

Mohan Baitha And Ors. vs State Of Bihar And Anr. on 21 March, 2001

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Bench: B.N. Agrawal

JUDGMENT

Pattanaik, J.

1. Leave granted.

2. The accused in Nath Nagar Police Station case No. 122/98, is the appellant and assails the order of a learned Single Judge of Patna High Court dated 15.9.1999 passed in Criminal Writ Jurisdiction Case No. 359/99. On the basis of an F.I.R. dated 4.7.98 by one Surendra Rajak at Police Station, Nath Nagar in the district of Bhagalpur, the Police registered a case under Section 304B/34/406 IPC. The said Surendra Rajak also filed a complaint in the Court of Chief Judicial Magistrate, Bhagalpur against Dr. Binod Kumar and four others, alleging the commission of offence against

those five persons under Sections 304B, 498A, 120B and 406 IPC. The complainant, Surendra Rajak, was the father of the deceased Kalpana and in the Complaint Petition, he narrated the chain of events starting from 9th of June, 1994, the date on which Kalpana was married to Binod Kumar till 12.6.1997, the date on which the father received a telephonic message that Kalpana had received burn injuries, while preparing milk for Kalpana's daughter and ultimately Kalpana died on 20th of June, 1997. As the Police did not proceed with the investigation in right earnest, Surendra Rajak had filed a writ petition, which was registered as Criminal Writ Jurisdiction Case No. 766/98. Even earlier to that writ petition, a learned Single Judge of Patna High Court had directed by order dated 28.1.99 that the Superintendent of Police, Bhagalpur should submit a report, under what circumstances the accused persons have not been arrested yet. Rajak had all along apprehended that the investigation has not been proper, as the higher police officials tried to shield the accused persons. Police, however on completion of investigation, ultimately filed the charge-sheet on 3.4.99. Before the Magistrate took any further action in the criminal proceedings, the accused persons filed an application in the High Court, seeking a direction to the Magistrate, not to proceed with the matter. One of the ground taken before the High Court was that since the incident constituting the offence punishable under Section 304B IPC had taken place at Jahanaganj in the State of Uttar Pradesh, the Court at Bhagalpur lacks territorial jurisdiction to try the same. The High Court by the impugned judgment having dismissed the same, the accused persons have approached this Court.

3. At the outset, it may be noticed that immediately after filing of the charge-sheet and before the Magistrate took up the matter and passed any order in the criminal proceeding, the accused persons approached the High Court, assailing the territorial jurisdiction of the Magistrate at Bhagalpur to try the offence under Section 304B IPC.

4. Mr. P.S.Mishra, the learned senior counsel, appearing for the accused persons contended that under Section 177 of the Code of Criminal Procedure, an offence could be inquired and tried by the Court in whose local jurisdiction, it was committed and consequently on the basis of allegations made in the F.I.R. as well as the complaint filed, the incident constituting the alleged offence under Section 304B being at Jahanaganj (Azamgarh) in the state of Uttar Pradesh, the Magistrate at Bhagalpur in the State of Bihar will not have territorial jurisdiction to try the offence. Mr. Mishra also further contended that on the basis of allegations made, no offence under Section 406 IPC can be said to have been constituted. On examining the assertions in the F.I.R. and the complaint as well as on scrutinizing the judgment of the learned Single Judge of Patna High Court, which is the subject matter of challenge, we do not find any substance in either of the contentions raised by Mr. Mishra. So far as the contention relating to the constitution of offence under Section 406 is concerned, we are not required to examine the same, since the accused never assailed the criminal proceedings itself on the ground that no offence under Section 406 IPC can be said to have been committed. The accused merely assailed the territorial jurisdiction of the criminal court at Bhagalpur in relation to offence under Section 304B on the ground that the said offence stood committed in Uttar Pradesh. Section 177 of the Code of Criminal Procedure on which Mr. Mishra relies, uses the expression "ordinarily". The use of the word "ordinarily" indicates that the provision is a general one and must be read subject to the special provisions contained in the criminal procedure code. That apart, this Court has taken the view that the exceptions 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 considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court (See *Purshottamdas Dalmia vs. The State of West Bengal*,) (*L.N.Mukherjee vs. The State of Madras*,) and (*Banwari Lal Jhunjhunwala and Ors. Vs. Union of India and Anr.* 1963 Supp.(2) SCR,338).) Even the Law Commission in its 41st Report had observed that the general rule laid down in Section 177 is neither exclusive nor peremptory. The learned Single Judge while dismissing the contention raised by the accused has relied upon Section 220 of the Code of Criminal Procedure and considering the narration of events culminating in the death of Kalpana, which constitutes offence under Section 304B of the IPC, the learned Single Judge has come to a conclusion that there appears to exist a continuity of action to attract Sub-section(1) of section 220, and therefore, it cannot be said that the jurisdiction of the Magistrate at Bhagalpur is ousted to try the offence under Section 304B. The High Court also has casually observed that the assertions made prima facie constitute an offence under Section 498A and since the accused has approached the Court even before the Magistrate has applied his mind to the result of the investigation on the basis of the allegations made by the informant/complainant, it would not be appropriate to express any definite opinion on the same. According to Mr. Mishra, from the tenor of the impugned judgment, it can be well imagined that the judgment is rather strained one and has been passed in view of the earlier directions and by no stretch of imagination, the incident constituting the offence under Section 304B can be held to be one falling under Section 220 of the Code of Criminal Procedure, so as to be tried along with the offence under Section 406 at Bhagalpur. It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. Bearing in mind the aforesaid principles and on scrutiny of the narration of events in the F.I.R. as well as the complaint, we do not find any infirmity with the conclusion of the High Court in applying Section 220 of the Criminal Procedure Code to the case in hand and in coming to the conclusion that the jurisdiction of the Magistrate at Bhagalpur cannot be held to have been ousted for the offence under Section 304B IPC. In the aforesaid premises, we see no merits in this appeal, which accordingly stands dismissed. The interim order of stay stands vacated and the Magistrate is directed to proceed with the matter expeditiously, in accordance with law.