

AMARENDU JYOTI & ORS.

A

v.

STATE OF CHHATISGARH & ORS.

(Criminal Appeal No. 546 of 2009)

AUGUST 4, 2014

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[SUDHANSU JYOTI MUKHOPADHAYA AND

S. A. BOBDE, JJ]

Jurisdiction – Territorial jurisdiction to try an offence – Wife after residing at place ‘D’ with husband for a month started residing at parent’s place at ‘A’ – Girls’ father filing FIR u/s. 498A alleging cruelty – Application u/s. 482 Cr.P.C. by the husband seeking quashing of FIR since FIR did not disclose a continuing offence – Application dismissed by the High Court holding that offence of cruelty continued, thus, was a continuing offence – On appeal, held: All overt acts, which are said to have constituted cruelty have allegedly taken place at place ‘D’ – Offence of cruelty cannot be said to be a continuing one as contemplated by s. 178 and 179 Cr.P.C. – Thus, going by the complaint, it cannot be held that the court at place ‘A’ has jurisdiction to try the offence since the appropriate court at place ‘D’ would have jurisdiction to try the said offence – Code of Criminal Procedure, 1973 – ss. 482, 178 and 179.

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After marriage, appellant no. 1-husband and respondent no.2-wife resided at place ‘D’ for a month. Thereafter, respondent no. 2 left for her parents place at ‘A’. Two years later, father of respondent no. 2 filed an FIR u/s. 498A IPC at place ‘A’ alleging cruelty against appellant no. 1 and his family. The appellants filed an application u/s. 482 Cr.P.C. before the High Court challenging the territorial jurisdiction of the court at place ‘A’ to try the offence alleged against the appellants when

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- A the incidents of cruelty alleged by respondent no. 2 took place at place 'D' and thereafter, respondent no. 2 left for her parents' at place 'A'. The High Court dismissed the application holding that the acts of cruelty continued and thus, the offence of cruelty was a continuing offence.
- B Hence the instant appeal.

Allowing the appeal, the Court

- C HELD: 1.1 It is found from the F.I.R. that all the incidents alleged by the complainant in respect of the alleged cruelty are said to have occurred at place 'D'. The husband, elder brother-in-law and elder sister-in-law for bringing less dowry are said to have been uttered at place 'D'. Allegedly, arbitrary demands of lakhs of rupees in dowry have been made at place 'D'. The incident of beating and dragging the respondent no. 2 and abusing her in filthy language also is said to have taken place at place 'D'. Suffice it to say that all overt acts, which are said to have constituted cruelty have allegedly taken place at place 'D'. [Para 7][1085-B-E]

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- E 1.2 The offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. The holding by the High Court that the mental cruelty inflicted upon the respondent no. 2 "continued unabated" on account of no effort having
- F been made by the appellants to take her back to her matrimonial home, and the threats given by the appellants over the telephone cannot be accepted. It might be noted incidentally that the High Court did not make reference to any particular piece of evidence
- G regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, it cannot be held that the Court at place 'A' has jurisdiction to try the offence since the appropriate

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Court at place 'D' would have jurisdiction to try the said offence. It is appropriate, in the interest of justice to permit the Court at place 'A' to proceed with the trial of criminal case arising out of F.I.R., in exercise of powers conferred on this Court by Article 142 of the Constitution of India. [Para 8, 9][1085-G-H; 1086-A-D]

Manish Ratan v. State of M.P. 2006 (8) Suppl. SCR 226 : (2007) 1 SCC 262 ; *Sujata Mukherjee v. Prashant Kumar Mukherjee* 1997 (3) SCR 1127 : (1997) 5 SCC 30 ; *State of Bihar v. Deokaran Nenshi* 1973 (3) SCR 1004 : (1972) 2 SCC 890 ; *Y Abraham Ajith v. Inspector of Police* 2004 (3) Suppl. SCR 604 : (2004) 8 SCC 100 ; *Ramesh v. State of T.N.* 2005 (2) SCR 493:(2005) 3 SCC 507 – referred to.

CASE LAW REFERENCE

2006 (8) Suppl. SCR 226	referred to	Para 4,5
1997 (3) SCR 1127	referred to	Para 5
1973 (3) SCR 1004	referred to	Para 5
2004 (3) Suppl. SCR 604	referred to	Para 5
2005 (2) SCR 493	referred to	Para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No(s). 546 of 2009.

From the Judgment and Order dated 19.12.2006 of the High Court of Chattisgarh in Misc. CrI. Case No. 1104 of 2006.

Bhaskar Y. Kulkarni, Adv., for the Appellants.

Sumit Kumar Sharma, Niraj Sharma, Advs., for the Respondents.

A The Judgment of the Court was delivered by
 S. A. BOBDE, J.

B 1. The appellant no. 1 – Amarendu Jyoti, who is husband
 of respondent no. 2 – Smt. Kiran Sinha, has challenged the
 Order dated 19th December, 2006 passed by the High Court
 of Chhattisgarh in Miscellaneous Criminal Case [MCRL] No.
 1104 of 2006 dismissing the appellants' application under
 Section 482 of the Code of Criminal Procedure, 1973
 [hereinafter referred to as 'the Code'] and holding that the First
 C Information Report [F.I.R.] for offence under Section 498-A of
 the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'],
 lodged by the respondent no. 3 – Madhusudan Sinha, was
 liable to be tried by the Court at Ambikapur, which has
 D jurisdiction to try the offence. The main contention of the
 appellants is that the incident of cruelty alleged by respondent
 no. 2 has taken place only at Delhi, where the couple resided
 after which the respondent no. 2 went to stay with her parents
 at Ambikapur in the State of Chhattisgarh, therefore, the Court
 at Ambikapur has no jurisdiction to try the alleged offence
 E against the appellants in the F.I.R. under Section 498-A, IPC,
 lodged by respondent no. 3.

F 2. The marriage of the appellant no. 1 to the respondent
 no. 2 took place on 21.04.2003 at Patna. The couple resided
 at Delhi from 27.04.2003 to 22.05.2003 when the respondent
 no. 2/wife left Delhi for her parents' place at Ambikapur. After
 about 2 ½ years, her father – Madhusudan Sinha/respondent
 no. 3 filed an F.I.R. at Ambikapur alleging that respondent no.
 2/Kiran Sinha has been subjected to cruelty by her husband/
 G appellant no. 1, elder brother-in-law/appellant no. 2 and elder
 sister-in-law/appellant no. 3, who are therefore to be punished
 under Section 498-A of the IPC.

H 3. The appellants approached the High Court of
 Chhattisgarh at Bilaspur under Section 482 of the Code
 questioning the territorial jurisdiction of the Court at Ambikapur

to try the offence alleged against the appellants. The respondent no. 3 has alleged cruelty in the F.I.R. dated 31.12.2005. However, according to the appellants each of the alleged incidents, which constitute cruelty, has taken place when the couple resided together in Delhi between 27.04.2003 to 22.05.2003, before the respondent no. 2 shifted to Ambikapur to stay with her father – respondent no. 3. Thus, according to the appellants the territorial jurisdiction to try the offence cannot be with the Court at Ambikapur, where no incident is alleged to have taken place. This argument did not find favour with the High Court, which dismissed the application under Section 482 of the Code. The High Court held, having regard to the provisions of Sections 178 and 179 of the Code that after the respondent no. 2 had left the appellants society at Delhi and gone to Ambikapur to reside with her father, the acts of cruelty continued and therefore the offence of cruelty was a continuing offence. The High Court relied on the fact that the respondent no. 2 was made to abandon her husband's company because of cruel treatment and compelled to stay at Ambikapur; further, that the respondent no. 2 was subjected to cruelty by telephone calls over which she was threatened and demand of dowry was made. The letters written by respondent nos. 2 and 3 showing the sufferings of the wife at Ambikapur were relied on and the High Court noted that despite the respondent's plight the appellant made no effort to take her back to the matrimonial home. Accordingly, the High Court held that the offence of cruelty was a continuing offence and the court at Ambikapur had jurisdiction to try.

4. Aggrieved by the rejection of the application under Section 482 of the Code, the appellants have approached this Court by way of special leave to appeal. The main contention on behalf of the appellants was that the F.I.R. did not disclose a continuing offence. The offence, if any, was alleged to have been committed only at Delhi and there was no question of any offence having been committed after the respondent no. 2 went to stay at Ambikapur. The learned counsel for the

A appellants relied on the decision of this Court in ***Manish Ratan v. State of M.P.***, (2007) 1 SCC 262.

5. In ***Manish Ratan's*** case (*supra*), in the complaint, the incident was said to have taken place in Jabalpur. The wife had left her matrimonial house and started residing at Datia.

B The Criminal Revision filed by the accused, questioning the jurisdiction of the Court at Datia, was dismissed opining that the offence was a continuing one, and therefore, the Datia Court had jurisdiction to take cognizance. The High Court held that the Court at Datia also has jurisdiction to try the case since

C the harassment to the wife continued at the place where she was residing with her father "*since she was forced to live at her father's place on account of the torture of the in-laws and as such it can safely be said that there was also a mental cruelty.*" This conclusion of the High Court was dubbed as

D curious by this Court since the High Court found earlier that "*there is nothing in the complaint to show that any maltreatment was given to the appellant at Datia. The allegations, which I may repeat here, are that the maltreatment was given within a specific period at Jabalpur.*"

E After looking at the decided case on the point i.e. ***Sujata Mukherjee v. Prashant Kumar Mukherjee***, (1997) 5 SCC 30; ***State of Bihar v. Deokaran Nenshi***, (1972) 2 SCC 890; ***Y Abraham Ajith v. Inspector of Police***, (2004) 8 SCC 100; and ***Ramesh v. State of T.N.***, (2005) 3 SCC 507, this Court

F held that the order of the High Court was unsustainable, and therefore, set it aside. It is not only that in the interest of justice; while setting aside the order of the High Court, this Court directed the transfer of the criminal case pending in the Court of Chief Judicial Magistrate, Datia, where the wife was staying

G with her father to the Court of Judicial Magistrate, Jabalpur (vide para 18).

6. Relying on the Judgment of this Court in ***Manish Ratan's*** case (*supra*), the learned counsel for the appellants contended that the offence in the present case cannot be

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considered to be a continuing offence, if any, and must be taken to have been complete at Delhi and no cause of action can be said to have arisen at Ambikapur. As must necessarily be, the application of law and the consequences must vary from case to case.

7. The core question thus is whether the allegations made in the F.I.R. constitute a continuing offence. We find from the F.I.R. that all the incidents alleged by the complainant in respect of the alleged cruelty are said to have occurred at Delhi. The cruel and humiliating words spoken to the 2nd respondent/wife by her husband, elder brother-in-law and elder sister-in-law for bringing less dowry are said to have been uttered at Delhi. Allegedly, arbitrary demands of lakhs of rupees in dowry have been made in Delhi. The incident of beating and dragging the respondent no. 2 and abusing her in filthy language also is said to have taken place at Delhi. Suffice it to say that all overt acts, which are said to have constituted cruelty have allegedly taken place at Delhi. The allegations as to what has happened at Ambikapur are as follows:

“No purposeful information has been received from the in-laws of Kiran even on contacting on telephone till today. They have been threatened and abused and two years have been elapsed and the in-laws have not shown any interest to call her to her matrimonial home and since then Kiran is making her both ends meet in her parental home. To get rid of the ill-treatment and harassment of the in-laws of Kiran, the complainant is praying for registration of an FIR and request for immediate legal action so that Kiran may get appropriate justice.”

8. We find that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. We do not agree with the High Court that in this case the mental cruelty inflicted upon the respondent no. 2 “continued unabated” on account of no effort having been made by the appellants to take her back to her matrimonial

A home, and the threats given by the appellants over the telephone. It might be noted incidentally that the High Court does not make reference to any particular piece of evidence regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, we are of the view that it cannot be held that the Court at Ambikapur has jurisdiction to try the offence since the appropriate Court at Delhi would have jurisdiction to try the said offence. Accordingly, the appeal is allowed.

9. However, we consider it appropriate, in the interest of justice to permit the Court at Ambikapur to proceed with the trial of Criminal Case arising out of F.I.R. No. 798 of 2005 dated 31.12.2005, in exercise of powers conferred on this Court by Article 142 of the Constitution of India.

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Nidhi Jain

Appeal allowed.