

Mahendra Prasad Mehta vs The State Of Bihar on 9 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1790, AIR ONLINE 2019 SC 394, (2019) 200 ALLINDCAS 46 (SC), (2019) 108 ALLCRIC 991, (2019) 1 DMC 721, (2019) 1 ORISSA LR 840, (2019) 200 ALLINDCAS 46, (2019) 2 ALD(CRL) 325, (2019) 2 ALLCRILR 360, (2019) 2 CRILR(RAJ) 429, (2019) 2 CRIMES 139, (2019) 2 HINDULR 1, (2019) 2 ICC 617, (2019) 2 KER LJ 601, (2019) 2 KER LT 334, (2019) 2 PAT LJR 255, (2019) 2 RAJ LW 1442, (2019) 2 RECCIVR 807, (2019) 2 RECCRIR 795, 2019 (2) SCC (CRI) 558, (2019) 2 UC 933, (2019) 3 ALLCRIR 2954, 2019 (3) KCCR SN 190 (SC), (2019) 3 MAD LJ(CRI) 449, 2019 (5) SCC 384, (2019) 6 SCALE 96, (2019) 74 OCR 563, 2019 CALCRILR 2 217, 2019 CRILR(SC MAH GUJ) 429, AIR 2019 SC(CRI) 809

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Bench: Sanjay Kishan Kaul, L. Nageswara Rao, Ranjan Gogoi

REPO

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.71 OF 2012

RUPALI DEVI

... APPELLA

VERSUS

STATE OF UTTAR PRADESH & ORS.

... RESPOND

WITH

CRIMINAL APPEAL NO. 619 OF 2019
[Arising out of SLP(Crl.) No. 5695/2010]

CRIMINAL APPEAL NO. 620 OF 2019
[Arising out of SLP(Crl.) No. 8246/2010]

CRIMINAL APPEAL NO. 621 OF 2019
[Arising out of SLP(Crl.) No. 7387/2011]

CRIMINAL APPEAL NO. 622 OF 2019
[Arising out of SLP(Crl.) No. 5052/2014]

CRIMINAL APPEAL NO. 623 OF 2019
[Arising out of SLP(Crl.) No. 5139/2014]

JUDGMENT

RANJAN GOGOI, CJI

1. “Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the Reason: parents or other family members”. This is the precise question that arises for determination in this group of appeals.

2. The opinions of this Court on the aforesaid question being sharply divided, the present reference to a larger Bench has been made for consideration of the question indicated hereinabove.

3. In

(i) Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another (2004) 8 SCC 100.

(ii) Ramesh and Others v. State of Tamil Nadu (2005) 3 SCC

(iii) Manish Ratan and Others v. State of Madhya Pradesh and Another (2007) 1 SCC 262.

(iv) Amarendu Jyoti and Others v. State of Chhattisgarh and Others (2014) 12 SCC 362.

a view has been taken that if on account of cruelty committed to a wife in a matrimonial home she takes shelter in the parental home and if no specific act of commission of cruelty in the parental home can be attributed to the husband or his relatives, the initiation of proceedings under Section 498A in the courts having jurisdiction in the area where the parental home is situated will not be permissible. The core fact that would be required to be noted in the above cases is that there were no allegations made on behalf of the aggrieved wife that any overt act of cruelty or harassment had been caused to her at the parental home after she had left the matrimonial home. It is in these circumstances that the view had been expressed in the above cases that the offence of cruelty having been committed in the matrimonial home the same does not amount to a continuing offence committed in the parental home to which place the aggrieved wife may have later shifted.

4. In Sujata Mukherjee v. Prashant Kumar Mukherjee (1997) 5 SCC 30; Sunita Kumari Kashyap v. State of Bihar and Another (2011) 11 SCC 301 and State of M.P. v. Suresh Kaushal & Anr. (2003) 11 SCC 126 a seemingly different view has been taken. However, the said view may appear to be based in the particular facts of each of the cases in question. For instance, in Sujata Mukherjee (Supra) there was a specific allegation that the husband, after committing acts of cruelty in the matrimonial home, had also gone to the parental house of the wife where she had taken shelter and had assaulted her there. On the said facts this court in Sujata Mukherjee (Supra) held that the offence is a

continuing offence under Section 178 (c) of the Cr.P.C. In Sunita Kumari Kashyap (Supra), there was an allegation that the wife was illtreated by her husband who left her at her parental home and further that the husband had not made any enquiries about her thereafter. There was a further allegation that even when the wife had tried to contact the husband, he had not responded. In the said facts, this court took the view that the consequences of the offence under Section 498A have occurred at the parental home and, therefore, the court at that place would have jurisdiction to take cognizance of the offence alleged in view of Section 179 of the Cr.P.C. Similarly in State of M.P. vs. Suresh Kaushal (Supra) as the miscarriage was caused to the wife at Jabalpur, her parental home, on account of cruelty meted out to her in the matrimonial home, it was held that the court at the place of the parental home of the wife would have jurisdiction to entertain the complaint under Section 179 Cr.P.C.

5. The above two views which the learned referring bench had considered while making the present reference, as already noticed, were founded on the peculiar facts of the two sets of cases before the Court. It may be possible to sustain both the views in the light of the facts of the cases in which such view was rendered by this court. What confronts the court in the present case is however different. Whether in a case where cruelty had been committed in a matrimonial home by the husband or the relatives of the husband and the wife leaves the matrimonial home and takes shelter in the parental home located at a different place, would the courts situated at the place of the parental home of the wife have jurisdiction to entertain the complaint under Section 498A. This is in a situation where no overt act of cruelty or harassment is alleged to have been committed by the husband at the parental home where the wife had taken shelter.

6. A look at the provisions of Chapter XIII of the Code of Criminal Procedure, 1973 (Cr.P.C) dealing with the jurisdiction of the Criminal Court in inquiries and trials will now be required. Section 177 of the Code of Criminal Procedure contemplates that “every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”. It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.

7. Sections 178 and 179 are exceptions to the above rule and may be set out hereinunder:

“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.” “179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason

of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

8. Section 178 creates an exception to the “ordinary rule” engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the “ordinary rule” would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

9. At this stage it may also be useful to take note of what can be understood to a continuing offence. The issue is no longer *res integra* having been answered by this court in *State of Bihar v. Deokaran Nenshi* (1972) 2 SCC 890. Para 5 may be usefully noticed in this regard.

“5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

10. The question that has posed for an answer has nothing to do with the provisions of Section 178 (b) or (c). What has to be really determined is whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

11. To answer the above question, one will have to look into the Statement of Objects and Reasons of the Criminal Law [2 nd Amendment Act, 1983 (Act 46 of 1983)] by which Section 498A was inserted in the Indian Penal Code. The section itself may be noticed in the first instance:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means —

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. Section 498A of the Indian Penal Code was introduced by the Criminal Law (second amendment) Act, 1983. In addition to the aforesaid amendment in the Indian Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by magistrates into cause of such deaths were also amended. Section 198A was also inserted in the Code of Criminal Procedure with regard to prosecution of offences under Section 498A. Further by an amendment in the first schedule to the Cr.PC the offence under Section 498A was made cognizable and non-bailable. Of considerable significance is the introduction of Section 113A in the Indian Evidence Act by the Criminal Law (second amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113A is in the following term:

“113-A. Presumption as to abetment of suicide by a married woman.— When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation.— For the purposes of this section, “cruelty” shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).”

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. “Cruelty” which is the crux of the offence under Section 498A IPC is defined in Black’s Law Dictionary to mean “The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

17. All the appeals are disposed of in terms of the above.

.....,CJI [RANJAN GOGOI]J.

[L. NAGESWARA RAO]J.

[SANJAY KISHAN KAUL] NEW DELHI;

APRIL 09, 2019.