

Bench: B Gavai

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2768 OF 2008

1. Shekhar Shivdas Mahire ]

age 30 years, Occ : Service, ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ]

]

2. Shivdas Dharmaji Mahire ]

age 57 years, Occ: Agri. ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ]

]

3 Smt. Lilabai Shivdas Mahire ]

age 50, Occ: Household ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ]

]

4 Rekhabai Shivdas Mahire ]

Age 58 years, Occ: Household ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ]

]

5. Sarika Shivdas Mahire ]

age 26 years, Occ : Agri. ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ]

]

6 Sangeeta Sarnath Salve ]

age 29 years, Occ: Household ]

r/o. Shriramnagar, Panchak Jail Road ]

Plot No. 18, Nashik ] ..Applicants versus

1. Sou. Sarikabai Shekhar Mahire ]

an adult, Occ : Service, ]

At present r/o. Panchasheel Colony ]

Dasharath Nagar, Dodasicha Road ]

Opp: Forest Office, Sahada ]

District Nashik ]

2. State of Maharashtra ]..Respondents 2

Mr. A. P. Mundargi amicus curiae appointed by the Court. Mr. Vivek Salunkhe i/b. Mr. P. B. Shah for Applicants. Ms. Rita K. Joshi for Respondent No. 1.

Mr. P. S. Hingorani - APP for Respondent No. 2 - State. CORAM : B. R. GAVAI, J.

DATED : APRIL 13, 2010.

ORAL JUDGMENT :

1. Rule, returnable forthwith. Heard by consent.

2. The applicants have filed the present application for quashing and setting aside CR. No. 126/2006 registered with Sahada Police Station and charge sheet No. 9 of 2007 filed in RCC No. 14/2007 pending before the learned J.M.F.C. Sahada. The applicants have in the alternative prayed for transfer of proceedings to the learned J.M.F.C. Nashik Road, Nashik.

3. An FIR was filed at the instance of the respondent No. 1 alleging therein that the applicants had physically and mentally ill treated her on account of unlawful demand of dowry and thereby committed an offence under Section 498-A of I.P.C. It appears that on completion of investigation the charge sheet came to be filed before the learned J.M.F.C. In the said proceedings, an application came to be filed by the present 3

applicants for transfer of the proceedings to the Court of J.M.F.C. at Nashik. The said application came to be rejected on the ground that the learned J.M.F.C. has no powers to transfer the proceedings. Subsequently the present application has been filed.

4. Mr. Salunkhe, the learned counsel appearing on behalf of the applicants submits that from the perusal of FIR, it would reveal that even according to the complainant the entire instances have taken place within the jurisdiction of the court at Nashik and therefore it is only the court at Nashik which will have jurisdiction to entertain the complaint. He further submits that nothing has taken place at Sahada, so as to invest the court at Sahada with the jurisdiction to entertain the complaint. The learned counsel relies on the judgments of the Apex Court in the case of Manish Ratan & Ors. Vs. State of M.P. & Anr. [(2007)1 Supreme Court Cases 262].

5. Ms. Joshi the learned counsel appearing on behalf of the respondent no. 1 submits that the respondent no. 1 complainant was required to stay in her parents house as her husband had himself taken her there. It is therefore submitted that since the complainant was required to stay with her parents as a consequence of ill treatment on account of demand of dowry, the court at Sahada had jurisdiction to entertain the complaint. 4

6. The learned counsel for the respondent no. 1 relied on the judgments in the cases of (1) Syed Khaja Mohiuddin vs. State of A.P. [I(2006)DMC 32], (2) Smt. Suman Upadhyay and others vs. State of U.P. and others [1999 Cri.L.J. 4657], (3) Vijai Ratan Sharma and others vs. State of U.P and another [1988 Cri.L.J. 1581], (4) Bina Dey and others vs. Pratibha Dey (Baidya) 2003 Cri. L.J. 3618] and (5) Dharmendra Kumar @ Dharmendra Kumar Vedi & Ors. vs. State of Bihar & Anr. [II (2009)DMC 779].

7. Looking into the important question as to whether the court at the place where the complainant wife resides will have a jurisdiction to entertain the complaint or not, Mr. Ashok Mundargi the learned senior counsel was requested to assist the court in the matter and act as amicus curiae. Mr. Mundargi graciously agreed to do so. I must place on record the valuable assistance rendered by Mr. Mundargi, the learned senior counsel. Taking the court through various provisions of Sections 126, 182, 183, 179, the learned senior counsel submits that wherever the legislature intended that the court other than the court within whose local jurisdiction the offence was committed will have a jurisdiction to enquire into the said offence, the legislature has so specifically provided. He submits that in so far as offence under Section 498-A is concerned, it has not been provided by the 5

legislature that it will be enquired into at any other place other than where the offence has taken place. Relying on the judgment of the Apex Court in the case of Y. Abraham Ajith & Ors. vs. Inspector of Police, Chennai & Anr. [(2004)8 SCC 100], the learned counsel submits that offence under Section 498-A is not a continuous offence. The courts at the place at which the complainant resides i.e. her parents' place will have no jurisdiction to entertain the complaint. The learned counsel further submits that in so far as the judgment of the Apex Court in the case of Sujata Mukherjee (Smt) vs. Prashant Kumar Mukherjee [(1997)5 SCC 30] is concerned, in the said case there was an allegation that the demand of dowry and assault on her had taken place at her parents place and therefore in the peculiar facts, it was held that the place where the complainant was residing will have jurisdiction.

8. From the perusal of the FIR, it would reveal that the entire allegations in the FIR is regarding ill treatment by the accused persons at her matrimonial home at Nashik. The only averment in the complaint on which the learned counsel for the complainant relies so as to bestow the court at Sahada with jurisdiction to entertain the complaint, is to the effect that she used to inform her father on telephone regarding the ill treatment and on other occasions whenever she used to go to Sahada she used to inform regarding demand of dowry to her parents. Taking the allegation in the FIR 6

at its face value, it cannot be said that there is even a whisper of any instance regarding the ill treatment within the territorial jurisdiction of the court at Sahada.

9. Section 177 of the Cr.P.C. provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Sections 176, 181, 182 and 183 provide for enquiry into the offence by a court through or into whose territorial jurisdiction the offence has taken place. The perusal of the aforesaid provisions would reveal that any offence is ordinarily required to be enquired into or tried by the court within whose local jurisdiction it was committed. However certain exceptions have been carved out by the legislation itself. Wherever the legislature has intended that the offence enquired into or tried by any other court other than the court in whose local jurisdiction offence was committed, it has specifically provided for the same. The Apex Court in the case of Y. Ibrahim (cited supra) has observed thus :

"11. A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee v. Prashant Kumar Mukherjee. There the allegations related to commission of alleged offences punishable under Sections 498-A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands 7

were made earlier, the husband of the complainant went to the place where the complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15-4-1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178(c) of the Code relating to continuance of the offences cannot be applied."

The Apex Court has observed further:

"19. 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 Magistrate concerned 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."

10. In the case of Manish Ratan (cited supra), the Apex Court has held that the offence under Section 498-A cannot be held to be continuing one 8

only because the complainant was forced to leave her matrimonial home. In the said case the Apex Court has also referred to the judgment of the Apex Court in the case of Ramesh v. State of Tamil Nadu, wherein the Apex Court observed as follows:

"16. Yet again in Ramesh v. State of T.N., Abraham Ajith was followed by this Court stating: (SCC pp. 512-13, paras 11-12):

"11. 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 committed wholly or partly within the local jurisdiction of the Magistrate's 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.

12. 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."

The said cases are squarely applicable to the facts of the present case."

It can thus be clearly seen that the Apex Court in clear terms had held that the offence under Section 498-A is not a continuing offence. Merely because the complainant has left the matrimonial house on account of the ill treatment by her husband and resides with her parents, cannot be a ground to bestow the court at the place where the parents reside, a jurisdiction to entertain the complaint.

11. In so far as reliance placed by the learned counsel for the respondent no. 1 on the judgment of the learned Single Judge of Andhra Pradesh High Court in the case of Sayed Khaja Mohiuddin (cited supra) is concerned, the learned Single Judge of the Andhra Pradesh High Court in the said case has observed that on account of harassment if the wife is forced to go either to her parent's place or a friend's place, there is nothing in law which prohibits the wife to initiate criminal action at a place where she is forced to live as a 10

consequence of being subjected to cruelty. Taking recourse to Section 126 of the Cr.P.C. the learned Judge has observed that the woman who is subjected to cruelty can file a complaint or lodge an F.I.R. at a place where the husband resides or the relative resides, at a place where she resides or at a place where both of them last resided. The learned Judge has further observed that the choice of choosing the court is certainly with the married woman and the husband or relatives, who are accused of committing an offence under Section 498-A of IPC cannot choose the forum of their choice. However, it can clearly be seen that the reliance placed by the learned Single Judge on Section 126 of the Cr.P.C. was totally out of context. Section 126 gives a choice to the wife to file the proceedings under Section 125 of the Cr.P.C. for maintenance at any of the place mentioned in Section 126. Relying on the provisions of Section 126 which deal with the jurisdiction for proceedings under Section 125 also for an offence under Section 498-A, in my view would be providing something which has not been provided by the legislature. It further appears that the learned Single Judge of the Andhra Pradesh High Court has not noticed the judgments of the Apex Court in the case of Y. Ibrahim Ajith and Ramesh vs. State of T.N., which were prior to the judgment of the learned Single Judge. In that view of the matter, I am unable to agree with the view taken by the learned Single Judge of the Andhra Pradesh High Court.

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12. In so far as the judgment of the learned Judge of Allahabad High Court in the case of Suman Upadhyay (cited supra) is concerned, in the said case in the complaint it was specifically alleged that the ill treatment was committed at several places, therefore, the learned Judge of the Allahabad High Court took a view that the complaint could be filed at any of the places where the alleged ill treatment had taken place.

13. In so far as the judgment of the learned Single Judge of Allahabad High Court in case of Vijai Ratan Sharma and others (cited supra) and judgment of the learned Single Judge of Gauhati High Court in the case of Binay Dey & ors. vs. Pratibha Dey (Baidya) (cited supra) are concerned, both these judgments are delivered prior to the judgments of the Apex Court in the case of Y. Ibrahim Ajith, Ramesh v. State of T.N., Manish Ratan, and therefore will have to be held to be impliedly over ruled.

14. In so far as judgment of the learned Single Judge of the Patna High Court in the case Dharmendra Kumar @ Dharmendra Kumar Vedi & Ors. (cited supra) is concerned, in the said case in the complaint it was alleged that the demand of dowry was made to her father where her father resided and on non fulfillment of demand she and her father was assaulted. In this factual background it was held that part of cause of action arose within the jurisdiction of the court where her parents resided and the court at such a 12

place had a jurisdiction to entertain the complaint.

15. In the present case as already discussed herein above, there are no allegations of any ill treatment at the place where the parents of the complainant resided. The entire allegations pertain to the matrimonial home of the complainant i.e. Nashik. In that view of the matter, the proceedings before the court at JMFC, Sahada are not tenable. However, I find that inspite of quashing the proceedings, it would be in the interest of justice to transfer the proceedings from the court of JMFC Sahada to the court of learned Chief Judicial Magistrate, Nashik. The application is therefore allowed by directing the proceedings being CR. No. 126/2006 registered with Sahada Police Station and charge sheet No. 9 of 2007 filed in RCC No. 14/2007 pending before the learned J.M.F.C. Sahada to be transferred to the court of the Learned Chief Judicial Magistrate, Nashik, who shall allot the same to the court of competent jurisdiction at Nashik. It is needless to state that the proceedings shall stand transferred from the present stage along with the evidence, if any, recorded.

16. At this stage, the learned counsel for the complainant - respondent no.1 prays for stay of the order passed by this court for a period of ten weeks. The said prayer is vehemently opposed by the learned counsel for the applicants.

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17. However, taking into consideration that there was an interim order operating for a considerable length of time, I am inclined to stay the order for a period of eight weeks from today. Order accordingly.

18. Rule made absolute in the aforesaid terms. No order as to costs. (B. R. GAVAI, J.)