Delhi High Court
Malkiat Singh And Ors. vs State And Anr. on 26 May, 2005
Equivalent citations: 121 (2005) DLT 668, II (2005) DMC 257
Author: M Goel
Bench: M Goel
JUDGMENT Manju Goel, J.

1. The petition seeks quashment of proceedings before the Crime Against Women Cell North East District in case No.V-2 arising out of the complaint of the respondent No.2 Smt. Virender Kaur. The proceedings before the Crime Against Women Cell culminated into an FIR and thereafter into a charge-sheet. Accordingly, the court now has to consider whether the FIR and the charge sheet can be quashed.

2. The grounds for making the prayer are precisely two namely:-(1) No part of the alleged offence took place in Delhi and therefore neither the Delhi police nor the Delhi courts can have jurisdiction in the matter; (2) For the same offence an FIR was registered earlier which was compromised between the parties and therefore the new complaint/FIR/charge sheet cannot be maintainable.

3. I take the second objection first as it relates entirely to fact. The complaint as is available in the FIR bearing No.249/2002 dated 25.4.2002 Police Station Rohini can be restated in brief as under:-

The respondent No.2 married the petitioner on 13.12.93. Three months after the marriage, the husband and other members of the family namely the present petitioners started taunting the respondent No.2 for having brought insufficient dowry and also gave her beatings off and on. Mausi Sas, Surinder Kaur made a demand for Rs.40,000/- to be brought from her father and her husband asked her to bring money from her brother. The father-in-law Joginder Singh asked for Rs.20,000/-. On 11.8.95, the respondent No.2 gave birth to a son at a nursing home in Delhi and stayed in Delhi for ten months during which no one from the family of the petitioners came to see her. On her return to her in-laws' house in Punjab she again received cruelty. They made an effort to kill her on 11.2.96. She was then taken to the house of her maternal grand father at village Jalalpur, District Hoshiarpur, Punjab and from there to Delhi where she lodged a complaint which formed the basis for FIR No.101/96 u/s 498-A/406/34 IPC at PS Sabzi Mandi. The petitioners compromised the matter with the respondent No.2 and assured her that they would not ill-treat her in any manner. The petitioner No.1/husband and others stayed at Delhi for some time when they filed a petition in the High Court of Delhi for quashing the FIR No.101/96. The respondent No.2, during their stay in Delhi, gave birth to another child. The FIR was quashed on 9.3.99 and the respondent No.2 returned to her matrimonial home in Punjab with her husband/petitioner No.1. Unfortunately on her return, the petitioners again resumed their misbehavior and acts of cruelty. The petitioner No.1 asked for Rs.1,50,000/- as the petitioners were going abroad. The father of the respondent No.2 agreed to give Rs.50,000/- which was collected by the petitioner No.1 from Delhi. The cruelty continued thereafter in December 1999. The respondent No.2 again become pregnant. The respondent No.2 then discovered that the petitioner No.1 was living in adultery and on this fact being brought to the notice of petitioners, Smt. Surinder Kaur, Smt. Sampuran Kaur and Smt. Malkiat Kaur, she was beaten up and locked in a room for two days. She thereafter delivered the

third child. She was then taunted that her parents had not brought sufficient gifts on the birth of the child. After four days her parents gave gold and other gifts along with cash of Rs.21,000/- which fell short of the expectations of the petitioner No.1. Another promise by her husband to treat her well also went the same way. On 11.6.2001, the petitioner No.1 brought the respondent No.2 to Jalandhar to meet her parents when the petitioner No.1 again demanded Rs.5 lakh and threatened to kill the respondent No.2 unless the amount was given. Petitioner No.1 gave her beatings when her father tried to prevail upon the petitioner No.1. Her parents got her admitted in a hospital in Jalandhar. Petitioners got a case registered against her at P.S.Tanda, Hoshiarpur, took away her three sons and filed a divorce case in Punjab. She therefore filed this complaint asking for recovery of her stridhan from the hands of the petitioners and for action against the petitioners for the cruelty.

4. This FIR was made at Rohini as her parents by then had shifted from their earlier address at Sabzi Mandi to a house in Rohini, Delhi.

5. It is clear from the narration of the allegations in the FIR that offences for which investigation is required to be done by the police are not those which stood compromised and quashed by the High Court of Delhi on 9.3.99. The offence that took place after that settlement is the subject matter of this FIR. Therefore it is incorrect to say that the present FIR is bad because in respect of the same offence an earlier FIR was registered and thereafter quashed.

6. The first question named above is whether the police or the courts in Delhi have jurisdiction in the matter. Here again, the allegations in the complaint have to be seen to ascertain the territorial jurisdiction. Clearly, there is no allegation anywhere saying that any torture of any kind was caused to the petitioner in Delhi after the first FIR was quashed on 9.3.99. She was all through in the place of the residence of the petitioners at Tanda. Some part of the offence allegedly took place at the residence of the grand father of the respondent No.2. Even that was at Punjab. Only thing which took place in Delhi is collection of Rs.50,000/- from the father of the respondent No.2. This allegation is not sufficient to give rise to a cause of action in Delhi. The cruelty was suffered by the respondent No.2 and it is the place where the sufferance was caused is the place where the jurisdiction will lie. The respondent No.2 suffered cruelty at the place where she was residing and that place was Tanda.

7. So far as the offence u/s 406 of the Indian Penal Code is concerned, the entrustment as well as breach of trust both took place at Tanda or at some place in Punjab. Admittedly the marriage did not take place in Delhi. Entrustment could have been made at the place of marriage or at the matrimonial home neither of which was in Delhi. On the allegations, the jurisdiction will lie with the police station having jurisdiction over the matrimonial home in Tanda or some other place where the respondent No.2 had lived along with her husband during the period in question which was admittedly not Delhi.

8. In Y. Abraham Ajith and Ors. vs. Inspector of Police, Chennai and Anr. (2004) 8 SCC 100, the Supreme Court held in a case u/s 498-A/406 of the Indian Penal Code that when the complainant and her husband resided at Nagerkoil and the complainant subsequently shifted to Chennai, the Court in Chennai had no jurisdiction because no part of cause of action had arisen in Chennai.

Obviously, it is the place of residence of the complainant where the cause of action of cruelty can arise. In the present case, all the cruelty was done before the complainant/respondent No.2 left the matrimonial home which was in Punjab.

9. Police station Rohini has completed the investigation and has filed the charge-sheet in court. Should the FIR be quashed for want of jurisdiction? Should the investigation be scrapped? Should the prosecution be quashed? The answer to all the three questions has to be `NO' when examined in the light of the two recent Supreme Court judgments in the case of Satvinder Kaur vs. State (Govt. of NCT of Delhi) & Anr. reported as 1999 (6) SCALE 323 and Y.Abraham Ajith (Supra). In the judgment of the Satvinder Kaur (Supra) all the provisions of Criminal Procedure Code relating to the duty of a police officer who is informed of commission of an offene have been examined. In a very similar situation this court quashed the FIR on the ground that the Delhi police station did not have territorial jurisdiction to investigate the offence. The Supreme Court found the judgment of this court erroneous because:

"(1) The S.H.O. has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an F.I.R. is lodged.

(2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal Procedure Code on the ground that the investigating officer has no territorial jurisdiction.

(3) After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly, under Section 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence."

10. For arriving at the three principles mentioned above, the Supreme Court referred to sub-Sections (1) & (2) of Section 156 of Cr.P.C., which read as under:

"156. Police officer's power to investigate cognizable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate."

11. The Supreme Court found that while sub-Section (1) of Section 156 prescribed the territorial jurisdiction of the officer in charge of a police station. Sub-Section (2) clearly prescribes that no proceedings before a police officer shall be called in question on the ground that the case was one which such officer was not empowered to investigate. The Supreme Court proceeded to say that on completion of investigation the officer in charge of police station was required by Section 170 of Cr.P.C. to forward the accused under custody to a Magistrate empowered to take cognizance of the

offence upon a police report. Further if the investigating officer arrived at the conclusion that the offence was not committed within the territorial jurisdiction of the police station, the FIR could be forwarded to the police station having jurisdiction over the area in which the crime was committed. Section 170 Cr.P.C. is extracted below for a ready reference:

"170. Cases to be sent to Magistrate when evidence is sufficient.- (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."

12. The Supreme Court observed that the police officer in charge of the police station on conclusion of his investigation was required to submit his report to the Magistrate empowered to take cognizance and that in case the territorial jurisdiction lay with a Magistrate other than the Magistrate within whose jurisdiction the police station would fall, no fresh investigation was required to be carried out. Referring to the provisions of Chapter XII, Sections 177 & 178 Cr.P.C., the Supreme Court said that there was no absolute prohibition that the offence committed beyond the local territorial jurisdiction could not be investigated, inquired into or tried. Section 177 prescribes only the ordinary place of inquiry and trial. Although Section 178 prescribed that the trial would be conducted by the court having territorial jurisdiction it did not put any embargo on the SHO of a police station to conduct an investigation into an offence reported to him not falling within his area.

13. In view of the judgment of the Supreme Court there is little scope to doubt that the report of the officer in charge of police station in this case cannot be thrown into a waste paper basket. The question, therefore, is what should be done with his report which he has already presented to a Magistrate and, as it is submitted by the counsel at the time of arguments, of which the Magistrate has already taken cognizance. In a similar case of Y.Abraham Ajith (Supra) in a complaint case under Section 498A/406 IPC the Supreme Court directed the complaint to be returned to the complainant so that she could file the same in the appropriate court. Section 201 of Cr.P.C. provides for return of a complaint by the court if the court did not have jurisdiction to deal with the matter. The present case is instituted on a police report and is not a complaint case. Section 170 Cr.P.C. requires the officer in charge of a police station to forward the accused to a Magistrate empowered to take cognizance of an offence upon a police report. There is no specific provision as to how the Magistrate not having territorial jurisdiction over the subject matter of the offence should deal with a police report which is presented to him. The only option for the Magistrate is to return the report to the officer in charge of the police station so that he could comply with the provisions of Section 170 Cr.P.C. Although for trial of a case instituted on a police report no provision parallel to Section 201 has been prescribed, there is no difficulty in borrowing the remedy provided in Section 201 for curing the defect which has crept into this case which is entirely curable. The irregularity is not one which vitiates the entire proceedings, when seen in the light of the provisions of Sections 460 and 462 of the Cr.P.C. Section 462 goes to the extent of providing that even the order of the criminal court cannot be set aside on the ground that the inquiry, trial or other proceedings took place in an

area over which he did not have the jurisdiction.

14. In a recent judgment in the case of CRL.M.C.No.1681/2000 titled R.K. JAIN & ORS. vs. STATE(NCT OF DELHI) & ANR. decided on 21.5.2005, the same practice has been adopted by this court and the M.M. has been directed to return the police report to the investigating officer so that the same could be presented to the appropriate Court. I, therefore, direct that the police report in this case be returned by the M.M. to the officer in charge of P.S. Rohini who may thereafter present the charge-sheet in the appropriate Court in compliance with the provisions of Section 170 Cr.P.C.

15. The petition is disposed of accordingly.