

THOTA VENKATESWARLU

v.

STATE OF A.P. TR. PRINCL. SEC. & ANR.
(SLP (CrI.) No. 7640 of 2008)

SEPTEMBER 02, 2011

[ALTAMAS KABIR, CYRIAC JOSEPH AND SURINDER
SINGH NIJJAR, JJ.]

Code of Criminal Procedure, 1973:

s. 188 proviso – Offence committed outside India by citizen of India – Previous sanction of Central Government for inquiring into or trying such offences in India – Requirement of – Held: Upto the stage of taking cognizance, no previous sanction is required from the Central Government in terms of the proviso to s. 188 – However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government.

s. 188 – Offence committed outside India – Petitioner-husband and respondent No.2-wife married in India – At the time of marriage, cash and gold given by father of respondent No. 2 to the petitioner – Petitioner left for abroad-Botswana and respondent No. 2 joined him one month later – Respondent No.2 allegedly ill-treated by the petitioner as also demand for dowry raised by the petitioner, and his immediate relatives by way of phone calls – Respondent No. 2 addressed a complaint to the police in India – Registration of complaint u/ss. 498-A and 506 IPC and ss. 3 and 4 of the Dowry Prohibition Act, 1986 – Charge-sheet filed against the petitioner and his close relatives-co-accused – Cognizance taken by Magistrate – Petition filed by the petitioner and co-accused seeking quashing of the same – High Court quashed proceedings against the co-accused, however dismissed the petition filed by the petitioner – On appeal, held: Alleged

- A offences u/ss. 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the criminal courts in India and could, therefore, be tried by the courts in India without obtaining the previous sanction of the Central Government – Magistrate may proceed with the trial relating to offences –
- B However, in respect of offences alleged to have been committed outside India, the Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the proviso to s. 188 – Penal Code, 1860 – ss. 498-A and 506 – Dowry Prohibition Act, 1986 – ss. 3 and 4.

- C **Petitioner-husband and respondent No.2-wife got married in India. At the time of marriage, father of respondent No. 2 gave cash and gold to the petitioner and his relatives (accused Nos. 1 to 4). The petitioner left for abroad-Botswana and respondent No. 2 joined him**
- D **one month later. It is alleged that while in Botswana, the petitioner ill-treated respondent No.2 as also raised dowry demands. The petitioner's immediate relatives also raised dowry demands by way of phone calls. Respondent No. 2 addressed a complaint to the police in India from**
- E **Bostwana. The case was registered u/ss. 498-A and 506 IPC and ss. 3 and 4 of the Dowry Prohibition Act, 1986. The charge-sheet was filed against the petitioner and his close relatives. The Magistrate took cognizance of the case and ordered issuance of summons against the**
- F **accused. The petitioner and accused Nos. 2 to 4 filed a criminal petition seeking quashing of the cognizance taken by the Magistrate u/s. 482 Cr.P.C. The High Court allowed the criminal petition filed by accused Nos. 2 to 4, however, dismissed the one filed by the petitioner.**
- G **Therefore, the petitioner filed the instant Special Leave Petition.**

- H **The question which arose for consideration in the instant case was whether in respect of a series of offences arising out of the same transaction, some of which were committed within India and some outside**

India, such offences could be tried together, without the previous sanction of the Central Government, as envisaged in the proviso to Section 188 Cr.P.C. A

Disposing of the Special Leave Petition, the Court

HELD: 1.1 From the complaint made by respondent No.2, it is clear that the cases relating to alleged offences under Section 498-A and 506 I.P.C. had been committed outside India in Botswana, where the petitioner and respondent No.2 were residing. At best it may be said that the alleged offences under Sections 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the criminal courts in India and could, therefore, be tried by the courts in India without having to obtain the previous sanction of the Central Government. [Para 9] [102-G-H; 103-A-B] B C D

1.2 The language of Section 188 Cr.P.C. is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. The proviso to Section 188 is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to E F G H

A Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to
 B complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required. [Paras 10 and 11] [103-C-H; 104-A-D]

C 1.3 The provisions of the Penal Code, 1860 have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of Section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Penal Code, 1860 subject to the
 D limitation imposed under the proviso to Section 188 Cr.P.C. [Para 12] [104-E]

E 1.4 While there is no reason to interfere with the High Court's decision to reject the petitioner's prayer for quashing of the proceedings in the complaint case it is also clear that the Magistrate may proceed with the trial relating to the offences alleged to have been committed in India. However, in respect of offences alleged to have been committed outside India, the Magistrate shall not
 F proceed with the trial without the sanction of the Central Government as envisaged in the proviso to Section 188 Cr.P.C. [Para 13] [104-F-G]

G *Ajay Aggarwal vs. Union of India and Ors.* (1993) 3 SCC 609: 1993 (3) SCR 543 – referred to.

Case Law Reference:

1993 (3) SCR 543 Referred to Para 10

H CRIMINAL APPELLATE JURISDICTION : SLP (Crl.) No. 7640 of 2008.

From the Judgment & Order dated 27.08.2008 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 3629 of 2008. A

G.V.R. Choudary, K. Shivraj Choudhuri, A. Chandra Sekhar for the Petitioner. B

D. Mahesh Babu, Sawita, D. Bharathi Reddy, P. Venkat Reddy, Anil Kumar Tandale for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. This Special Leave Petition is directed against the judgment and order dated 27th August, 2008, passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Petition No.3629 of 2008 dismissing the Petition filed by the Petitioner under Section 482 Criminal Procedure Code ('Cr.P.C.' for short) for quashing the proceedings in Complaint Case No.307 of 2007 pending before the Additional Munsif Magistrate, Addanki. This case raises certain interesting questions of law and to appreciate the same, some of the facts are required to be reproduced. C
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2. The Petitioner, Thota Venkateswarlu, was married to the Respondent No.2, Parvathareddy Suneetha, on 27th November, 2005, as per Hindu traditions and customs in the Sitharama Police Kalyana Mandapam, Ongole, Prakasam District, Andhra Pradesh. At the time of marriage 12 lakhs in cash, 45 sovereigns of gold and 50,000/-as Adapaduchu Katnam is alleged to have been given to the Accused Nos.1 to 4, who are the husband, the mother-in-law and other relatives of the husband. According to the Respondent No.2, the Petitioner left India for Botswana in January 2006 without taking her along with him. However, in February, 2006, the Respondent No.2 went to Botswana to join the Petitioner. While in Botswana, the Respondent No.2 is alleged to have been severely ill-treated by the Petitioner and apart from the above, various demands were also made including a demand for additional dowry of 5 F
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A lakhs. On account of such physical and mental torture not only by the Petitioner/husband, but also by his immediate relatives, who continued to demand additional dowry by way of phone calls from India, the Respondent No.2 addressed a complaint to the Superintendent of Police, Ongole, Prakasam District, Andhra Pradesh, from Botswana and the same was registered as Case (Crl.) No.25 of 2007 under Sections 498-A and 506 Indian Penal Code ('I.P.C.' for short) together with Sections 3 and 4 of the Dowry Prohibition Act, 1986, by the Station House Officer, Medarametla Police Station, on the instructions of the Superintendent of Police, Prakasam District. Upon investigation into the complaint filed by the Respondent No.2, the Inspector of Police, Medarametla, filed a charge-sheet in CC No.307 of 2007 in the Court of the Additional Munsif Magistrate, Addanki, Prakasam District, under Sections 498-A and 506 I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act against the Petitioner and his father, mother and sister, who were named as Accused Nos.2, 3 and 4. The learned Magistrate took cognizance of the aforesaid case and by his order dated 19th February, 2007, ordered issuance of summons against the accused.

3. The cognizance taken by the learned Magistrate was questioned by the Petitioner and the other coaccused before the Andhra Pradesh High Court in Criminal Petition Nos.3629 and 2746 of 2008 respectively and a prayer was made for quashing of the same under Section 482 of the Code of Criminal Procedure. The High Court by its order dated 27th August, 2008, allowed Criminal Petition No.2746 of 2008 filed by the Accused Nos.2 to 4 and quashed the proceedings against them. However, Criminal Petition No.3629 of 2008 filed by the Petitioner herein was dismissed. The present Special Leave Petition is directed against the said order of the High Court rejecting the Petitioner's petition under Section 482 Cr.P.C. and declining to quash Complaint Case No.307 of 2007 initiated against him.

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4. The submissions made by the learned counsel for the Petitioner before this Court have raised certain important questions which warrant the attention of this Court. A

5. It has been submitted on behalf of the Petitioner that as will appear from the complaint made by the Respondent No.2 to the Superintendent of Police, Ongole, Prakasam District, Andhra Pradesh on 22nd March, 2007, no grounds had been made out therein to continue with the proceedings in India, having regard to the provisions of Section 188 Cr.P.C., which provides as follows : B

“188. Offence committed outside India – When an offence is committed outside India- C

(a) by a citizen of India, whether on the high seas or elsewhere; or D

(b) by a person, not being such citizen, on any ship or aircraft registered in India.

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: E

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.” F

6. Learned counsel urged that Section 188 Cr.P.C. recognizes that when an offence is committed outside India by a citizen of India, he would have to be dealt with as if such offence had been committed in any place within India at which he may be found. Learned counsel, however, laid stress on the proviso which indicates that no such offence could be inquired into or tried in India except with the previous sanction of the Central Government [Emphasis Supplied]. Learned counsel G

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A submitted that in respect of an offence committed outside India, the same could not be proceeded with without previous sanction of the Central Government and that, accordingly, even if any of the offences was allegedly committed inside India, trial in respect of the same could continue, but the trial in respect of the offences committed outside India could not be continued, without the previous sanction of the Central Government.

7. On behalf of the Respondents it was urged that a part of the alleged offences relating to the Dowry Prohibition Act did appear to have arisen in India, even at the initial stage when various articles, including large sums of cash and jewellery were given in dowry by the father of the Respondent No.2. It was submitted that since a part of the cause of action had arisen in India on account of alleged offences under Sections 3 and 4 of the Dowry Prohibition Act, 1968, the learned Magistrate trying the said complaint could also try the other offences alleged to have been committed outside India along with the said offences. Reliance was placed on the decision of this Court in *Ajay Aggarwal vs. Union of India & Ors.* [(1993) 3 SCC 609], wherein it had been held that obtaining the previous sanction of the Central Government was not a condition precedent for taking cognizance of offences, since sanction could be obtained before trial begins.

8. The question which we have been called upon to consider in this case is whether in respect of a series of offences arising out of the same transaction, some of which were committed within India and some outside India, such offences could be tried together, without the previous sanction of the Central Government, as envisaged in the proviso to Section 188 Cr.P.C.

9. From the complaint made by the Respondent No.2 in the present case, it is clear that the cases relating to alleged offences under Section 498-A and 506 I.P.C. had been committed outside India in Botswana, where the Petitioner and the Respondent No.2 were residing. At best it may be said that

the alleged offences under Sections 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the Criminal Courts in India and could, therefore, be tried by the Courts in India without having to obtain the previous sanction of the Central Government. However, we are still left with the question as to whether in cases where the offences are alleged to have been committed outside India, any previous sanction is required to be taken by the prosecuting agency, before the trial can commence.

10. The language of Section 188 Cr.P.C. is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in *Ajay Aggarwal's* case (supra), it was held that sanction under Section 188 Cr.P.C. is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows :

"29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one — commission of an offence; second — by an Indian citizen; and third — that it should have been committed outside the country."

Although the decision in *Ajay Aggarwal's* case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Cr.P.C. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The

A fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

11. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.

12. It may also be indicated that the provisions of the Indian Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of Section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Indian Penal Code, subject to the limitation imposed under the proviso to Section 188 Cr.P.C.

13. Having regard to the above, while we see no reason to interfere with the High Court's decision to reject the petitioner's prayer for quashing of the proceedings in Complaint Case No.307 of 2007, we also make it clear that the learned Magistrate may proceed with the trial relating to the offences alleged to have been committed in India. However, in respect of offences alleged to have been committed outside India, the learned Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the proviso to Section 188 Cr.P.C.

14. The Special Leave Petition is disposed of accordingly.

H N.J. SLP disposed of.