

Crl. Misc. No.M-15064 of 2009 1

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH.

Crl. Misc. No.M-15064 of 2009

Date of Decision: 26.03.2010

Arun Kumar etc.

....Petitioners

Versus

Pinki Rani

...Respondent

CORAM : Hon'ble Ms. Justice Nirmaljit Kaur

Present:- Mr. M.S. Khaira, Sr. Advocate

with Mr. Abhinashi Singh, Advocate

for the petitioner.

Mr. L.S. Sidhu, Advocate

for the respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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NIRMALJIT KAUR, J.

Brief facts of the case are that the respondent had filed a complaint No.156 under Sections 498-A and 406 of the Indian Penal Code, 1869 at Mansa. The Chief Judicial Magistrate, Mansa, summoned the petitioners vide Order dated 14.11.2008, annexed as P-2.

The present petition under Section 482 Cr.P.C has been filed only on the ground that the Chief Judicial Magistrate had no jurisdiction to entertain the complaint. It is stated that if the allegations contained therein are accepted in toto, no part of the cause of action arose within the jurisdiction of the concerned Court. The complainant itself disclosed that CrI. Misc. No.M-15064 of 2009 2 after 28.01.2007, respondent left Mansa to go to Etawah and was staying there. All the allegations which are per se without any basis took place according to complainant at Etawah, therefore, the Courts at Mansa did not have the jurisdiction to deal with the matter.

Reliance has been placed on the judgments of Hon'ble the Apex Court, rendered in the case of Manish Ratan vs. State of M.P. 2007 (1) R.C.R. (Criminal) 513 and in the case of Y. Abraham Ajith vs. Inspector of Police, Chennai 2004(4) CrI. C.C. 466.

Learned counsel for the respondent, on the other hand, while opposing the said petition, submitted that it is categorical case of the respondent/complainant that the marriage took place at Mansa and the same was attended by the persons as mentioned in para 1 of the complaint. It has also been categorically asserted that the demand of dowry was raised at Mansa and the articles of the `istridhan' were delivered to the petitioners/accused at Mansa. The list of articles that were delivered to the petitioners/accused at Mansa has been mentioned in para 1 of the complaint and the same articles were later on misappropriated by the petitioners/accused. Hence, the Court at Mansa has got jurisdiction to try the present complaint.

Reliance has been placed on various judgments of this Court, as well as, other High Courts, titled as V.P. Singh vs. State of Haryana

1996(2) R.C.R. (Criminal) 261, Sita Ram vs. State of Haryana 1997(2) R.C.R. (Criminal) 602, Surinder Kaur vs. State of Punjab 1998(1) R.C.R. (Criminal) 115, Jiwani vs. State of Haryana 1996(3) R.C.R. (Criminal) 710, Charanjit Singh vs. State of Haryana 1996(3) R.C.R. (Criminal) 233, Rajinder Singh vs. Arinder Kaur 1995(3) R.C.R. (Criminal) 168, Puran Singh vs. Surjit Kaur 1995(3) R.C.R. (Criminal) 121, Sandeep Aggarwal vs. Sudesh Gupta 1997(2) R.C.R. (Criminal) 322, Brij Lal vs. State of Haryana 1997(3) R.C.R. (Criminal) 319, Jagdish Kumar vs. State of Crl. Misc. No.M-15064 of 2009 3 Haryana 1998(2) R.C.R. (Criminal) 367, Ramesh Chand vs. State of Rajasthan 1998(4) R.C.R. (Criminal) 46, Bimlesh Kumar Saraf vs. Smt. Chetna Saraf 1998(1) R.C.R. (Criminal) 859 and Vishal Maheshwari vs. State of Haryana 2006(2) R.C.R. (Criminal) 589.

Learned counsel for the parties have been heard.

In order to adjudicate upon the issue of territorial jurisdiction, it would be necessary to note the facts and the place, where the offence was committed. The petitioner No.1 had initiated proceedings for restitution of conjugal rights under Section 9 of the Hindu Marriage Act 1955 on 21.12.2007 at Etawah. The demand for dowry of the Istri Dhan is alleged to have been made at Etawah. After the marriage, the complainant resided at Etawah. It is only at Etawah that alleged demand of more dowry was made. The Panchayat went to Etawah and it was there that they saw the accused wearing her ornaments which were the Istri Dhan.

In the entire complaint, the only incident that has taken place at Mansa, as alleged, is that the Istri Dhan was delivered to the accused. In the same paragraph, it is mentioned that the same was required to be delivered to the girl after reaching Etawah. The other allegations with

respect to the harassment and cruelty, as per Section 498-A, are stated to be at Etawah. The misappropriation and demand of dowry is also stated to be at Etawah.

Section 177 of the Code deals with the ordinary place of enquiry and trial. The same is reproduced as under :-

"Section 177 : Ordinary place of inquiry and trial

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

Sections 177 to 186 deal with venue and place of trial. Section

178 of the Code has several exceptions to the said rules and the same CrI. Misc. No.M-15064 of 2009 4 reads as under :-

"Section 178 : Place of inquiry or trial

- (a) When it is uncertain in which of several local areas an offence was committed, or
- (b) Where an offence is committed partly in one local area and partly in another, or
- (c) Where an offence is continuing one and continuous to be committed in more local areas than one; or
- (d) Where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas."

However, a reading of the complaint and summoning order shows that no such exception is applicable to the case, in hand.

Hon'ble the Apex Court, in the case of Y. Abraham Ajith

(supra), while interpreting the cause of action in criminal cases held that when no part of the cause of action arose in Chennai, the same Magistrate had no jurisdiction to deal with the matter just because the petitioner came to reside there and went on to hold as under :-

"9. 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.

10. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

11. It is settled law that cause of action CrI. Misc. No.M-15064 of 2009 5

consists of 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. 12, 13, 14, 15 xxx xxx xxx

16. When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No.2 who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed."

Hon'ble the Supreme Court, in the case of Manish Ratan

(supra) held that the offence under Section 498-A is not a continuing one

and hence cruelty to bride at matrimonial home at Jabalpur will not grant

jurisdiction to District Court, where, the bride came to reside ultimately and

held :-

"15. Yet again in Ramesh and others v. State of T.N., 2005(2) RCR (CrI.) 68: 2005(1) Apex Criminal 537 (SC) : [(2005) 3 SCC 507], Abraham Ajith (supra) was followed by this Court stating :

"In the view we are taking, it is not necessary for us to delve into the question of territorial jurisdiction of the Court at Trichy in detail. Suffice it to say that on looking at the

complaint at its face value, the offences

alleged cannot be said to have been CrI. Misc. No.M-15064 of 2009 6

committed wholly or partly within the local jurisdiction of the Magistrates Court at Trichy. Prima facie, none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction of that court. Almost all the allegations pertain to acts of cruelty for the purpose of extracting

additional property as dowry while she was in the matrimonial home at Mumbai and the

alleged acts of misappropriation of her

movable property at Mumbai. However, there

is one allegation relevant to Section 498-A from which it could be inferred that one of the acts giving rise to the offence under the said section had taken place in Chennai. It is

alleged that when the relations of the

informant met her in-laws at a hotel in Chennai where they were staying on 13.10.1998, there was again a demand for dowry and a threat to torture her in case she was sent back to Mumbai without the money and articles demanded.

Thus the alleged acts which according to the petitioner constitute the offences under Sections 498-A and 406 were done by the accused mostly in Mumbai and partly in

Chennai. Prima facie, there is nothing in the entire complaint which goes to show that any acts constituting the alleged offences were at all committed at Trichy."

In the facts of the present case, no offence appears to have been committed at Mansa. The delivery of dowry articles does not constitute an offence. It is a subsequent misappropriation and demand of dowry and refusal to return the said articles of dowry that constitutes an offence. As per the complaint, the said offence is stated to have taken place at Etawah. The harassment and cruelty under Section 498 is also CrI. Misc. No.M-15064 of 2009 7 alleged to have occurred at Etawah.

The judgments relied on by the learned counsel for the petitioner, as mentioned above, are the judgments rendered by various High Courts. The judgments rendered by the Hon'ble Apex Court, in the cases of Manish Ratan (supra) or Y. Abraham Ajith (supra) have not been referred to in either of these judgments. In fact, the judgments were rendered by the Hon'ble Apex Court at the later point of time.

The judgments referred to by the learned counsel for the respondent are all judgments rendered by the learned Single Bench of various High Courts, whereas, the principle with respect to the territorial jurisdiction of offence under Section 498-A is settled by the Hon'ble Apex Court in the judgments, rendered in the case of Manish Ratan and Y. Abraham Ajith (supra), as

discussed above fully cover the case in hand.

Accordingly, taking into account the facts in the present case as apparent from the complaint, there is no doubt that the cause of action arose in Etawah and the Court at Mansa had no jurisdiction to deal with the matter. The facts in hand are not covered with any of the exception under Section 178 of the Code.

Accordingly, the summoning order dated 14.11.2008 passed by the Chief Judicial Magistrate, is quashed and the complaint is returned to the respondent, who if so advised, may file the same at the appropriate Court, to be dealt with in accordance with law.

The petition is, accordingly, allowed.

(NIRMALJIT KAUR)

Judge

26.03.2010

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