Y. Abraham Ajith & Ors vs Inspector Of Police, Chennai & Anr on 17 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4286, 2004 AIR SCW 4788, (2004) 6 JT 497 (SC), 2004 (8) SRJ 99, 2004 (6) JT 497, 2005 (1) ALL CJ 408, (2005) 1 JCR 15 (SC), 2004 (8) SCC 100, 2004 (6) ACE 638, 2004 (7) SCALE 26, 2005 ALL CJ 1 408, 2004 ALL MR(CRI) 3400, 2004 CALCRILR 972, 2004 SCC(CRI) 2134, 2004 (2) UJ (SC) 1435, 2004 UJ(SC) 2 1435, 2004 (5) SLT 152, (2005) 1 KER LJ 449, (2004) MATLR 520, (2004) 29 OCR 241, (2004) 3 RAJ CRI C 798, (2005) 1 ALLCRIR 577, (2004) 7 SCALE 26, (2004) 2 UC 1177, (2004) 4 ALLCRILR 96, (2004) 3 CURCRIR 130, (2004) 2 DMC 371, (2005) 1 GUJ LH 22, (2004) 3 RECCRIR 988, (2004) 6 SUPREME 207, (2004) 50 ALLCRIC 210, (2004) 3 BLJ 421, (2004) 2 CHANDCRIC 289, (2004) 3 CRIMES 227, (2004) 21 INDLD 422, 2005 CHANDLR(CIV&CRI) 160, 2004 (2) ALD(CRL) 491, 2004 (2) ANDHLT(CRI) 253 SC, (2004) 2 ANDHLT(CRI) 253

Author: Arijit Pasayat

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (crl.)  904 of 2004

PETITIONER:
Y. Abraham Ajith & Ors.

RESPONDENT:
Inspector of Police, Chennai & Anr.

DATE OF JUDGMENT: 17/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T (Arising out of SLP(Crl.)No. 4573/2003) ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Madras High Court whereby the appellants' prayer for quashing proceedings in CC 3532 of 2001 on the file of the Court of XVIII Metropolitan Magistrate Saidapet, Chennai, by exercise of powers

under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') was rejected. Background facts sans unnecessary details are as follows :

> Respondent no.2 as complainant filed complaint in the Court of the concerned magistrate alleging commission of offences punishable under Sections 498A and 406 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 4 of the Dowry Prohibition Act, 1961 (in short the 'Dowry Act'). The magistrate directed the police to investigate and after investigation charge-sheet was filed by the police. When the matter stood thus, the appellants filed an application under Section 482 of the Code before the High Court alleging that the concerned magistrate has no jurisdiction even to entertain the complaint even if the allegations contained therein are accepted in toto. According to them, no part of the cause of action arose within the jurisdiction of the concerned Court. The complaint itself disclosed that after 15.4.1997, the respondent left Nagercoil and came to Chennai and was staying there. All the allegations which are per se without any basis took place according to the complainant at Nagercoil, and therefore, the Courts at Chennai did not have the jurisdiction to deal with the matter. It was further submitted that earlier a complaint was lodged by the complainant before the concerned police officials having jurisdiction; but after inquiry no action was deemed necessary.

In response, learned counsel submitted that some of the offences were continuing offences. The appellant no.1 had initiated proceedings for judicial separation, the notice for which was received by her at Chennai and, therefore, the cause of action existed.

The High Court unfortunately did not consider rival stands and even did not record any finding on the question of law raised regarding lack of jurisdiction. It felt that legal parameters were to be considered after a thorough trial after due opportunity to the parties and, therefore, the factual points raised by parties were not to be adjudicated under Section 484 of the Code.

In support of the appeal Mr. T.L. Viswanatha Iyer, learned senior counsel, submitted that the approach of the High Court is clearly erroneous. A bare reading of the complaint would go to show that no part of the cause of action arose within the jurisdiction of the Court where the complaint was filed. Therefore, the entire proceedings had no foundation.

In response, learned counsel for respondent no.2-complainant submitted that the offences were continuing in terms of Section 178(c) of the Code, and therefore The Court had the jurisdiction to deal with the matter.

Section 177 of the Code deals with the ordinary place of inquiry and trial, and reads as follows:

> "Section 177 : ORDINARY PLACE OF INQUIRY AND TRIAL:
>
> Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common law rule referred to in Halsbury's Laws of England (Vol. IX para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which read as follows:

> "Section 178 PLACE OF INQUIRY OR TRIAL
>
> (a) When it is uncertain in which of several local areas an offence was committed, or
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> (b) where an offence is committed partly in one local area and partly in another, or
>
> (c) where an offence is 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."
>
> "All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia v. State of West Bengal (AIR 1961 SC 1589), L.N.Mukherjee V. State of Madras (AIR 1961 SC 1601), Banwarilal Jhunjhunwalla and Ors. v. Union of India and Anr.

(AIR 1963 SC 1620) and Mohan Baitha and Ors. v. State of Bihar and Anr. (2001 (4) SCC 350), exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand.

As observed by this Court in State of Bihar v. Deokaran Nenshi and Anr. (AIR 1973 SC 908), continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee (1997 (5) SCC 30). There the allegations related to commission of alleged offences punishable under Section 498A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the

complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

While in civil cases, normally the expression "cause of action"

> is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases.
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> It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.
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> The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts

that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

> "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No.2 who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed.