

Rajesh Kumar and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Feb-20-2006

Reported in : 2006CriLJ2062; RLW2006(3)Raj1762; 2006(3)WLC632

Judge : R.S. Chauhan, J.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 4; [Indian Penal Code , 1860](#) - Sections 120B, 406, 420, 467, 494 and 498A; Code of Criminal Procedure (CrPC) , 1974 - Sections 156(3), 177 and 468; Criminal Law

Appeal No. : Crl. Misc. Petn. No. 333 of 2005

Appellant : Rajesh Kumar and anr.

Respondent : State of Rajasthan and anr.

Advocate for Def. : R.P. Kuldeep, Public Prosecutor,; Samandar Singh,; P.C.

Advocate for Pet/Ap. : B.R. Handa, Sr. Counsel,; Hiteshi Arora,; Hari Bareth

Disposition : Petition allowed

Judgement :

ORDER

R.S. Chauhan, J.

1. The petitioners are challenging the continuation of the criminal proceedings which is pending before the Judicial Magistrate No. 2, Ajmer for offences under Sections 498A, 406, IPC and for Section 4 of the Dowry Prohibition Act.

2. The brief facts of the case are that the present case emanates from a complaint filed by the Respondent No. 2. Smt. Savitri Devi against her husband, Petitioner No. 1, Rajesh Kumar and against her mother-in-law, the Petitioner No, 2, Smt. Tulsi alias Tulsia Devi and others. In the complaint, she has alleged that Rajesh Kumar and she were married at Delhi on 14-2-1992. Out of the wedlock, a boy was born on 28-1-1993. However, after his birth differences started to crop up between the husband and wife at Delhi. According to her, her husband would tell her that in case her parents were to give him one lakh of rupees, he would accept her as his wife. She further alleged, that he developed illicit relationship with one Ms. Pushpa Khokhal at Delhi. Due to the strained relationship, he forced her out of the matrimonial house at Delhi. She came back to Ajmer to live with her parents. She further claimed that her husband had sent invitations to some of the relatives at Ajmer, whereby she came to know that he has married Ms. Pushpa Khokhal and has begotten a daughter from her. She made certain inquiries at Delhi and came to know that the husband and his family members had forged the record about the birth of the said daughter. She further stated that while she was living at Delhi with the husband, she was tortured for dowry by the mother-in-law as well. She thus claimed that the nine persons named in the complaint committed the offences under Sections 498A, 406, 467, 420, 494, 120-B, IPC.

3. The learned Magistrate was pleased to send the said complaint for further investigation under Section 156(3) of the Criminal Procedure Code (henceforth to be referred to as the 'Code', for short). On the receipt of the said complaint, the police has chalked out a formal FIR, FIR No. 147/2004, for aforementioned offences. It seems that the petitioner had challenged the said FIR by filing a criminal Misc. Petition before this Court. During the pendency of the said petition, the police filed the charge-sheet. Therefore, vide order dated 16-2-2005 the petition was dismissed as infructuous by this Court. However, the Court granted a liberty to the petitioner to file a fresh petition, if so advised. Meanwhile, after a thorough investigation, the police was pleased to file a charge-sheet only against

the present Petitioners and that too only for offences under Sections 498A, and 406, IPC. Thus, the police did not file any charge sheet for the other offences mentioned in the complaint. The respondent No. 2 has challenged the negative Final Report with regard to the other offenders who have not been charge-sheeted and with regard to the non-filing of the charge-sheet for offences mentioned above. But the pendency of the said litigation does not concern us presently. The petitioners, on the other hand, have challenged the continuation of the criminal proceedings pending before the Judicial Magistrate No. 2, Ajmer. Hence, this petition before us.

4. Mr. B. R. Handa, Senior Advocate, learned Counsel for the petitioners, has raised five contentions before us. Firstly, that according to the complaint itself all the alleged acts of cruelty and act of criminal breach of trust were committed at Delhi where the petitioner No. 1 and respondent No. 2 resided as husband and wife. Since none of the offences were committed at Ajmer, the Courts at Ajmer do not have the territorial jurisdiction to try the case. Secondly, according to him, the offences under Section 498A and 406, IPC were committed in 1994, when the respondent No. 2 left her matrimonial house. But the cognizance of the said offences was taken on 24-9-2004 i.e. after a period of ten years. Therefore, the cognizance was taken much beyond the period of limitation as prescribed by Section 468 of the Code. Thirdly, once the police recovered the "Stridhan", the offence under Section 406, IPC came to an end. Therefore, the learned Magistrate could not have taken cognizance for the said offence. Fourthly, there are no specific allegations about cruelty or about the demand of dowry. The complainant has merely stated that the husband had said that he would accept her as his wife in case her parents were to give him Rs. 1 lakh. Moreover, she has made a vague statement that her mother-in-law used to torture her 'by various means'. But she has not given any details about the various means. Therefore, the learned Magistrate could not have taken cognizance on the basis of such vague allegations. Lastly, once the husband and wife had entered into a divorce by mutual consent in March 2005, the wife should be deemed to have condoned all the alleged acts of cruelty. Hence, the continuation of the criminal proceedings tantamount to abuse of the process of the law and the Court.

5. On the other hand, Mr. Samander Singh, the learned Counsel for the respondent No. 2, has vehemently argued that in Criminal Law there is no concept of condoning a criminal act. Hence, even if divorce were granted on the ground of mutual consent, such a divorce would not tantamount to condoning the acts of cruelty. Secondly, the offence under Section 494, IPC is non-cognizable offence. Therefore, the learned Magistrate could not have directed the police to investigate the said offence under Section 156(3) of the Code. Thirdly, dealing with the question of territorial jurisdiction, he has argued that mental cruelty is a continuing offence. Hence, respondent No. 2 was justified in filing the complaint in the Court at Ajmer. Lastly, he has argued that since the police did not recover all of Stridhan, offence under Section 406, IPC is clearly made out against the petitioners.

6. We have heard the learned Counsel for the parties and have perused the impugned order and have critically examined the record, which is before us.

7. A bare perusal of the complaint filed by the respondent No. 2 clearly reveals that the alleged acts of cruelty and the alleged act of criminal breach of trust were committed at Delhi and not at Ajmer. The respondent No. 2 was married at Delhi where the Stridhan was entrusted to the husband and his family members. The demand for the return of the Stridhan was made at Delhi. The refusal to return the said property was made at Delhi. The demand for one lakh of rupees by the husband was also made at Delhi. Allegedly, the mother-in-law, the petitioner No. 2 had tortured the respondent No. 2 'through various means' at Delhi. There is not a whisper of allegation that the petitioners ever made a demand for dowry at Ajmer. Thus, clearly the offences described in the complaint were all committed at Delhi.

8. According to Section 177 of the Code, 'every offence shall ordinarily be inquired into and tried by the Court within whose local jurisdiction it was committed'. Since all the acts of crime were committed at Delhi, only the Courts at Delhi had the jurisdiction to inquire into and try the said case. Since none of the offences were ever committed at Ajmer, the Courts at Ajmer do not have the territorial jurisdiction to inquire into and to try the case.

9. In the case of *Y. Abraham Ajith v. Inspector of Police, Channai* : 2004 CriLJ4180 , the Apex Court dealt with a similar set of facts. In the said case, the

Hon'ble Supreme Court has clearly held that the crucial question is 'whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused'. It further held that the expression 'cause of action' is, therefore, not a stranger to criminal cases. The cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a Court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent, it must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.'

10. In the present case, relying on the principle of law as enunciated by the Hon'ble Supreme Court above, we are of the opinion that the Courts at Ajmer do not have the territorial Jurisdiction to try the case. Since the petitioner succeeds on the basis of first contention raised by him, we need not discuss the other contentions raised by him. Suffice it to say that the continuation of the criminal proceeding at Ajmer would tantamount to an abuse of the process of the Court and of the law.

11. In the result the petition is allowed and the criminal proceeding pending before the Judicial Magistrate, No. 2, Ajmer arising out of FIR No. 147/2004 registered at Police Station Mahila (Women Cell), Ajmer for offences under Sections 498A, 406, IPC and Section 4 of the Dowry Prohibition Act is hereby quashed. However, the respondent No. 2 is certainly free to initiate criminal proceeding against the petitioners before the appropriate Court at Delhi.