

Ramesh And Ors vs State Of Tamil Nadu on 3 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1989, 2005 (3) SCC 507, 2005 AIR SCW 1319, (2005) 28 ALLINDCAS 88 (SC), (2005) 3 JT 90 (SC), 2005 (2) SLT 734, 2005 (2) SCALE 484, 2005 (1) CALCRILR 617, 2005 (4) SRJ 562, 2005 (2) UJ (SC) 885, 2005 ALL MR(CRI) 1795, 2005 UJ(SC) 2 885, 2005 (28) ALLINDCAS 88, 2005 (3) JT 90, 2005 (1) MARR LJ 530, (2006) SC CR R 1188, (2004) 4 PAT LJR 770, (2004) 2 BLJ 664, (2005) 1 DMC 554, (2005) 2 EASTCRIC 130, (2005) 30 OCR 752, (2005) 2 PAT LJR 193, (2005) 2 SUPREME 381, (2005) 52 ALLCRIC 45, (2005) 1 CHANDCRIC 248, (2005) 1 HINDULR 385, (2005) 1 ALLCRIR 1077, (2005) 2 MADLW(CRI) 807, (2005) MATLR 418, (2005) 2 RAJ CRI C 346, (2005) 2 RECCRIR 68, (2005) 2 SCJ 622, (2005) 1 CURCRIR 245, (2005) 2 SCALE 484, (2005) 2 ALLCRILR 565, (2005) 1 CRIMES 366, 2005 (2) ANDHLT(CRI) 94.2 SC

Bench: P. Venkatarama Reddi, A.K. Mathur

CASE NO.:

Appeal (crl.) 372 of 2005

PETITIONER:

Ramesh and Ors.

RESPONDENT:

State of Tamil Nadu

DATE OF JUDGMENT: 03/03/2005

BENCH:

P. Venkatarama Reddi & A.K. Mathur

JUDGMENT:

JUDGMENT ORDER Leave granted.

The two appeals filed by five accused (three in one case and two in another) arise out of two identical orders passed by the Madras High Court on 7.8.2003 and 21.8.2003 dismissing the petitions filed by them under Section 482 of the Criminal Procedure Code (Cr.P.C.', for short) by which a prayer was made to quash the charge-sheet and the consequential proceedings in C.C. No. 72/2002 on the file of the Judicial Magistrate III, Tiruchirapalli ('Trichy' for short), Tamil Nadu Sate. The wife of the 1st appellant in the appeal arising out of SLP(Crl.) No. 5735/2003, filed a complaint on 23.6.1999 with the All Women Police Station, Trichy alleging the commission of offences under Sections 498-A and 406 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Allegations were made in the said complaint against the husband, the in-laws, husband's brother and sister, who

were all the petitioners before the High Court and the appellants herein. After registration of the F.I.R. and investigation, the charge-sheet was filed by the Inspector of Police, All Women Police Station, Trichy on 28.12.2001 in the Court of the Judicial Magistrate-III, Trichy. Thereupon, the learned Magistrate took cognizance of the offence and issued warrants against the appellants on 13.2.2002. It appears that four of the appellants were arrested and released on bail by the Magistrate at Mumbai. The appellants then filed Criminal Writ Petition No. 593/2002 in the Bombay High Court for quashing the F.I.R. or in the alternative to transfer the F.I.R. to Mumbai. The proceedings were stayed by the High Court. On 2.6.2003, the writ petition was dismissed as withdrawn while giving liberty to approach the High Court of Madras at Chennai for appropriate relief. Thereafter, the appellants filed the petition under Section 482 Cr.P.C. before the Madras High Court for quashing the proceedings in C.C. No. 72/2002 on the file of the Judicial Magistrate-III, Trichy. The High Court by the impugned order dismissed the petition with the following observations :

"But the grounds raised by the Petitioners are all subject matters to be heard by the trial court for better appreciation after conducting full trial and hence this Court is of the view that it is only desirable to dismiss the above Criminal Original Petition and the same is dismissed as such."

However the High Court directed the Magistrate to dispense with the personal attendance of the appellants. Aggrieved by the order of the Madras High Court dismissing the petitions under Section 482 Cr.P.C., the special leave petitions giving rise to these appeals were filed by the accused.

In the petition under Section 482, three contentions were raised-

- (i) That the allegations are frivolous and without any basis;
- (ii) Even according to the F.I.R., no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence;
- (iii) Taking cognizance of the alleged offences at this stage is barred under Section 468(1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2).

The last two contentions are stressed before us. As far as the 1st appellant in the appeal arising out, of S.L.P.(Crl.) No. 290/2004 (Gowri Ramaswamy) is concerned, it is contended that the allegations in the F.I.R. do not make out any offence of which cognizance could be taken.

Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant-Gowri Ramaswamy. Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged offence, viz., Sections 498-A, 406 of the I.P.C. and Section 4 of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time, i.e., between

March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under Section 498-A or any other offence of which cognizance was taken. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the F.I.R. is that on some occasions, she directed the complainant to wash W.C. and she used to abuse her and used to pass remarks such as "even if you have got much jewellery, you are our slave." It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible. Neither the F.I.R. nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.

Now we have to deal with the case of other four appellants who, as already stated, have raised the questions of limitation and territorial jurisdiction.

On the point of limitation, we are of the view that the prosecution cannot be nullified at the very threshold on the ground that the prescribed period of limitation had expired. According to the learned counsel for the appellants, the alleged acts of cruelty giving rise to the offence under Section 498-A ceased on the exit of the informant from the matrimonial home on 2.10.1997 and no further acts of cruelty continued thereafter. The outer limit of time for taking cognizance would therefore be 3.10.2000, it is contended. However, at this juncture, we may clarify that there is an allegation in the F.I.R. that on 13th/14th of October, 1998, when the informant's close relations met her in-laws at the hotel in Chennai, they made it clear that she will not be allowed to live with her husband in Mumbai unless she brought the demanded money and jewellery. Even going by this statement, the taking of cognizance on 13.2.2002 pursuant to the charge-sheet filed on 28.12.2001 would be beyond the period of limitation. The commencement of limitation could be taken as 2.10.1997 or at most 14.10.1998. As pointed out by this Court in *Arun Vyas v. Anita Vyas*, [1999] 4 SCC 690, the last act of cruelty would be the starting point of limitation. The three year period as per Section 468(2)(c) would expire by 14.10.2001 even if the latter date is taken into account. But that is not the end of the matter. We have to still consider whether the benefit of extended period of limitation could be given to the informant. True, the learned Magistrate should have paused to consider the question of limitation before taking cognizance and he should have addressed himself to the question whether there were grounds to extend the period of limitation. On account of failure to do so, we would have, in the normal course, quashed the order of the Magistrate taking cognizance and directed him to consider the question of applicability of Section 473. However, having regard to the

facts and circumstances of the case, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution to remit the matter to the trial court for taking a decision on this aspect. The fact remains that the complaint was lodged on 23.6.1999, that is to say, much before the expiry of the period of limitation and the F.I.R. was registered by the All Women Police Station, Tiruchirapalli on that day. A copy of the F.I.R. was sent to the Magistrate's Court on the next day, i.e., on 24.6.1999. However, the process of investigation and filling of charge-sheet took its own time. The process of taking cognizance was consequentially delayed. There is also the further fact that the appellants filed Writ Petition (Crl.) No. 1719/2000 in the Bombay High Court for quashing the F.I.R. or in the alternative to direct its transfer to Mumbai. We are told that the High Court granted an ex-parte interim stay. On 20.8.2001, the writ petition was permitted to be withdrawn with liberty to file a fresh petition. The charge-sheet was filed four months thereafter. It is in this background that the delay has to be viewed. The approach the Court has to adopt in considering the question of limitation in regard to the matrimonial offences was highlighted by this Court in the case of Arun Vyas (supra). While pointing out in effect that the two limbs of the enabling provision under Section 473 are independent, this Court observed thus :

"14.The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression "in the interest of justice" in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is "interest of justice". The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPc in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive.

No doubt, the Court directed the Magistrate to consider the question of limitation taking note of Section 473 Cr.P.C. in the light of the observations made in the judgment. In the instant case, however, the same course need not be adopted. That was a case in which the complaint alleging offence under Section 498-A itself was filed nearly 7 years after the aggrieved spouse was kept out of the matrimonial home without any explanation for delay. That is why the matter was remanded to the Magistrate for reconsideration. In the present case, such a course is unnecessary and inexpedient. Adopting the liberal approach that has been stressed by this Court in the afore-mentioned decision and considering the facts apparent from the record as

discussed supra, we feel that it is a fit case where the benefit of Section 473 Cr.P.C. should be extended to the informant-lady and there is no need to prolong the controversy on the point of limitation.

The next controversy arising in the case is about the territorial jurisdiction of the Magistrate's Court at Tiruchirapally to try the cases. As already noted, the High Court was of the view that the questions raised in the petition cannot be decided before trial. It is contended by the learned counsel for the appellants that the issue relating to the place of trial can be decided even at this stage without going beyond the averments in the complaint filed by the respondents and the High Court should have, therefore, decided this point of jurisdiction, when it is raised before the trial has commenced. Our attention has been drawn to a recent decision of this Court in *Y. Abraham Ajit and Ors. v. Inspector of Police Chennai and Anr.*, [2004] 8 SCC 100. In that case, the Madras High Court refused to interfere under Section 482 Cr.P.C. when the issue of territorial jurisdiction of the concerned Magistrate to take cognizance of the offence was raised. This Court did not endorse the approach of the High Court for not recording the finding on the question of jurisdiction. On reading the allegations in the complaint, the court came to the conclusion that no part of the cause of action arose in Chennai and therefore the Metropolitan Magistrate at Chennai could not have taken cognizance and issued summons. On this ground, the criminal proceedings were quashed and the complaint was directed to be returned to respondent who was given liberty to file the same in an appropriate court. That was also a case of complaint for an offence under Section 498-A and Cr.P.C. filed by the wife against the appellant therein.

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.

Thus the alleged acts which according to the petitioner constitute the offences under Section 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.

One more relevant aspect to be noticed is that the informant-wife filed Transfer Petition No. 603/2003 seeking transfer of MJ Petition No. A416/2003 on the file of Family Court at Bandra, Mumbai filed by the husband for dissolution of the marriage to the Family Court at Chennai to be heard along with OP No. 2071 of 1999 on the file of II Additional Family Court at Chennai (since disposed of). It appears that on an earlier occasion, the petition filed by the wife for restitution of conjugal right in the sub-Court at Trichy was transferred to the Family Court at Chennai at the instance of the wife by an order of this Court dated 29.10.1999. That petition was ultimately allowed by the Family Court and the Execution Petition was transmitted to the Mumbai Court. A Civil Miscellaneous Appeal (unnumbered so far) against the decree of the Family Court, Chennai is said to be pending in the Madras High Court.

Having regard to the above facts viz., background and history of litigation, the prima facie, view taken by us on the point of territorial jurisdiction and taking an overall view of the convenience of both the parties, we are of the view that the criminal case arising out of CC No. 72/2002 on the file of the Judicial Magistrate III, Tiruchirapally and the Matrimonial Case filed by the husband (first petitioner in the Appeal No. 372/2005, corresponding to SLP 5735 of 2003) at Mumbai should both be tried in Chennai. The criminal case shall be transferred from the Court of Judicial Magistrate Tiruchirapally to the Chief Judicial Magistrate at Chennai who may either decide it himself or assign it to one of the Judicial Magistrates in Chennai. The MJ Petition No. A416/2003 pending in the Family Court at Bandra, Mumbai shall be transferred to the Principal Family Court at Chennai. Both these cases shall be decided expeditiously without avoidable delay. Accordingly, the appeal filed by Ramesh and three others and the Transfer Petition are disposed of. The appeal arising out of SLP(Crl.) No. 290/2004 filed by Gauri Ramaswamy and another is partly allowed by quashing the proceedings insofar as Gauri Ramaswamy is concerned. No Costs.

Before closing, we may record the fact that the case was adjourned for considerable time in the hope that the parties will reach the settlement but it could not take place as the counsel appearing for the complainant- lady stated that she was keen on going back to resume marital ties while pursuing the criminal case against the husband and others.