

Sanjeev Rai Vs. the State of West Bengal and Another

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Court : Kolkata Appellate

Decided On : Feb-15-2011

Judge : Ashim Kumar Banerjee, J.

Appeal No. : C.R.R. No.3319 of 2010 with C.R.R.No. 3325 of 2010

Appellant : Sanjeev Rai

Respondent : The State of West Bengal and Another

Advocate for Def. : Mr. Tapas Kumar Ghosh; Mr. Tanmay Chaudhury, Advs

Advocate for Pet/Ap. : Mr.Milan Mukherjee; Mr. Swapan Banerjee, Advs

Judgement :

1. Petitioner married the respondent No. 2 on June 22, 2004. The marriage was solemnized at Balia in the State of Uttar Pradesh. The respondent No. 2 made a complaint with the local Police Station at Asansol that her husband and in-laws subjected her to torture. The Police initially did not entertain the complaint. She approached the learned Magistrate under Section 156 of the Code of Civil Procedure.

2. The complaint before the learned Magistrate would reveal as under:

i) The marriage was a negotiated one. In marriage, articles like utensils- made of steel, silver, and gun-metal; furniture; electronic goods were given. Old and silver ornaments were also given apart from cash of Rs. 2,00,000/- paid as dowry, out of

which Rs. 65,000/- was paid in cash and Rs. 1,35,000/- in draft in the name of Indranil Rai the uncle in-law of the petitioner.

ii) The in-laws assured the bridal side that the money would be kept in deposit with the local Post Office where the wife of the brother-in-law of the complainant was working.

iii) After the marriage, the complainant went to her matrimonial home at village Kathoda, where the accused were all sharing common mess.

iv) After few days the complainant noticed that the husband was in the grip of the lady being the wife of the brother-in-law. The in-laws were controlled by the said lady. Without her permission nothing could be done. She also doubted the relationship between her husband and the said lady.

v) After a fortnight of the marriage, the husband and the lady went to Faijabad and came after sometime. That fact strengthened the doubt of the complainant.

vi) The complainant was compelled to give all her ornaments to her in-laws who took it on the plea that it would be kept in safe custody of the bank.

vii) In September, 2004, the complainant's brother came to see her and took her to her parental home where the complainant stayed for a couple of months and thereafter her brother-in-law again took her to her matrimonial home.

viii) Within a few weeks of return, the accused Nos. 2 and 3 started complaining about insufficient dowry. They also expressed displeasure about the quality of the gifts.

ix) The accused started pressurizing the complainant to tell her parents to come down to Balia for a compromise, otherwise she would be set on fire

x) The parents along with their well-wishers went to Balia and requested the in-laws to come down to Asansol for settlement of dispute on the issue of further demand. Accordingly in May 2006, discussion was held at Asansol when accused Nos. 2, 3, 6 and 7 informed them that their social prestige had been lost and such loss must be made good.

ix) The accused made a demand of Rs. 5,00,000/-, a Maruti Car and 5 Bhories of ornaments for accused No. 9. Ultimately, it was settled at Rs. 1,00,000/- on the assurance that there would be no further demand. The parents paid Rs. 50,000/- to the accused No. 1. In July 2006 when accused No. 1 visited her parents at Asansol they assured them that the balance money would be paid at Asansol.

xii) In meddle of 2007, the accused made a further demand of Rs. 5,00,000/- for setting up business of electronic goods. Complainant sent letters to her parents to the said effect being letters dated September 27, 2007 and October 20, 2007. Ultimately she had to leave her matrimonial home in the last part of October, 2007 without taking her belongings.

xiii) Further negotiation took place when father of the complainant arranged for the couples accommodation at Asansol and made arrangement for the husband for selling of Mobile Card. Such arrangement was made at the house of Monoj.

xiv) In the said house the accused Nos. 5 7 and 9 used to come occasionally and tortured the complainant. In last week of December 2007, the husband left Asansol and did not return. The complainant wrote letters on January 8, 2008 and January 17, 2008, however no reply came.

3. If we closely analyse the aforesaid petition of complaint we would find that the couple stayed for about less than a couple of months at Asansol in the last part of 2007 where the accused Nos. 6, 7 and 9 tortured her. In July 2006 negotiation took place at Assansol and a part of payment of Rs. 50,000/- was made there. Apart from these two incidents, no other part of the cause of action arose within the State.

4. The learned Magistrate took cognizance of the offence and issued process under Section 498A/323/506 of the Indian Penal Code. Hence, this application for revision by the accused.

5. Mr. Milon Mukherjee, learned counsel appearing for the accused/ petitioners contended that on a combined reading of the petitioners complaint it would appear that a substantial part of the incident of torture happened at Balia where marriage

was solemnized. Hence the learned Magistrate should not have taken cognizance for want of territorial jurisdiction.

6. Mr. Mukherjee, further contended that he approached this Court after the charge sheet was submitted inter alia under Section 406. From the petition of complaint it would ex-facie appear that no part of the cause of action in relation to Section 406 arose within the jurisdiction of the learned Magistrate at Asansol. He contended that the alleged stay of the couple for less than a couple of months at Asansol did not have any poof, no material was placed before the learned Magistrate for framing charges. Neither any rent receipt nor the particulars of the said premises were disclosed before the learned Magistrate. Hence, the proceeding should be quashed for want of territorial jurisdiction and in the alternative, may be transferred to the appropriate Court at Balia.

7. To support his contentions Mr. Murkherjee cited the following decisions.

i) All India Reporter 2004 Supreme Court Page- 4286 (Y. Abraham Ajith and others Vs- Inspector of Police, Chennai and Another)

ii) 2006 Volume-I Calcutta Criminal Law Reporter (Calcutta) Page-492 (Sri Nakul Chandra Mondal & Another Vs- The State of West Bengal)

iii) 2007 Volume-I Calcutta Criminal Law Reporter (Calcutta) Page- 800 (Shipra Raj Roy Vs- The State of West Bengal & Another)

iv) 2010 Volume- I Calcutta High Court Notes Page- 267 (Sankar Prasad Roy Chowdhury & Another Vs- Mitali Roy Chowdhury)

v) 2010 Volume- III Calcutta Criminal Law Reporter (Calcutta) Page- 265 (Sri Anil Barua Vs- The State of West Bengal & Another)

Opposing the said application, Mr. Tapas Kumar Ghosh, learned Counsel appearing for the wife / respondent contended as follows:

i) Since part of the cause of action arose within the jurisdiction of the learned Magistrate, following the mandate as contained in Section 178 of the Criminal Civil Procedure Code the learned Magistrate was competent to take cognizance.

ii) In a revisional application the facts could not be gone into. Even if the allegations were taken on their face value it would appear that both demands of dowry and refusal to return the Shridhon property were made at Asansol where negotiations took place. The in-laws especially, the accused Nos. 5, 7 and 9 committed torture upon her at Asansol. Taking a sum total of the incidents it would appear that substantial part of cause of action arose within the jurisdiction of the Asansol Police Station and as such the learned magistrate was quite competent to take cognizance of the crime so committed by the accused.

8. To support his contentions Mr. Ghosh relied on the decision in the case of Y. Abraham Ajith (Supra).

9. I have considered the rival contention of the parties. Section 178 of the Criminal Civil Procedure Code empowers the Court to take cognizance of the offence even if part of the said offence was committed outside the territorial jurisdiction of the said Court. It inter alia provides that where an offence is committed partly within one Court and partly within another Court both Courts would be having jurisdiction. In the case of Nakul Chandra (Supra) learned Judge of this Court held that when entrustment of Shridhon property was made within the territorial limits of a Police Station the Court having jurisdiction over the said Police Station would be competent to take cognizance.

10. In the case of Y. Abraham Ajit (Supra) the Apex Court held that factual scenario stated by the complainant in the complaint would disclose no part of the cause of action arising in Chennai. Hence, the complaint filed before the Learned Magistrate at Chennai was not maintainable.

11. In the case of Shripra Raj Roy (Supra), the learned Judge of this Court considered a situation where the Shridhon properties were given at the marriage held within jurisdiction. Those articles were taken to Mumbai after the marriage. The torture was committed at Mumbai demanding dowry. Hence, the offence alleged to have been committed at Mumbai could not be tried at Durgapur.

In the case of Anil Barua (Supra) the offence was allegedly committed under Section 49A/323. The couple was residing at Raj Bhawan and the learned

Magistrate at Barackpore was found to have no jurisdiction to entertain the complaint.

12. On a combined reading of the precedents my understanding of the law is that the complaint must be taken on its face value by the learned Magistrate to find out whether the court has jurisdiction to entertain the said complaint. In the present case the complainant alleged that the couple was residing at Asansol when she was tortured by accused Nos. 5, 7 and 9 apart from her husband. If such fact was taken on its face value the learned Magistrate could not be said to have committed any error by taking cognizance. Mr. Mukherjee contended that he waited till submission of the charge sheet. Charge is yet to be framed. The learned Magistrate would consider the charge sheet and the materials on record before framing of charges. While doing so, the learned Magistrate would obviously examine whether there was any material to support the charge of torture or breach of entrustment of Streedhon property at Asansol. In case he finds none he would have to obviously hold that the offence cannot be tried before him. The learned Magistrate would certainly consider such issue. In my view, stage has not come for me to intervene. I hope and trust, the learned Magistrate would keep in mind the objection raised by the petitioner before me as also the principle of law so discussed above while considering framing of charges.

13. With these observations the revisional applications is disposed of. Lower Court records, if received in the mean time, must be sent down at once.

14. Urgent xerox certified copy will be given to the parties, if applied for.

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