

**Rajinder Singh Vs. State and Another**

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**Court :** Delhi

**Decided On :** Oct-13-1998

**Reported in :** 1998VIAD(Delhi)680; 1999(1)Crimes271; 76(1998)DLT264; I(1999)DMC28; 1998(47)DRJ590; ILR1999Delhi35

**Judge :** D.K. Jain, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 157, 177 to 184, 220, 406 and 498-A

**Appeal No. :** Crl. M(M) No. 540/93

**Appellant :** Rajinder Singh

**Respondent :** State and Another

**Advocate for Def. :** Mr. M.S. Butalia and ; Ms. Pinki Anand, Adv.

**Advocate for Pet/Ap. :** Mr. Mohit Mathur, Adv

**Judgement :**

ORDER

**D.K. Jain, J.**

1. The petitioner-husband has filed this petition under Section 482 of the Code of Criminal Procedure(hereinafter referred to as the Code) for quashing of FIR

No.34/93, dated 23 January 1993, got registered at P.S. Paschim Vihar, New Delhi by respondent No.2 herein-the wife, under Sections 406/498-A IPC, primarily on the grounds that:(i) Delhi Police has no jurisdiction to register the case and (ii) even taking the allegations in the complaint on their face value, no case can be made out under the said Sections.

2. Rajinder Singh petitioner and Smt. Satvinder Kaur-complainant, were married at Patiala(Punjab) on 9 October 1990. They lived together in Patiala and a daughter was born on 19 December 1991 out of the wedlock. The marital life had apparently been unhappy, either because of demand for gifts from the petitioner's side, as alleged by the complainant or because of incompatibility and some other reasons, as alleged by the petitioner. Be that as it may, on 19 January 1992 at 3.40 PM a complaint was lodged by the complainant-wife at P.S.Kotwali, Patiala(DD No.18) alleging: that after the birth of a female child her in-laws had started harassing her and had beaten her many a time; on 18 January 1992 her husband had rung up her brother at Delhi and had told him to take her away for ever; when her brother and father had come to enquire about her welfare, all members of her in-laws' family misbehaved with them; snatched the child and threw her out of the house; she had come to inform that she, her father and brother had been threatened to be killed..... 'Action be taken'. However, the same day at 8.20 PM another information(DD No.28) was given to the said Police Station by the complainant with a request not to take action in DD 18 as due to intervention of some persons, the complaint got diarised in the morning about threat to her life, had been compromised and her father was taking her to Delhi along with some mentioned jewellery/gold items, clothes etc; leaving rest of her articles at her in-laws' house, and she was taking her child along for which only she will be responsible; and she was going to Delhi as per her own will without any pressure from her father and brother. It seems that on 4 March 1992 the complainant wrote a letter to SHO, P.S. Paschim Vihar, New Delhi alleging threats from the petitioner and seeking protection. On 30 April 1992 a complaint was lodged against the petitioner in the Crime Against Women Cell, Delhi. It was on 23 January 1993 that the impugned FIR under Sections 406 and 498A IPC for the alleged 'occurrence dated 9 December 1990 at Patiala' was lodged at P.S.Paschim Vihar, New Delhi.

3. On the lodging of the FIR, police authorities at Delhi swung into action and arrested the petitioner on 4 February 1993 at Patiala; allegedly effected certain recoveries there and brought him to Delhi; produced him before the Metropolitan Magistrate, who remanded him to judicial custody and ultimately the petitioner was enlarged on bail on 9 February 1993.

4. Under these circumstances the petitioner filed the present petition under Section 482 of the Code for quashing FIR No.34/93 on the ground that on the allegations in the complaint, which are false and malafide, no part of cause of action for investigation or trial of an offence arose in Delhi, continuation of investigations under it is an abuse of the process of Court.

5. The petition came up for hearing on 12 October 1993 and after hearing counsel for the parties, the Court took the view that 'since the return of stridhan and accounting thereof is being sought in Delhi, the Courts at Delhi will have the jurisdiction to try the case'. With these observations the petition was dismissed.

6. This order was challenged by the petitioner in the Supreme Court. By order, dated 4 April 1995, the Supreme Court, observing that there was no discussion on the merits of the matter in the High Court's order, dated 12 October 1993, regarding the compromise arrived at between the parties on 19 January 1992, set aside the same, and remitted the matter for its fresh consideration on the points raised by the petitioner in this petition.

7. I have heard Mr. Mohit Mathur, learned counsel for the petitioner and Ms. Pinki Anand, learned counsel for the complainant.

8. It is submitted by learned counsel for the petitioner that neither the SHO, P.S. Paschim Vihar, Delhi nor the Courts in Delhi had any territorial jurisdiction to entertain and investigate the complaint or to try the alleged offences, for neither the alleged acts of cruelty and maltreatment nor the entrustment of property or its dishonest misappropriation or conversion took place within the territorial jurisdiction of the Courts in Delhi where the impugned FIR has been lodged, instead all the alleged acts are stated to have taken place at Patiala. Laying emphasis on the complaint filed by the complainant on 19 January 1992(DD 18) at

Patiala, it is asserted that apart from the fact that in the said complaint there was no allegation of demand of dowry, the allegation of maltreatment was made by the complainant only at Patiala; all items of dowry/gifts were entrusted and returned at Patiala and the so called refusal to return the remaining articles was also at Patiala; these neither were returned nor required to be returned at Delhi and, therefore, the registration of the FIR by the Delhi Police is without jurisdiction. It is maintained that after settling the disputes on 19 January 1992 at Patiala itself, vide DD 28, filing of the impugned FIR is an abuse of the process of the Court. In support of the contention that Delhi Courts have no jurisdiction, reliance is placed on a decision of this Court in Rohit Arora & Ors v. The State, 1996(3) AD Delhi 960, which supports the petitioner.

9. On the other hand learned counsel for the complainant has alleged that after the marriage at Patiala, the petitioner used to visit Delhi along with the complainant, where some money was given to him by the complainant's brother for purchase of beds; during their stays at Delhi complainant withdrew money from her account at Delhi and entrusted it to the petitioner and as such offence under Section 406 IPC was committed at Delhi and, therefore, Police at Delhi had the jurisdiction to register and investigate into the complaint.

10. The relevant statutory provisions determining the forum for enquiries and criminal trials are contained in Chapter XIII of the Code. Section 177 provides the ordinary general rule. It prescribes that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Sections 178 to 184 carve out certain exceptions to the general rule and provide for forum of trial in some distinct situations, which may be different from the general rule. Section 177 is a general rule whereas Sections 178 to 184 are special provisions. A special provision has to get precedence over the general rule. The allegations in the complaint being of misappropriation and criminal breach of trust, one of such exceptions' contained in Section 181(4), is relevant for the purpose of the present case. It reads as follows:

'181(1).....

181(4)Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject to the offence was received or retained, or was required to be returned or accounted for, by the accused person.'

11. It provides that an offence of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject matter of the offence was received or retained or was required to be returned or accounted for by the accused person.

12. In the instant case the marriage between the petitioner and the complainant was solemnised at Patiala and it is evident from the material on record that the dowry items were entrusted at Patiala, though in the counter-affidavit, now filed, it is alleged that some cash was handed over to the petitioner at Delhi, but there is no averment in the FIR to support entrustment at Delhi. All what is stated is that she had a bank account, being Account No.BP 205, in State Bank of India, Mall Road, Patiala, in which she used to deposit her salary earned at Patiala, at the time she was leaving her in-laws house at Patiala, her husband(petitioner) coerced her to sign three cheques, which he got encased from her said bank account and that apart from the pay of Patiala, ' I also gave him the pay of Delhi, while I was serving in K.V. Shalimar Bagh, Delhi', roughly in all an amount of about Rs.23,000/- and odd She further says(at page 3 of the complaint, that her father and brother came to Patiala at the matrimonial home, her in-laws misbehaved with them and snatched her child, pushed her out of the house, she got her daughter back with police assistance, left for Delhi 'leaving all her 'stridhan' at Patiala with her in-laws, except some clothes and wearing jewellery'. There would thus be no controversy with regard to the question of jurisdiction of the Court in the first three situations, namely, (a) where the offence is committed, (b) where any part of the property was received and (c) where such property was retained. In all the three situations, the territorial jurisdiction will undoubtedly be with the Patiala Courts. The fourth situation envisaged in the Section is the place where the items, in regard to which criminal breach of trust is alleged, 'were required to be returned or accounted for'.

13. There is no gainsaying that the words 'was required to be returned or accounted for' have no nexus with the parental home of the wife. The relevant factor would be either a stipulation to that effect between the parties either before or after the marriage and in the absence of such a stipulation, the place where the items in question were kept in trust and a breach in respect thereof was committed.

14. From the afore-noted stand of the complainant it is evident that on the complainant's own showing the entrustment of some cash or articles took place at Patiala and there is no averment whatever in any of the reports/complaints that any such item was to be returned at Delhi or any specific demand was made by the complainant for the return of these articles at Delhi. thereforee, viewed from any angle, I am of the opinion that in the instant case the items in question, if any, were required to be returned or accounted for at Patiala, where these were allegedly entrusted to the petitioner and, thereforee, it will be the Police at Patiala which will have to investigate the commission of alleged offence under Section 406 IPC.

15. As regards the question as to whether the alleged offence under Section 498-A IPC could also be tried at Patiala, it is evident from the first complaint dated 19 January 1992(DD 18) and from the impugned FIR that all acts of cruelty/beatings and threats appear as given and extended to the complainant at Patiala and thereforee, under the normal rule of procedural law, these have to be enquired into and tried by a Court within whose local jurisdiction these were committed,i.e. Patiala. Besides, though there is no allegation of demand of dowry in any of the complaints/FIR, the alleged offence under Section 498-A IPC can be said to be connected with the alleged offence under Section 406 IPC as to form the same transaction within the meaning of Section 220 of the Code, it can also be tried with Section 406 IPC.

16. Before parting, I may also deal with the argument of learned counsel for the complainant to the effect that the instances mentioned in the counter-affidavit in these proceedings should be taken into consideration for determining the question whether a part of the property was entrusted to the petitioner at Delhi. It is well

settled that to determine whether prima facie case of commission of cognizable offence is made out or not, it is the contents of the FIR which have to be seen and not the case set up subsequently because the condition precedent to the commencement of an investigation under Section 157 of the Code is that the FIR must disclose prima facie commission of a cognizable offence (See State of West Bengal v. Swapan Kumar, 1982 Cr.L.J. 819. Thus apart from the fact that in the complaint, dated 19 January 1992, the allegations now made in the impugned FIR did not find mention, as already noted above, even what is stated in the impugned FIR does not tend to indicate that the entrustment of any property was at Delhi. The averments in the counter-affidavit now set up are self-serving improvements which cannot be taken into consideration.

17. For the view I have taken above, it is unnecessary to go into the question of the effect of the compromise purportedly arrived at between the parties on 19 January 1992 as per DD 28, which basically purports to identify the items of personal effect being removed by her and those left with her in laws and to withdraw the plea for action sought for in her same day's complaint in DD 18, lodged in the earlier part of the day. Even otherwise the question whether all items of stridhan were returned in terms of the settlement or not will have to be decided after taking evidence, which may be produced by both the sides. This cannot be done in proceedings under Section 482 of the Code.

18. For the foregoing reasons FIR No.34/93, registered at P.S. Paschim Vihar, New Delhi is quashed.

19. The petition stands disposed of in the above terms.