

Ibarat Husain And Ors. vs The State Through Jarrar Hussain on 7 February, 1955

Equivalent citations: AIR1955ALL363, 1955CRILJ897, AIR 1955 ALLAHABAD 363

ORDER

Desai, J.

1. This is an application against an order of the courts below holding that a court at Kanpur has jurisdiction over the complaint filed against the applicants under Section 494, I.P.C. The allegations in the complaint, on the basis of which the question of jurisdiction has to be decided, are that the father-in-law of the complainant took away the complainant's wife from his house in Kanpur district to Gonda district and that in Gonda district she was remarried to the applicant Ibarat Hussain. As the remarriage was performed in Gonda district, it was contended before the trial court in Kanpur that it had no jurisdiction over the offence of Section 494, I.P.C., and that it co'uld be tried only in a court in Gonda district.

The trial court held that the consequence of the remarriage was that the complainant was deprived in Kanpur district of the consortium of his wife and that consequently the offence "could, be tried in Kanpur district and relied upon -- 'Munir v. Emperor', AIR 1926 All 189 (A). The trial court overruled the objection of the applicants and proceeded with the case. The applicants went up in revision to the Sessions Judge, who also relied upon Munir v. Emperor (A)', and dismissed the application.

2. The material facts in Munir v. Emperor (A), were similar to the facts in the present case, and it was held by Kanhaiya Lal J. that the consequence of the remarriage and the adultery by the wife of the complainant was that he was kept deprived of her company at his house and that consequently the offences could be inquired into by a court which had jurisdiction over the area in which his house was situated. With great respect to the learned Judge, I do not agree.

Under Section 179, Criminal P.C., which is the only section relied upon, it is not enough that a consequence ensues from anything done by the accused; it is also necessary that the consequence is an ingredient of the offence. If the consequence is immaterial to the culpability of the accused, Section 179 does not apply. In an offence under Section 494, I.P.C., the only act done by the offender is of marrying the wife of the complainant; the consequence that arises from this act is that the complainant is deprived of the consortium of the wife at his place.

The consequence undoubtedly arises at the house of the complainant but is not at all an ingredient of the offence of Section 494, I.P.C.; as far as that offence is concerned the consequence is wholly immaterial and the liability of the Offender to be punished for that offence does not at all depend upon that consequence. Section 179 would not, therefore, apply and the offence cannot be tried by a court which has jurisdiction over the area in which the complainant resides.

There is no other section which would take the case out of the general rule laid down in Section 177 of the Code. Had the decision in *Munir v. Emperor (A)*, been the last word on the question I would have been obliged to refer the matter to a Bench, but I find that in a subsequent decision this Court has explained Section 179. In -- '*Emperor v. Kashi Ram*', AIR 1934 All 499 (FB) (B), a Full Bench of this Court stated: "If, therefore, the act done and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that Section 179 be applicable. If the offence is complete in itself by reason of the act having been done, and the consequence is a mere result of it which was not essential for the completion of the offence, then Section 179 would not be applicable."

Munir v. Emperor (A), was not cited before the Full Bench, but had it been cited, I have no doubt that it would have been overruled, In my opinion the decision in *Munir v. Emperor (A)*, is not the ruling law and I am not bound by it.

3. The application is allowed and the complaint is dismissed on the ground of want of jurisdiction, without prejudice to the right of the complainant to file a fresh complaint in a court of competent jurisdiction in Gonda district.