

Anilkumar and ors. Vs. Sindhu and ors.

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Court : Kerala

Decided On : Apr-07-2009

Reported in : 2009CriLJ3530; 2009(2)KLJ152

Judge : V. Ramkumar, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Sections 2, 12, 12(1), 18 to 23, 27, 27(2), 28, 29 and 31; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 6, 11(1), 11(2), 12, 12(1), 12(3), 14, 14(1), 14(2), 15, 15(1), 15(2), 29(1), 192, 397, 401 and 410

Appeal No. : Crl. Rev. Pet. No. 480 of 2009

Appellant : Anilkumar and ors.

Respondent : Sindhu and ors.

Advocate for Def. : P. Ravindra Babu,; K.S. Hariharaputhran and; George Math

Advocate for Pet/Ap. : A. Dinesh Rao and; K.K. Rajeev, Advs.

Disposition : Petition allowed

Judgement :

ORDER

V. Ramkumar, J.

1. In this Revision filed under Section 397 read with Section 401 Cr.P.C. The revision petitioners who are the counter petitioners in CMP. No. 206 of 2008 on the file of the Chief Judicial Magistrate's Court, Thiruvananthapuram, challenge the orders passed concurrently by the courts below overruling the petitioner's preliminary objection regarding the territorial jurisdiction of the Chief Judicial Magistrate to try (decide) the case. The interesting questions for judicial resolution are:

i. Whether the Chief Judicial Magistrate's Court be said to be a judicial Magistrate of the first class within the meaning of Section 27 of the [Protection of Women from Domestic Violence Act, 2005](#)?

ii. When once the local jurisdiction of the Chief Judicial Magistrate's Court or Judicial Magistrate of the first class has been defined by recourse to Section 14 Cr.P.C., is it permissible for any of those Magistrates to exercise judicial powers of inquiry or trial in respect of a cause of action occurring outside such local jurisdiction?

2. C.M.P. No. 2066 of 2008 was an application filed by one Sindhu, the first respondent herein under Section 12 of the [Protection of Women from Domestic Violence Act, 2005](#) (herein under referred to as 'the Act') claiming relief's under Sections 18, 19, 20, 22 and 23 of the Act. The revision petitioners were shown as the counter-petitioners to the said application. The first revision petitioner (V. Anilkumar) is the husband of the said Sindhu and the revision petitioners 2 and 3 are his relatives.

3. After entering appearance, the revision petitioners raised an objection regarding the territorial jurisdiction of the Chief Judicial Magistrate to decide the case. As per order dated, 10.09.2008, the learned Magistrate overruled the said objection and held that he has the jurisdiction to try the case. Even though the revision petitioners preferred an appeal under Section 29 of the Act before the Sessions Court, Thiruvananthapuram, the learned Sessions Judge as per judgment dated 2.1.2009 dismissed the appeal confirming the order passed by the Chief Judicial Magistrate. Hence, this Revision.

4. I heard the learned Counsel appearing for the revision petitioners as well as the learned Counsel appearing for the first respondent.

5. The learned Counsel appearing for the first respondent submitted that the view taken by the courts below is perfectly legal and does not call for interference at the hands of this court.

6. I am afraid that I find myself unable to agree with the view taken by the courts below. In a non-Metropolitan area, the Forum which is competent to grant protection orders and other orders under the Act as also the Forum to try the offences under the Act, is, by virtue of Section 27 of the Act, the court of the Judicial Magistrate of the first class (JMFC) within whose territorial limits, any of the jurisdiction facts envisaged by Section 27 of the Act, are present. Section 27 of the Act read as follows:

27. Jurisdiction - (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanent or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

IS C J M A JMFC?

7. I will now dispose of preliminary argument advanced by the learned Counsel for the petitioners. According to him, the Chief Judicial Magistrate ('C.J.M' for short) is not a Judicial Magistrate of the first class (JMFC) within the meaning of Section 27 of the Act, and therefore the C J M is not competent to pass orders under the Act. The following is the submissions made in this regard on behalf of the revision petitioners:

Section 2(i) of the Act defines the word 'Magistrate' as follows.

'Magistrate' means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.

The word 'Magistrate' occurring in Section 27 of the Act will have to be thus read and understood in the light of the definition of the word 'Magistrate' contained in Clause (i) of Section 2 of the Act. Therefore, Judicial Magistrate of the first class within whose local limits any of the Jurisdictional facts envisaged by Clauses a, b, and c of Sub-section 2 of Section 27 of the Act occurs alone can exercise jurisdiction. C M J is superior to all other Judicial Magistrate. Section 15 Cr.P.C. declares that every other Judicial Magistrate shall be subordinate to the C J M. Hence, the Chief Judicial Magistrate, Thiruvananthapuram who is not Judicial Magistrate of the first class could not have entertained the application under Section 12 of the Act. This contention without prejudice to the main contention of the revision petitioners that even if the Chief Judicial Magistrate is to be treated as Judicial Magistrate of the first class, the Chief Judicial Magistrate, Thiruvananthapuram who has jurisdiction only over the territorial limits of two Police Stations, namely, the Museum and Valiyathura Police Stations could not have entertained the application under Section 12 of the Act.

Judicial evaluation in Re - IS C J M ATJMFC?

8. The contention of the revision petitioners that the Chief Judicial Magistrate is not Judicial Magistrate of the first class is misconceived. Sub-Section (1) of Section 12 Cr.P.C. reads as follows:

(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

Section 12(1) Cr.P.C. thus clearly indicates that Judicial Magistrate of the first class alone can be appointed as the Chief Judicial Magistrate. The said provision

pre-supposes the existence of Judicial Magistrate of the first class. Courts of Judicial Magistrate of the first class for each district are established by the State Government in consultation with the High Court. (Section 11(1) Cr.P.C). The Presiding Officers of such Courts Judicial Magistrate of the first class are to be appointed by High Court in view of Section 11(2) Cr.P.C. It is from among such Judicial Magistrates of the first class that the High Court appoints one of them as the Chief Judicial Magistrate by virtue of Section 12(1) Cr.P.C.

9. The Court of the Chief Judicial Magistrate is not a separate class of court but is only a court of Judicial Magistrate of the first class. This can be discerned from Section 6 Cr.P.C. which reads as follow:

6. Classes of Criminal Courts --Besides the High Court and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely,-

i) Courts of Session

ii) Judicial Magistrate of the first class and, in any metropolitan area, Metropolitan Magistrate;

iii) Judicial Magistrate of the second class; and

iv) Executive Magistrates

The power of the CJM can be classified under two heads:

a) Administrative powers

b) Judicial powers (Local jurisdiction)

The Administrative powers of the CJM are general control and supervision over the work of the Judicial Magistrates subordinate to him (Vide Section 12(3)(b) Cr.P.C.). It means that he has administrative control over all other judicial Magistrates subordinate to him. Every Judicial Magistrate is subordinate to the CJM. (Vide Section 15(1) Cr.P.C). The local jurisdiction of every Judicial Magistrate including and subordinate to the CJM is to be defined by the CJM and

that exercise of defining the local jurisdiction shall be subject to the control of the High Court. (Vide Section 14(1) Cr.P.C.). The distribution of business among such judicial Magistrates subordinate to the CJM is to be made by the CJM by framing rules or by issuing special orders from time to time. (Vide Section 15(2) Cr.P.C.). It is by virtue of the fact that the CJM is the Controlling Officer of the district that he is given the power to pass a sentence of imprisonment up to 7 years as provided under Section 29(1) Cr.P.C. It is for the same reason that the CJM is invested with the power under Section 192 Cr.P.C. of making over cases to the Magistrates subordinate to him under Section 192 Cr.P.C. and also the power of withdrawal and transfer all cases under Section 410 Cr.P.C. Barring the above powers, the CJM has only those judicial powers which any other judicial Magistrate has. Section 12(3)(b) Cr.P.C does not invest the CJM with judicial powers. Section 192 Cr.P.C. gives the CJM the power of making over cases to other Magistrates in the district. This power, however, is not an administrative power because the said provision itself says that the power under the said provision can be invoked by the CJM only after taking cognizance of the offence. Where a case is transferred by the CJM before taking cognizance of the offence, then such a transfer will only be an administrative action and not a transfer under Section 192 Cr.P.C. (Vide *Gopal Das v. State of Assam* AIR 1961 SC 986). Section 410 Cr.P.C. is another provision which gives the CJM the power to withdraw cases. This provision has nothing to do with the jurisdiction of the CJM in the matter of cognizance, enquiry or trial of an offence. This special power is given to him by virtue of he being the person having general control or supervision over the work of the other Magistrates in the district. Merely because the CJM is invested with the power of making over cases under Section 192 Cr.P.C. or of withdrawing of cases under Section 410 Cr.P.C. it cannot be said that his local jurisdiction (judicial power) extends to the entire district. The aforementioned powers are given to him only for the effective exercise of the general control and supervision over his subordinate Magistrates.

Whether the CJM has judicial powers Over the entire district?

10. Now, coming to the judicial powers (local jurisdiction) of the CJM, it has already been seen that the CJM who is appointed by the High Court under Section

12 Cr.P.C. is only a Judicial Magistrate of the first class who has first been appointed as such by the High Court under Section 11(2) Cr.P.C. The local jurisdiction of every such Magistrate of the first class including the CJM shall, by virtue of Section 14(2) Cr.P.C., extend throughout the district unless defined by the CJM, subject to the control of the High Court under Section 14(1) Cr.P.C. Power is given to the CJM under Section 14(1) Cr.P.C. to define the local jurisdiction of every Magistrate of the first class including himself. But the said power of defining jurisdiction is subject to the control of the High Court. This control by the High Court is exercised, in actual practice, by approving the proposal forwarded to the High Court by the CJM defining the local jurisdiction of himself and all other judicial Magistrates subordinate to him. Once the power of control is exercised by the High Court on the proposal forwarded by the CJM by approving the local limits of the jurisdiction of the CJM, the latter cannot exercise any jurisdiction or judicial powers beyond the limits thus fixed.

11. In exercise of the power of control under Section 14(1) Cr.P.C. the High Court of Kerala, as per O.M. No. D3 (B)/9829/99 dated 18-3-2000 had approved the revised proposal forwarded by the Chief Judicial Magistrate, Thiruvananthapuram, regarding his own territorial jurisdiction besides the jurisdiction of three other Magistrates subordinate to him. The High Court, in the communication issued in that behalf directed the CJM to issue the necessary notification in that regard. Accordingly, as per order No. G.852/00 dated 22-3-2000 the CJM, Thiruvananthapuram had defined the local limits of four Magistrate Courts including that of his own. The local limits of jurisdiction of the CJM, Thiruvananthapuram was thus defined as follows:

1. Museum Police Station
2. Valiyathura Police Station 1st Class Offences
3. Railway Protection Force
4. Railway Police Stations 1st and IIInd Class Offences
5. All cases of CBCID (Within the limits of above Police Stations)

Thus, the CJM. Thiruvanthapuram, like any other CJM, is only one among the Judicial magistrates of the first class and since the High Court has, in exercise of its power of control under Section 14(1) Cr.P.C. approved the local limits of the jurisdiction of the CJM, thiruvanthapuram, the exercise of judicial powers by the

CJM, Thiruvanthapuram is to be confined only to those local limits and not beyond. The extension of the jurisdiction and powers of every judicial Magistrate including the CJM throughout the district as provided under Section 14(2) Cr.P.C. is, therefore, subject to the definition of their local limits. Once their local jurisdiction is so defined, they can exercise their powers only within such local limits.

12. I, now proceed to consider the reasons given by the CJM, Thiruvananthapuram, to conclude that he has the territorial jurisdiction to entertain and decide the application filed in this case under Section 12 of the Act. The learned CJM has observed that he is not bound by the territorial limits defined by himself under Section 14 Cr.P.C. The said reasoning of the CJM, as has already been seen, is fallacious. Yet another reason given by the CJM is that the decision of the Full Bench of the Rajasthan High Court in Mahesh Chand v. State of Rajasthan 1985 Cri. L.J. 301 indicates that even if the area in which the offence was committed falls within the local limits of the area assigned by the CJM to some other Magistrate subordinate to him, the CJM is still competent to take cognizance of the offence committed anywhere in his district. The above reasoning is also not legally sound. When, with the approval of the High Court, the local jurisdiction of each Magistrate including that of the CJM has been defined, the CJM cannot ignore the same or re-define it without the knowledge or concurrence of the High Court. The relevant portion of the judgment of the Rajasthan High Court relied on by him reads as follows:

The Chief judicial Magistrate is competent to take cognizance of any offence, committed anywhere in his district, notwithstanding the fact that the area in which the offence was committed, happens to fall within the local limits of the area assigned by the Chief judicial Magistrate to some other Judicial Magistrate, subordinate to him, in accordance with the provisions of Sections 14 and 15 Cr.P.C.

There cannot be any disagreement or quarrel with regard to the above proposition, In fact, after the verdict of the Apex Court in *Trusuns Chemical Industry v. Rajesh Agarwal* : 1999 CriLJ4325 , the power of the Magistrate of the first class to take cognizance of the offences is not curtailed by any territorial restrictions and the

power to take cognizance of an offences even extends beyond the district in which such Magistrate functions. In that decision the Supreme Court held that the High Court of Gujarat came to the erroneous conclusion that the judicial Magistrate of the first class at Gandhidham in Gujarat had no power to take cognizance of the offences allegedly committed at Indore in the State of Madhya Pradesh. In *Somon Achari v. Sabu Jacob* : 2006(4)KLT604 the learned Chief Justice of this Court has observed that every Magistrate has jurisdiction to entertain a complaint throughout the district but on account of the division of work he is not entitled to try the complaint. In the light of the ruling by the Apex Court as indicated above, the above power of the Magistrate to take cognizance of an offence is not confined to cases occurring within his district but even beyond. But the only restriction is that such Magistrate cannot try the case. For the purpose of enquiry or trial he has to follow the rules under Chapter XIII Cr.P.C. The decision of the Apex Court in *Trisuns Chemical Industry's Case* (Supra) clearly indicates that although a Magistrate has the power to take cognizance of an offence committed outside his jurisdiction, the aspect of territorial jurisdiction will become relevant when the question of enquiry or trial arises.

13. The 3rd reason given by the CJM in support of his conclusion is that since by virtue of Sections 192 and 410 Cr.P.C. the CJM is invested with the power to withdraw any case from any Magistrate subordinate to him and either himself try such case or make over the case to any Magistrate subordinate to him, the CJM is having the jurisdiction to entertain and try any case (other than a case exclusively triable by the court of Session or Special Court) arising within the district. This reasoning is also fallacious. The power of the CJM to withdraw a case and enquire into or try the same under Section 410 Cr.P.C. does not confer on him territorial jurisdiction over the area comprised within the local limits of another Magistrate from whose court such case was withdrawn. A case may be transferred to a Magistrate having no territorial jurisdiction if he is, otherwise competent. By virtue of that transfer such Magistrate gets only the authority to try that case. But he does not get the jurisdiction over the area comprised within the local limits of the Magistrate from whose court the case was transferred. Section 192 Cr.P.C. also does not relate to the territorial jurisdiction of the CJM.

14. It is an admitted fact that neither the applicant (Sindhu-the 'aggrieved person') nor any of the respondents to CMP 2066 of 2008 on the file of the CJM resides or carries on business or is employed within the local limits of either the Museum Police Station or the Valiyathura Police Station which are the only two police stations within the local jurisdiction of the CJM, Thiruvananthapuram. Likewise, no part of the alleged cause of action arose within the local limits of the aforesaid two police stations. Section 28 of the Act provides that all proceedings under Sections 12 and 18 - 23 and all offences under Section 31 of the Act shall be governed by the provisions of the Cr.P.C. It, therefore, follows that the provisions in the Cr.P.C. relating to the enquiry of offences are applicable to the enquiries under the Act also. In other words, Chapter XIII Cr.P.C. dealing with the jurisdiction of the criminal courts with regard to enquiries and trials is applicable to the proceedings under Act. If so, the CJM has no jurisdiction to conduct any inquiry or pass or grant any protection or other order under the Act. The orders passed by the courts below on the question of territorial jurisdiction are accordingly set aside and the CJM, Thiruvananthapuram is directed to return the complaint for presentation before the proper court having jurisdiction.

This Cri.R.P. is allowed as above.

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