wife at place where she was residing, though the entrustment had taken place elsewhere. The Court after analysing these provisions opined that the requisite requirement is to determine as to what was the stipulation, if any, between the parties as to where the goods were to be returned or to be accounted for. In the absence of any such stipulation that Court would have the jurisdiction where the goods in question were kept as trust and the breach in respect thereof was committed, Relying on these observations Mr. Sharma contended that since goods as alleged were entrusted at Najibabad and are kept at Kashipur hence no cause of action arose at Delhi. The goods could either be returned or accounted for at Kashipur or at Najibabad, but by no stretch of imagination at Delhi. To get further support he placed reliance on the decision of this Court in the case of, *Ram Sarup Rastogi etc. v. State* 1979 CCC 31 (Del) where while interpreting the provisions of S. 406, IPC, this Court opined that complaint could be registered at a place where entrustment took place or where the party was to return or account for the same and not at the place where neither of the cause of action accrued. There is no quarrel with the proposition of law laid down in these decisions. But at the same time, we cannot loose sight of the facts of this case. In the report under S. 173, Cr.P.C. it has been mentioned that the engagement ceremony took place at Delhi. Part of the dowry articles were entrusted to the petitioners at Delhi at the time of engagement ceremony. Though this fact is disputed by the petitioners but at this stage this Court is not going into this controversy. Photographs have been filed showing the engagement ceremony held at Delhi in May, 1989 which form part of the report under S. 173, Cr.P.C. therefore, on the basis of complaint and the documents forming part of the report under S. 173, Cr.P.C. it can be said that part of the cause of action arose at Delhi. At this stage we have not to evaluate or apprise the evidence to come to the conclusion that the petitioner would ultimately get convicted. The Court is only to satisfy itself on the basis of material available and has to come to a prima facie view. Since the photographs showing the engagement ceremony having taken place at Delhi in May, 1989, it cannot be said

that Court at Delhi would not have jurisdiction. So far Delhi High Court judgment is concerned in that entrustment of amount of loan took and the cinema hall was to function at Lucknow. The terms of agreement described to and complied with at Lucknow, therefore, on the basis of these facts the Court concluded that the parties had stipulated the terms to be complied with at Lucknow, hence Delhi Court had no jurisdiction. But that is not the case in hand. There is a difference between the provisions of S. 177, Cr.P.C. and S. 181(4), Cr.P.C. So far as S. 177, Cr.P.C. is concerned that makes a general provision that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Whereas S. 181(4), Cr.P.C. makes a specific provision with regard to the offence of criminal misappropriation or criminal breach of trust and the ingredients have already been reproduced above. Admittedly the marriage took place at Najibabad, the engagement as per the prosecution case took place at Delhi. At Delhi part of the entrustment of property was done. Articles were to be returned or accounted for by the petitioners at the place where they were entrusted. Since part of the entrustment took place at Delhi, hence Delhi Court will have the jurisdiction.

4. Ms. Mukta Gupta counsel for respondent No. 2 has brought to my notice judgment of the Punjab and Haryana High Court in the case of Bhim Singh v. State of Punjab 1990 (2) CCC157 where the Court went to the extent of holding that in a criminal case like this where entrustment of the dowry articles took place at the time of marriage or other ceremonies the FIR can be registered at the place where woman is residing. Such FIR registered at that place cannot be quashed. Facts of that case were that marriage between petitioner Bhim Singh and Jaspreet Kaur took place at Chandigarh. Part of the demand was made at the native place of the woman in village Khara in District Patiala. While the case was still at investigation stage the husband filed a petition under S. 482, Cr.P.C. for quashing of the FIR. The Court after considering the provisions of Ss. 177 and 181(4), Cr.P.C. came to the conclusion that the complaint could be filed by the woman where she was residing. In that case as in the present case, the allegation of entrustment of various items of dowry to specific individuals were not made, still the Court held that in spite of these allegations being conspicuously absent still the FIR does not deserve to be quashed because the allegation do disclose a prima

facie case. Supreme Court in the case of Mrs. Dhanalakshmi v. R. Prasanna, : 1990 CriLJ320 observed that 'in proceedings instituted on a complaint, exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.' The meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not cannot be done at this stage.

5. So relying on the decision of Bhim Singh's case 1990 (2) CCC 157 (supra) I am of the considered view that this Court would have jurisdiction, firstly because part of the cause of action as alleged by the prosecution took place at Delhi and secondly - complainant is residing at Delhi. Hence, the FIR lodged by the complainant under S. 406, IPC cannot be quashed.

6. So far as the complaint under S. 498-A is concerned the bare reading of the statement recorded of the complainant under S. 161, Cr.P.C. makes out a prima facie case against the petitioners. Mere fact that in the divorce petition the details of demand and cruelty were not mentioned cannot be a ground to quash the FIR, because the marriage was sought to be annulled and divorce proceedings were filed hardly after few days of the marriage. It was not necessary for the complainant to give all the details of the demand of dowry or cruelty in the said petition. I find no force in the submission of counsel for the petitioner that the Police at Delhi lack jurisdiction or that prima facie case has not been made out on the basis of material available on record. So-far as complaint by wife making allegations of harassment, beatings and torture are concerned, truthfulness of these allegations cannot be gone into in the proceedings under S. 482, Cr.P.C. It will be for the trial Court to examine the evidence that may be produced and all the defenses would be available to the petitioners. therefore, on this account also, I find no merit in this petition.

7. Now turning to the objection of limitation, so far as provision of S. 406 is concerned, till the articles are returned or accounted for the cause of action will continue. To this demand the question of limitation of three years would not apply. So far as the complaint under S. 498-A is concerned, admittedly respondent came out of the matrimonial house few months after the marriage. Ms. Mukta Gupta,

amices Curiae for respondent No. 2 contends that respondent No. 2 was turned out from matrimonial home in December, 1989. She lodged the complaint with the District Crime Cell at Delhi much earlier than the present complaint. thereforee, the period of limitation in this case has not expired. Even otherwise this Court while considering the complaint of the wife regarding cruelty, harassment, beating and torture and the lodging of the complaint by the wife to different authorities, cannot go into this question because this is a mix question of law and facts and would be decided after recording of evidence. In these proceedings under S. 482, Cr.P.C. the defense, if any, be that of limitation or harassment, beating or cruelty will not be looked into. This would be examined by the Court concerned after recording the evidence. This Court while exercising its inherent jurisdiction cannot examine the facts. Hence, the question of limitation and defense set up by the petitioners would also be gone into by the Court after examination of facts.

8. For the reasons stated above, I find no merit in the petition. Dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com