

CASE NO.:
Appeal (crl.) 210 of 2000

PETITIONER:
Manish Ratan & Ors.

RESPONDENT:
State of M.P. & Anr.

DATE OF JUDGMENT: 01/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Application of Sections 177 and 178 of Code of Criminal Procedure (Code) is involved in this appeal which arises out of a judgment and order dated 1.09.1998 passed by the High Court of Madhya Pradesh in Crl. Revision No. 98 of 1998.

Appellant No. 1 was married with Meena, Respondent No. 2 herein at Niwari, Distt. Tikangarh. They were living at their matrimonial home at Jabalpur. Allegedly, a complaint was lodged by father-in-law of Appellant No. 1 with the police station, Jabalpur on 19.04.1997 alleging that the appellants have been ill-treating his daughter and demanded dowry.

Meena allegedly lodged another First Information Report against the appellants at the Police Station, Datia on 25.05.1997 whereupon a criminal case was registered. In the said complaint, the place of incident was said to have taken place in House No. 151, Adarsh Nagar Narbada Road, Jabalpur. The period during which the incident took place was said to be before November, 1995 till 25.08.1997. It was alleged:

"7. That during the time of Dusshera the complainant's husband Manish, Father in law S.S. Rattan, Mother in law Smt. Kiran and sister in law Menaka (Minni) illtreated her so much that she left her house and saved her life by some means and reached in her Mama's house at Bhopal and from there she reached her house and since then she has been staying with her father."

A criminal revision was filed by the appellants questioning the jurisdiction of the Court of Chief Judicial Magistrate, Datia. By reason of the impugned judgment, the said criminal revision application has been dismissed opining that the offence being a continuing one, Datia Court had jurisdiction to take cognizance of the offence.

The High Court did not consider the question on the touchstone of Sections 177 and 178 of the Code. It is interesting to note that while arriving at the decision the High Court distinguished the decision of this Court in Sujata Mukherjee (Smt) v. Prashant Kumar Mukherjee [(1997) 5 SCC 30], stating:

"\005The High Court held that excepting against the husband, the complaint against other respondents related to the incidents taking place at Raigarh and as such, the criminal case on the basis of complaint

made by the appellant was not maintainable against the said other respondents at Raipur but it was maintainable so far as the husband of the appellant was concerned. On these facts, the Apex Court took the view that the complaint reveals a continuing offence of the mal-treatment and humiliation meted out to the appellant in the hands of all the accused \026 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. It was, therefore, held that in view of clause (c) of Section 178 of Cr.P.C., the High Court was not right. The order passed by the High Court was set aside and the learned CJM, Raipur had jurisdiction to try the case. The facts of the present case are different. There is nothing in the complaint to show that any mal-treatment was given to the complainant at Datia. The allegations, which I may repeat here, are that the mal-treatment was given within a specific period at Jabalpur. There is nothing to show that any mal-treatment was given by any of the petitioners at Datia and under these circumstances, this case of Sujata Mukherjee does not help the learned counsel for the complainant in this case."

By a curious process of reasoning, however, it was held:

"\005They demanded a sum of Rs. 7.00 lakhs and forced her to write a letter to her parents in that regard. She was beaten and kept starving. Somehow she managed to escape and went to her Mama's place at Bhopal and from there she went to father's place and was living there. Thus these facts go to show that she was forced to go to her father's place on account of the fact that she was mal-treated; as demand of Rs. 7.00 lakhs was not fulfilled. As laid down in the aforesaid decision of this Court, the word 'cruelty' is not only the physical cruelty, the lady was forced to live at her father's place on account of the torture of the inlaws and as such it can safely be said that there was also a mental cruelty. The cruelty and the terror of the in-laws continued even at the place of the father where she was living. In this view of the matter, it can safely be said that the harassment continued at the place where she was residing with her father. In view of the provision of Section 178 Cr.P.C., the offence may be inquired into and tried by a Court where the physical harassment, marpeet had taken place i.e. the in-laws' place and also where the harassment continued i.e. the place where she was residing. Thus in view of the law laid down by this Court in the aforesaid authority with which I respectfully agree, the Court at Datia had also jurisdiction to try the case."

It is not denied or disputed that no part of cause of action arose within the territorial limits of the jurisdiction of the Datia Court. Section 177 of the Code ordains that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Interpretation of the term "ordinarily" will have to be considered having regard to the provisions contained in Section 178 thereof which reads as under:

"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 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."

Clause (c) of the said provision, thus, has been applied in the instant case.

Whether the allegations made in the complaint petition would constitute a continuing offence, thus, is the core question.

In a case of this nature, an offence cannot be held to be a continuing one, only because the complainant is forced to leave her matrimonial home.

In *State of Bihar v. Deokaran Nenshi and Another* [(1972) 2 SCC 890], it was stated:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

In *Sujata Mukherjee* (supra) this Court held the offence to be a continuing one as specific allegations had been made against the husband that he had also gone to Raipur where the complaint was filed and had assaulted the appellant therein. It was in the aforementioned fact situation, this Court set aside the judgment of the High Court holding that the incident at Raipur was not an isolated event stating:

"At the hearing of these appeals, Mr Gambhir, the learned counsel appearing for the appellant, has 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, 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. Hence, the criminal case filed in the Court of the Chief Judicial Magistrate, Raipur was only maintainable against the respondent husband against whom some overt act at Raipur was alleged. But such case was not maintainable against the other respondents."

This Court having regard to the peculiar fact situation obtaining therein held:

"\005We 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. We, therefore, set aside the impugned order of the High Court and direct the learned Chief Judicial Magistrate, Raipur to proceed with the criminal case\005"

Sujata Mukherjee (supra) was distinguished by a Division Bench of this Court in Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another [(2004) 8 SCC 100] where noticing the interpretation of the expression "cause of action", it was held that the expression "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. In that case the complaint itself disclosed that after 15.04.1997, the respondent left Nagercoil and went to Chennai and was staying there. Thus, having regard to the fact that all allegations according to the complainant took place at Nagercoil, it was held that the courts at Chennai did not have the jurisdiction to deal with the matter. It was held:

"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."

Yet again in Ramesh and Others v. State of T.N. [(2005) 3 SCC 507], Abraham Ajith (supra) was followed by this Court stating:

"In the view we are taking, it is not necessary for us to delve into the question of territorial jurisdiction of the Court at Trichy in detail. Suffice

it to say that on looking at the complaint at its face value, the offences alleged cannot be said to have been committed wholly or partly within the local jurisdiction of the Magistrates Court at Trichy. Prima facie, none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction of that court. Almost all the allegations pertain to acts of cruelty for the purpose of extracting additional property as dowry while she was in the matrimonial home at Mumbai and the alleged acts of misappropriation of her movable property at Mumbai. However, there is one allegation relevant to Section 498-A from which it could be inferred that one of the acts giving rise to the offence under the said section had taken place in Chennai. It is alleged that when the relations of the informant met her in-laws at a hotel in Chennai where they were staying on 13-10-1998, there was again a demand for dowry and a threat to torture her in case she was sent back to Mumbai without the money and articles demanded.

Thus the alleged acts which according to the petitioner constitute the offences under Sections 498-A and 406 were done by the accused mostly in Mumbai and partly in Chennai. Prima facie, there is nothing in the entire complaint which goes to show that any acts constituting the alleged offences were at all committed at Trichy."

The said decisions are squarely applicable to the facts of the present case.

Our attention was drawn to the fact that no criminal case was lodged at Jabalpur. Our attention was further drawn to the fact that the investigation of the case is complete.

We, therefore, are of the opinion that, interest of justice would be subserved, while setting aside the order of the High Court, if in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct transfer of the criminal case pending in the Court of Chief Judicial Magistrate, Datia to the Court of Chief Judicial Magistrate, Jabalpur. We accordingly do so.

Although the complainant has filed an application before us for impleading herself as a party, nobody has appeared on her behalf. We, therefore, direct the Chief Judicial Magistrate, Jabalpur to issue notice to her. Keeping in view of the fact that Respondent No. 2 is residing at Datia, we would request the Chief Judicial Magistrate, Jabalpur to accommodate her in the matter of fixing the date (s) of hearing as far as possible.

The appeal is allowed with the aforementioned directions.