

Rohit Arora Vs. State

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Court : Delhi

Decided On : Aug-01-1996

Reported in : 1996IIIAD(Delhi)960; 63(1996)DLT691; 1996(39)DRJ376a

Judge : N.G. Nandi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 181

Appeal No. : Criminal Miscellaneous Appeal No. 2029 of 1992

Appellant : Rohit Arora

Respondent : State

Advocate for Pet/Ap. : A.K. Gujral,; P.K. Behl and; Ashok Arora, Advs

Judgement :

N.G. Nandi, J.

(1) In this petition under Section 482 of the Criminal Procedure Code, the petitioners (original accused) prays for the quashing of Fir No. 307/92 under Section 406 Indian Penal Code, registered with police station Srinivas Puri, New Delhi by complainant Ms. Anuradha Arora.

(2) It is submitted by Mr. Gujral, learned counsel for the petitioners that the marriage was solemnised at Calcutta; that the entrustment of the articles given in

marriage was at Calcutta; that Delhi court has no jurisdiction since Section 181(4) of the Code is not attracted and Fir in question could not have been filed in the police station at Delhi and so no investigation by Delhi Police. As against this, it is submitted by Mr. Behl, learned App for the State that the complaint is at the initial stage, the investigation is in progress, the investigation can not be thwarted and that Section 482 of the Code can not be invoked at this stage; that the investigation should be allowed to be completed and at the conclusion of the investigation, report would be required to be filed u/s. 173 of the Code; that Section 181(4) is attracted in the present case inasmuch the parental house is the normal/natural place of residence for a lady returning from the matrimonial home and that the articles given to the wife at the time of marriage are 'necessarily required to be returned at the place where she is living with her parents.

(3) In the instant case the marriage was solemnised at Calcutta. The parties lived as husband and wife at Calcutta. The wife on account of the discord with the petitioner-husband returned with the daughter, to the parental house at Delhi and lodged the complaint alleging the offence under Section 406 IPC.

(4) Relying on the decision reported in 1986 (3) Cri (P & H) 503, it is the contention of the learned counsel for the petitioner that the Fir prima facie does not disclose the commission of cognizable offence within the territorial jurisdiction of Delhi Court and in view of sub-section 4 of Section 181 of the Code Ps Srinivas Puri, New Delhi will have no jurisdiction to investigate into the alleged offences as the Delhi Courts to which this police station is attached has no territorial jurisdiction.

(5) Perusal of the Fir suggests that the marriage of the petitioner with the respondent was solemnised on 13.12.1982. It is alleged that from the beginning wife was treated shabbily and demands for dowry were made by the husband and in-laws; that the jewellery, silver etc. items of dowry given to the wife by her parents and relations were under the control and in the custody of the mother-in-law; that on occasional trips to Delhi, the mother-in-law allegedly insulted her aged father by throwing a whisky glass at him while he was in Calcutta; that they abused her by making verbal abuses; that her mother-in-law would go for more

and more dowry and threats to burn her in case she did not comply with the demands of dowry that made her leave her matrimonial house in February, 1986 and returned to her parents in Delhi. Meantime she is residing in Delhi with her parents looking after her daughter single handedly. It is pertinent to note that in the Fir it is not alleged that there was a demand for the return of the dowry articles by the wife nor it is stated that the dowry articles were required to be returned or accounted for at Delhi or they were entrusted at Delhi. It is suggested from the Fir that the dowry articles were and remained with the mother-in-law meaning thereby at Calcutta. It is pertinent to note that in the Fir it is not stated that at which place the marriage was solemnised. The complainant and the petitioner-husband have stayed as husband and wife at Calcutta and it is also suggested from the Fir that the wife returned to Delhi at her parental house with her child/daughter, does not suggest even promotely as to how Delhi Courts PS' at Delhi will have the jurisdiction to investigate' under Section 157 of the Code.

(6) In the case of State of West Bengal & others v. Swapan Kumar Guha and other reported in : 1982 CriLJ819 , the Supreme Court observed that Fir which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is further alleged that the investigation can be quashed if no cognizable offence is disclosed by the FIR. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It is further observed that the condition precedent to the commencement of investigation under Section 157 of the Code is. that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. .

(7) These observations clearly indicate that the purpose of deciding as to whether F.I.R. should be quashed or not, it is the contents of the F.I.R. itself which have to be perused to find out if a prima facie case for commission of cognizable offence is disclosed therein. Necessary colliery to the same is that the alleged cognizable offence must have been committed within the territorial jurisdiction of the courts to

which the concerned police station is attached. At this juncture a reference be made to Section 156 of the Code which provides that any officer in charge of a police station may investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(8) Section 181 of the Code deals with place of trial in case of certain offences. Section 177 of the Code prescribes that every offence shall ordinarily be inquired and tried by Court within whose jurisdiction shall be committed.

(9) The arguments by the learned counsel for the respondents that the dowry articles should be returned to the wife at Delhi as she is residing in her parental house at Delhi and for the lady who has returned from matrimonial home, the parental home would be ordinarily and naturally the place of residence cannot be accepted for the simple reason that if the father of such lady happen to change his place of residence from one city to another then the husband can not be required to return the articles given to her in marriage at the place where the wife is residing with her father. The forum of jurisdiction and for that matter the place where the police has to investigate the commission of alleged offence cannot depend upon the whim of the complainant also for the reason that in a given case the wife after returning from the matrimonial home does not choose to reside with her parents but may stay settling down at a distant place then whether the husband can be said to be under the obligation to seek the wife and go to that distant place where she has chosen to settle? The answer to this has to be obviously in the negative. In sub-section 4 of Section 181 the words 'was required to be returned or accounted for', can have no nexus and have not whatsoever with either the parental home of the wife or any other place where she chooses to reside after the breaking down of the marriage. Neither of the courts at those places therefore can have jurisdiction to try the offences of criminal breach of trust by virtue of the clauses required to be interpreted.

(10) Had the entrustment/receipt of any part of the property/articles been at Delhi or the same was retained at Delhi or the offence is committed at Delhi then by virtue of sub sections 1,2,3 of Section 181 of the Code the Court at Delhi would have the

territorial jurisdiction to try the offences. As far as sub-section 4 is concerned as the petitioner-husband would not be required to return or account for the articles at the place where the wife is residing either with her parents or the place where she has settled in absence of entrustment of the marriage articles at either of such place and no part of the property/articles having been received by the petitioner at Delhi and the offence having not been committed at Delhi, the F.I.R. cannot be said prima facie to disclose the commission of cognizable offence within the territorial jurisdiction of the courts at Delhi to which police station Srinivas Puri is attached. It is pertinent to note that Section 181 of the Code does not refer to the residence of the wife after the breaking down of the marriage with regard to the jurisdiction to try the offence of criminal breach of trust relating to the dowry articles. The only conclusion that can be reached is that the residence of the wife after the breaking down of the marriage cannot confer territorial jurisdiction of the Court to try the offence of criminal breach of trust relating to dowry articles.

(11) To permit the investigation under Section 157 of the Code to proceed where prima facie it is not suggested that the alleged cognizable offence has been committed within the territorial jurisdiction of the Court to which police station Srinivas Puri, New Delhi is attached would be not only mala fide at the instance of the wife but would be sheer abuse of the process of law and in my opinion looking to the facts as aforesaid to permit the investigation to proceed further in a case like this would be an abuse of process of law and Section 482 of the Code cannot be successfully brought to the aid of the petitioner.

(12) Looking to the circumstances as aforesaid, the present case is covered by Air 1992 (Supp) (1) Scc 335 in the case of State of Haryana v. Bajan Lal. I deem it proper to exercise inherent powers under Section 482 of the Code.

(13) In the result, the petition is allowed, F.I.R. No-307/92 dated 10.6.1992 registered with Ps Srinivas Puri, New Delhi under Section 406 Indian Penal Code against the petitioner is quashed.