

Sunita Kumari Kashyap vs State Of Bihar And Anr on 11 April, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1674, 2011 (11) SCC 301, 2011 AIR SCW 2481, AIR 2011 SC (CRIMINAL) 1066, 2011 (2) AIR JHAR R 778, 2011 (2) AIR KANT HCR 854, (2011) 106 ALLINDCAS 155 (SC), (2011) 3 CHANDCRIC 125, 2011 CRILR(SC&MP) 400, 2011 (3) SCC(CRI) 173, 2011 (4) SCALE 572, 2011 ALL MR(CRI) 1648, 2011 (2) CALCRILR 701, 2011 CRILR(SC MAH GUJ) 400, 2011 (106) ALLINDCAS 155, 2011 (3) RECCRIR 512.1 SN, 2011 (3) KCCR 264 SN, (2011) 1 MADLW(CRI) 654, (2011) 2 ALLCRILR 498, (2011) 2 DLT(CRL) 265, (2011) 1 CRILR(RAJ) 400, (2011) 3 MAD LJ(CRI) 779, (2011) 49 OCR 603, (2011) 3 RAJ LW 2185, (2011) 3 RECCRIR 26, (2011) 2 CURCRIR 200, (2011) 2 ALLCRIR 1611, (2011) 4 SCALE 572, (2011) 74 ALLCRIC 980, (2011) 2 CRIMES 181

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 917 OF 2011

(Arising out of S.L.P. (Crl.) No. 8078 of 2010)

Sunita Kumari Kashyap

.... Appellant(s)

Versus

State of Bihar & Anr.

.... Respondent(s)

WITH

CRIMINAL APPEAL No. 918 OF 2011

(Arising out of S.L.P. (Crl.) No. 8079 of 2010)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) The only issue for consideration in both the appeals is whether criminal proceedings initiated by the appellant herein at Gaya against her husband and his relatives are maintainable or not for lack of jurisdiction?

3) Brief facts:

(a) The appellant herein got married to Sanjay Kumar Saini -

respondent No.2 herein, on 16.04.2000 as per the Hindu rites and ceremonies at Gaya. According to the appellant, at the time of marriage, her father gifted all the household utensils, Almirah, Double Bed, Dining Table, Fridge, Television and an amount of Rs. 2,50,000/- in cash. In addition to the same, her father spent so much money to solemnize the marriage and for gifts to other family members of her husband. In spite of the same, immediately after the marriage, she was blamed for bringing less dowry by her in-laws and they started harassing and torturing her. Her husband also used to support his family members to torture her. It is her further grievance that her husband demanded an additional amount of Rs. 4 lakhs from her parents for renovation of their house at Ranchi. When she was pregnant, she was forcibly taken out of her matrimonial home at Ranchi and brought to her parental home at Gaya. After giving birth to a girl child the circumstances became even worse and everyone started blaming her that she had brought an additional burden on them. After some time, her husband came out with a new demand that unless her father gives his house at Gaya to him she will not be taken back to her matrimonial home at Ranchi.

Having continuous torture and unbearable nature of treatment by her husband and in-laws for years and years, having no other option, the appellant lodged a First Information Report (in short "FIR") being No. 66 of 2007 under Sections 498A and 406 read with Section 34 of Indian Penal Code (in short "IPC") and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (in short "D.P. Act") at Magadh

Medical College Police Station, Gaya.

b) The Chief Judicial Magistrate, after perusal of the charge-

sheet, found a prima facie case against the accused persons, accordingly, took cognizance of offences punishable under Sections 498A and 406 read with Section 34 IPC and Sections 3 and 4 of the D.P. Act against all of them and transferred the case to the Court of sub-Divisional Judicial Magistrate, Gaya for trial. Though an objection was raised stating that the Court at Gaya has no jurisdiction, the learned Magistrate, after considering all the relevant materials including the allegations in the complaint, rejected the said objection.

c) Aggrieved by the said order, the accused persons preferred Criminal Miscellaneous No. 42478 of 2009 before the High Court of Judicature at Patna. By order dated 19.03.2010, the High Court found that the proceedings at Gaya are not maintainable for lack of jurisdiction and quashed the entire proceedings in Magadh Medical College Police Station Case No. 66 of 2007 with liberty to the appellant herein to file the same in appropriate Court. Following the said order, the High Court on 29.04.2010 allowed Criminal Miscellaneous No. 45153 of 2009 filed by Sanjay Kumar Saini

- the husband (respondent No.2 herein) and quashed the criminal proceedings lodged against him.

d) Aggrieved by the impugned orders passed by the High Court on 19.03.2010 in Criminal Misc. Case No. 42478 of 2009 and 29.04.2010 in Criminal Misc. Case No. 45153 of 2009, the appellant-wife has filed the above appeals before this Court by way of special leave petitions.

4) Heard Mr. Vivek Singh, learned counsel for the appellant and Mr. S.B. Sanyal, learned senior counsel for respondent No.2 and Mr. Gopal Singh, learned counsel for respondent No.1 - State.

5) Inasmuch as the issue is confined to territorial jurisdiction about the criminal proceedings initiated by the appellant-wife, there is no need to go into other factual aspects. Since the SDJM has found that the Court at Gaya has jurisdiction to try the accused persons for offences punishable under Sections 498A and 406 read with Section 34 IPC and Sections 3 & 4 of the D.P. Act and the High Court reversed the said decision and found that the proceedings at Gaya are not maintainable for lack of jurisdiction, it is desirable to refer the relevant provisions and the contents of FIR.

6) Chapter XIII of the Code of Criminal Procedure, 1973 (in short "Code") deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 are relevant which are as follows:

"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.

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."

From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

7) Keeping the above provisions in mind, let us consider the allegations made in the complaint. On 17.10.2007, Sunita Kumari Kashyap - the appellant herein made a complaint to the Inspector In-charge, Magadh Medical College Police Station, Gaya. In the complaint, the appellant, after narrating her marriage with Sanjay Kumar Saini, respondent No.2 herein on 16.04.2000 stated that what had happened immediately after marriage at the instance of her husband and his family members' ill-treatment, torture and finally complained that she was taken out of the matrimonial home at Ranchi and sent to her parental Home at Gaya with the threat that unless she gets her father's house in the name of her husband, she has to stay at her parental house forever. In the said complaint, she also asserted that her husband pressurized her to get her father's house in his name and when she denied she was beaten by her husband. It was also asserted that after keeping her entire jewellery and articles, on 24.12.2006, her husband brought her at Gaya and left her there warning that till his demands are met, she has to stay at Gaya and if she tries to come back without meeting those demands she will be killed. It was also stated that from that date till the date of complaint, her in-laws never enquired about her. Even then she called them but they never talked to her. Perusal of the entire complaint, which was registered as an FIR, clearly shows that there was ill-treatment and cruelty at the hands of her husband and his family members at the matrimonial home at Ranchi and because of their actions and threat she was forcibly taken to her parental home at Gaya where she initiated the criminal proceedings against them for offences punishable under Sections 498A and 406/34 IPC and Sections 3 and 4 of the D.P. Act. Among the offences, offence under Section 498A IPC is the main offence relating to cruelty by husband and his relatives. It is useful to extract the same which is as under:

"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 purpose 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."

8) Similar allegations as found in the complaint in the case on hand with reference to the offences punishable under Sections 498A, 406/34 IPC were considered by this Court in the following decisions:

i) In *Sujata Mukherjee (Smt) vs. Prashant Kumar Mukherjee*, (1997) 5 SCC 30, similar issue was considered by this Court and found that clause (c) of Section 178 of the Code is attracted and the Magistrate at wife's parents' place has also jurisdiction to entertain the complaint. In the said decision, wife was the appellant before this Court and the respondents were the husband, parents-in-law and two sisters-in-law of the appellant Sujata Mukherjee. The gist of the allegation of the appellant, Sujata Mukherjee was that on account of dowry demands, she had been maltreated and humiliated not only in the house of her in-laws at Raigarh but as a consequence of such events, the husband of the appellant had also come to the house of her parents at Raipur and assaulted her. On behalf of the respondents therein, it was contended before the learned Chief Judicial Magistrate, Raipur that the criminal case was not maintainable before the said learned Chief Judicial Magistrate because the cause of action took place only at Raigarh which was outside the territorial jurisdiction of the learned Magistrate at Raipur. A prayer was also made to quash the summons issued by the learned Chief Judicial Magistrate by entertaining the said complaint of Smt Mukherjee. As the Chief Judicial Magistrate was not inclined either to quash the summons or to transfer the criminal case to the competent court at Raigarh, the criminal revision petitions were filed before the High Court, one by all the five respondents and another by four of the respondents excluding the husband presumably because there was specific allegation against the husband that the husband had also gone to Raipur and had assaulted the appellant and as such the husband could not plead want of territorial jurisdiction. Both the said criminal revision cases were disposed of by a common order dated 31.08.1989 by the High Court holding that the case against the husband of the appellant alone is

maintainable and in respect of other respondents related to the incidents taking place at Raigarh, hence, the criminal case on the basis of complaint made by the appellant is not maintainable at Raipur. The said order of the High Court was challenged by the appellant-Sujata Mukherjee in this Court. It was submitted that it will be evident from the complaint that the appellant has alleged that she had been subjected to cruel treatment persistently at Raigarh and also at Raipur and incident taking place at Raipur is not an isolated event, but consequential to the series of incidents taking place at Raigarh. Therefore, it was contended that the High Court was wrong in appreciating the scope of the complaint and proceeding on the footing that several isolated events had taken place at Raigarh and one isolated incident had taken place at Raipur. This Court basing reliance on Section 178 of the Code, in particular clauses (b) and (c), found that in view of allegations in the complaint that the offence was a continuing one having been committed in more local areas and one of the local areas being Raipur, the learned Magistrate at Raipur had jurisdiction to proceed with the criminal case instituted in such court. Ultimately, accepting the stand of the appellant, this Court held as under:

"We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted."

ii) In State of M.P. vs. Suresh Kaushal and Another, (2003) 11 SCC 126, again in a similar circumstance, considering the provisions of Section 179 with reference to the complaint relating to the offences under Section 498A read with Section 34 IPC, this Court held as under:

"6. The above Section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued.

When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore."

9) Mr. S.B. Sanyal, learned senior counsel appearing for the respondents fairly stated that there is no dispute about the jurisdiction of the Court at Gaya insofar as against the husband, however, in respect of other relatives of the husband in the absence of any act at Gaya, the said Court has no jurisdiction and if at all, the wife has to pursue her remedy only at Ranchi. In support of his contention, he relied on a decision of this Court in Y. Abraham Ajith and Others vs. Inspector of Police, Chennai and Another, (2004) 8 SCC 100 in particular, paragraph 12 of the said decision which reads as under:

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned.

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."

It is true that Section 177 of the Code refers to the local jurisdiction where the offence is committed. Though the expression "cause of action" is not a stranger to criminal cases, in view of Sections 178 and 179 of the Code and in the light of the specific averment in the complaint of the appellant herein, we are of the view that the said decision is not applicable to the case on hand.

10) Mr. Sanyal also relied on a decision of this Court in Bhura Ram and Others vs. State of Rajasthan and Another, (2008) 11 SCC 103 wherein following the decision in Y. Abraham Ajith and Others (supra), this Court held that "cause of action" having arisen within the jurisdiction of the court where the offence was committed, could not be tried by the court where no part of offence was committed. For the same reasons, as mentioned in the earlier paragraph, while there is no dispute as to the proposition in view of the fact that in the case on hand, the offence was a continuing one and the episode at Gaya was only a consequence at the continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. In view of the above reason, both the decisions are not applicable to the facts of this case and we are unable to accept the stand taken by Mr. Sanyal.

11) We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill-

treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-

treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offence, on some occasion all had taken part and on other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.

12) In view of the above discussion and conclusion, the impugned order of the High Court holding that the proceedings at Gaya are not maintainable due to lack of jurisdiction cannot be sustained. The impugned order of the High Court dated 19.03.2010 in Criminal Misc. No. 42478 of 2009 and

another order dated 29.04.2010 in Criminal Misc.

Case No. 45153 of 2009 are set aside. In view of the same, the SDJM, Gaya is permitted to proceed with the criminal proceedings in trial Nos. 1551 of 2008 and 1224 of 2009 and decide the same in accordance with law. It is made clear that we have not expressed anything on the merits and claims of both parties and our above conclusion is confined to the territorial jurisdiction of the Court at Gaya. Both the criminal appeals are allowed.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN)
NEW DELHI;

APRIL 11, 2011.