

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

S.B.CR. MISC. PETITION NO.1837/2014

Manish Kumar Sharma & Ors.

vs.

State of Rajasthan & Anr.

Date of Order : 23rd April, 2015

PRESENT

HON'BLE MR JUSTICE VIJAY BISHNOI

Mr Mahesh Bora, Sr. Advocate assisted by
Mr Nishan Bora & Mr Laxman Bishnoi, for the
petitioners

Mr Vikram Rajpurohit - Public Prosecutor
Mr Suresh Kumbhat, for respondent No.2

BY THE COURT:

This criminal misc. petition under
section 482 CrPC has been filed by the
petitioners for quashing the FIR No.19/2014
lodged at Police Station Women, Bikaner
against the petitioners for the offences
punishable under sections 498-A, 406 and 323
IPC.

While assailing the impugned FIR,
learned counsel for the petitioners has
confined his challenge up to the jurisdiction
of the police of District Bikaner to
investigate into the allegations levelled in
the FIR. Hence, the only issue for

consideration in this criminal misc. petition is whether the Women Police Station, Bikaner can investigate into the allegations levelled in the FIR

Brief facts of the case are that respondent No.2 has lodged the impugned FIR alleging ill treatment by the petitioners after her marriage with the petitioner No.1 at Jaipur. It is alleged in the FIR that after solemnization of her marriage with petitioner No.1 on 09.11.2008 at Jaipur, she was subjected to ill treatment and harassment by the petitioners when she was living with them in her matrimonial home at Jaipur. It is further alleged that the petitioners had demanded money and a car in dowry and when the same were not given to them, all the petitioners abused her with filthy language and tortured her by beating. It is also alleged that ornaments belonging to her were taken by mother-in-law and were not returned. Details of several specific incidents have also been given in the impugned FIR while claiming that the respondent No.2 was subjected to cruelty committed by the

petitioners, however, all the incidents mentioned in the impugned FIR are said to have taken place in matrimonial home at Jaipur.

Learned counsel for the petitioners has questioned the territorial jurisdiction of the Women Police Station, Bikaner to carry out the investigation into the allegations levelled in the FIR while contending that from wholesome reading of the FIR, it is clear that none of the alleged incidents of cruelty, criminal breach of trust and voluntarily causing hurt had taken place at Bikaner, therefore, the Police Station at Bikaner has no jurisdiction to investigate into the allegations levelled in the FIR as per section 177 CrPC. In support of the above arguments, learned counsel for the petitioners has placed reliance on decisions of Hon'ble Supreme Court in *Y.Abraham Ajith & Ors. vs. Inspector of Police, Chennai & Anr., AIR 2004 SC 4286; Manish Ratan & Ors. vs. State of M.P. & Anr., (2007) 1 SCC 262* and *Bhura Ram & Ors. vs. State of Rajasthan & Anr., AIR 2008 SC 2666*

as well as of this Court in *Dr. Ashok Pasricha & Ors. vs. State of Rajasthan, 1999 (1) R.C.C. 292; Kumari Suman & Ors. vs. State of Rajasthan & Anr., 2006 CriLJ 4187; Roop Singh & Ors. vs. State of Rajasthan & Anr., 2008 (3) R.C.C. 1073; Sameer Mohammad & Ors. vs. State of Rajasthan & Anr., 2008 (3) R.C.C. 1343* and *Mohammad Ameen & Anr. vs. The State of Rajasthan & Anr., 2009(32) Criminal CC 161.*

Per contra, learned counsel appearing on behalf of respondent No.2 has argued that the offence of cruelty committed by the petitioners is a continuing offence and, therefore, the impugned FIR at Bikaner is also maintainable because the respondent No.2 is residing at Bikaner in her parental house. It is also contended that as per the provisions of sub-section (c) of section 178 CrPC, where an offence is a continuing one and continues to be committed in more than one local areas, the police station of any of the local areas is having jurisdiction to investigate into the allegations levelled in the FIR.

It is further argued that in the impugned FIR, as the respondent No.2 has specifically alleged that her *Stridhan* has not been returned to her and at present as the respondent No.2 is residing at Bikaner, the petitioners are required to return her *Stridhan* at Bikaner, in view of the provisions of sub-section (4) of section 181 CrPC, the police station of District Bikaner is very much having territorial jurisdiction to entertain the impugned FIR. It is further contended that in the impugned FIR, there is specific allegation that on many occasions, the petitioners had demanded money from her father and he in turn, had fulfilled their demands by depositing money in the bank accounts of the petitioners and the said money was deposited by her father in Bikaner, therefore, also the Women Police Station, Bikaner has jurisdiction to investigate into the allegations levelled in the impugned FIR.

Learned counsel for the respondent No.2 has also argued that during the course of investigation, the supplementary statements of the respondent No.2 have been

recorded on 15.02.2014 under section 161 CrPC, wherein she has clearly stated that the petitioner No.1 has not returned the articles, which were given to him by her father at Bikaner and she has also specifically alleged that in the marriage of her brother at Bikaner all the accused-persons were present and had insulted her in the presence of her family members and not allowed her to attend all the functions of marriage of her brother and took her to Jaipur on the very next day of the marriage and had not allowed her to stay even for one day at Bikaner because they wanted some more money in gift and from the above statement of respondent No.2, it is clear that she was subjected to cruelty at Bikaner also and, therefore, the Women Police Station, Bikaner has territorial jurisdiction to entertain the impugned FIR.

In support of the above arguments, learned counsel for the respondent No.2 has placed reliance on decisions of Hon'ble Supreme Court rendered in *Ranjana Koshal (Gupta) V. Suresh Kaushal & Ors., 2004 SCC*

(Cri.) 1185; Naresh Kavarchand Khatri V. State of Gujrat & Anr., 2010 (Suppl.) Cr.L.R. (SC) 212 and Sunita Kumari Kashyap V. State of Bihar and Anr., 2011 Cr.L.R. (SC) 400. He also placed reliance on decisions of this Court rendered in Gyan Singh V. State of Rajasthan, 1999 Cr.L.R. (RAJ.) 107; Kanhaiyalal and Ors. V. State of Rajasthan & Anr., 2008 Cri.L.J. 3220; Piyush Ramsinghani V. State of Rajasthan & Anr., 2009 (2) CJ (Cr.) (Raj.) 630; Munshi Abdul Rahim & Ors. V. State of Rajasthan, 2010 (1) Cr.L.R. (Raj.) 516; Varinder Singh & Ors. V. State of Rajasthan & Ors., 2011 (1) Cr.L.R. (Raj.) 385; Gulshan Kapoor & Ors. V. State of Rajasthan & Anr., 2011 (2) Cr.L.R. (Raj.) 1711; Mohammad Jakir & Ors. V. State of Rajasthan & Anr., 2012 (3) CJ (Cri.) (Raj.) 1417; Hari Mohan & Ors. V. State of Rajasthan & Ors., 2013 (4) Cr.L.R. (Raj.) 1820; Smt. Madhu Gupta V. State of Rajasthan, 2013 (2) RCC (Raj.) 813; Dhamman V. State of Rajasthan & Ors., 2013 (1) RLW 42 (Raj.) and Kuldeep Singh & Ors. V. State of Rajasthan & Anr., 2014(2)Cr.L.R.(Raj.)

637. The learned counsel for the respondent No.2 has further placed reliance on decisions of Delhi High Court, M.P.High Court and Allahabad High Court respectively in *Surinder Kumar Yadav V. State of Delhi, 2000 ILR (1) Delhi 181; Badam Singh & Anr. V. State of M.P. & Anr., 2015 Cr. L.R. (M.P.) 137* and *Ravi Pratap Rai & Ors. V. State of U.P. & Ors., 2012 (3) Cr.C.C.(AL.) 651.*

Heard learned counsel for the rival parties and perused the material available on record.

The question before this Court is now that in the facts and circumstances of the case whether the Women Police Station, Bikaner has territorial jurisdiction to investigate into the allegations levelled in the impugned FIR or not.

Sections 177, 178 and 181 of Code of Criminal Procedure read as under:

“177. Ordinary place of inquiry and trial.--

Every offence shall ordinary be inquired into and tried by a court within whose local jurisdiction it was committed.

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 a continuing one, and continues 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.

181. Place of trial in case of certain

offences.--(1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local

jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.”

Section 177 CrPC prescribes a general rule with regard to the place where a case can be inquired or tried. Sections 178 and 181 CrPC are exceptions to the general rule contained in section 177 CrPC. Sub-section (c) of section 178 CrPC provides that where an offence is a continuing one and continues to be committed in more local areas than one it may be inquired into or tried by a court having jurisdiction over any of such local areas. Sub-section (4) of section 181 CrPC provides that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the

property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

From bare reading of the contents of impugned FIR, it is clear that all the incidents alleged by the respondent No.2 in respect of the cruelty, voluntarily causing hurt and breach of trust had occurred in her matrimonial home at Jaipur. The cruel and humiliating treatment alleged to have been given by the petitioners to the respondent No.2 on account of bringing less dowry said to have taken place in her matrimonial home at Jaipur. The demands of money, gifts and car in dowry were made in Jaipur. The incident of giving beating to the respondent No.2 and snatching of her child had also taken place in her matrimonial home at Jaipur. Suffice it to say that all the incidents, which are said to have constituted offences of cruelty, voluntarily causing hurt and breach of trust have allegedly taken place in the matrimonial home of the respondent No.2 at Jaipur. It is not the

case of the respondent No.2 that even when she had started residing at Bikaner in her parental house, the accused-persons demanded dowry or committed offence of cruelty at Bikaner with a view to coercing or any person related to her to meet any unlawful demand for any property or valuable security. There is nothing in the complaint to show that any ill treatment was given to the respondent No.2 at Bikaner after she left her matrimonial home and started living at Bikaner in her parental house. The allegations in the impugned FIR are that she was ill treated when she was residing in her matrimonial home at Jaipur. Even in the statement recorded under section 161 CrPC, the respondent No.2 has simply alleged that she was insulted in the marriage of her brother at Bikaner because her in-laws were not satisfied with the gifts and money given to them. In the said statements, she has not alleged that in the marriage of her brother, her in-laws demanded dowry and when their demand was not fulfilled, they insulted her.

The Hon'ble Supreme Court in

Amarendu Jyoti & Ors. vs. State of Chhattisgarh & Ors., (2014) 12 SCC 362, has held as under:

“5. 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 Respondent 2 went to stay at Ambikapur. The learned counsel for the appellants relied on the decision of this Court in *Manish Ratan v. State of M.P.*

6. In *Manish Ratan* case, 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. 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 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 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.*" After looking at the decided cases on the point i.e. *Sujata Mukherjee v. Prashant Kumar Mukherjee, State of Bihar v. Deokaran Nenshi, Y. Abraham Ajith v. Inspector of Police and Ramesh v. State of T.N.*, this Court 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 also directed the transfer of the criminal case pending in the Court of the Chief Judicial Magistrate, Datia, where the wife was staying with her father to the Court of the Judicial

Magistrate, Jabalpur (vide para 18).

7. Relying on the judgment of this Court in *Manish Ratan* case, the learned counsel for the appellants contended that the offence in the present case cannot be 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.

8. The core question thus is whether the allegations made in the FIR constitute a continuing offence.

9. We find from the FIR 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 Respondent 2 and abusing her in filthy language also are 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.

10. 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.”

11. 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 Respondent 2 "*continued unabated*" on account of no effort having been made by the appellants to take her back to her matrimonial 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.”

After applying the proposition of law laid down by the Hon'ble Supreme Court in *Amarendu Jyoti's* case (supra), in the above noted circumstances, it cannot be said that alleged offence of cruelty is a continuing one.

The contention of learned counsel for respondent No.2 that as the father of the respondent No.2 had deposited money in the bank accounts of the petitioners from Bikaner, the police of Bikaner has jurisdiction to investigate into the allegations levelled in the impugned FIR, is not tenable. As per the allegations in the impugned FIR, the money was demanded from Jaipur and received in Jaipur, therefore, it cannot be held that since the same was deposited in Bikaner, the cause of action has arisen at Bikaner.

So far as the offence punishable

under section 406 IPC is concerned, from perusal of the FIR, it is clear that there is no allegation that any article given in dowry at the time of marriage was entrusted to the petitioners at Bikaner. It is also not the case of the respondent No.2 that the dowry articles etc. entrusted to the accused at Jaipur were promised to be returned back at Bikaner or were demanded to be returned back at Bikaner.

In the statement of respondent No.2 recorded under section 161 CrPC., it is also alleged that the petitioner No.1 had visited Bikaner and received some articles from her father, which her father had received on *Supurdaginama* from the court and assured that the said articles would be returned as and when they require to be produced in the court but now he is not inclined to return the said articles. It is not clear that whether the court has ever ordered for producing those articles or not and otherwise also if the articles were given on *Supurdaginama* to the father of the respondent No.2 by a court, the said articles cannot be

termed as *Stridhan* till the competent court declares it as *Stridhan* of the respondent No.2. Hence, it cannot be held that alleged offence of breach of trust has taken place at Bikaner.

So far as offence of voluntarily causing hurt is concerned, the respondent No.2 has not alleged in the impugned FIR or in her statement recorded under section 161 CrPC that the petitioners have committed the said offence in Bikaner.

Looking from every angle, it is clear that the exceptions to the general rule as provided in section 178(c) and 181(4) CrPC are not applicable in the case in hand.

The judgments on which learned counsel for the respondent No.2 has placed reliance are distinguishable because in all those cases, the various courts have found that the offence is continuing one or the offence has been committed within more local areas. In the present case, such situation does not exist as all the allegations levelled regarding cruelty, voluntarily causing hurt and breach of trust in the

impugned FIR or the statements recorded under section 161 CrPC had taken place at Jaipur only.

In view of the above discussions, this Court is of the opinion that the Women Police Station, Bikaner has no jurisdiction to conduct investigation into the allegations levelled in the impugned FIR and a police station of Jaipur wherein the matrimonial house of the respondent No.2 falls is only having the jurisdiction to conduct investigation into the impugned FIR.

Resultantly, this criminal misc. petition is partly allowed. The Station House Officer, Women Police Station, Bikaner is directed to forward the impugned FIR to the Commissioner of Police, Jaipur, who shall forward the same to the Station House Officer of the Police Station at Jaipur, within whose jurisdiction, the matrimonial house of the respondent No.2 is situated.

Stay petition stands disposed of.

[VIJAY BISHNOI],J.

m.asif/-