

Chattisgarh High Court

Amrendu Jyoti And Ors. vs State Of Chhattisgarh And Ors. on 19 December, 2006

Equivalent citations: 2007 CriLJ 1511

Author: D R Deshmukh

Bench: D R Deshmukh

ORDER Dilip Raosaheb Deshmukh, J.

1. The petitioners have filed an application under Section 482 of Cr.P.C. for quashing the entire proceedings arising out of the first information report lodged by Madhusudan Sinha on 31-12-2005 at Police Station-Ambikapur which culminated in filing of charge-sheet before the Chief Judicial Magistrate, Ambikapur under Section 498A of IPC.

2. Brief facts are that Kiran Sinha is the daughter of Madhusudan Sinha and Annapurna Sinha. She was married to petitioner Amrendu Jyoti on 21-4-2003 in Patna. Petitioner No. 2 Shardendu Jyoti is the elder brother of the petitioner No. 1 and petitioner No. 3 Neelu is his wife. The petitioners reside at Delhi which is the matrimonial home of Kiran Sinha. A written report dated 10-5-2005 was lodged by Madhusudan Sinha in Police Station-Ambikapur stating that at her matrimonial home at Delhi, Kiran Sinha was treated with utmost cruelty by the petitioners and was subjected to harassment and mental torture on account of a demand for dowry. It was stated in the complaint that on 22-5-2003 Madhusudan Sinha returned with Kiran Sinha from Delhi to Ambikapur and reached Ambikapur on 24-5-2005. It was also stated in the complaint that on return to Ambikapur, Kiran Sinha narrated the manner in which she was harassed by the petitioner at Delhi. Paragraphs 5 to 12 of the complaint are reproduced below:

(Vernacular matter omitted)

3. Here it would be apt to reproduce (1) a letter written by Kiran Sinha from Delhi and (2) some letters written by Kiran Sinha and Madhusudan Sinha from Ambikapur;

(Vernacular matter omitted)

4. On the basis of first information report lodged by Madhusudan Sinha at Police Station-Ambikapur, an offence was registered at Police Station-Ambikapur and after investigation, charge-sheet has been filed before the Chief Judicial Magistrate, Ambikapur.

5. Petitioners placed reliance on *Y. Abraham Ajith v. Inspector of Police, Chennai* 2004 AIR SCW 4788 : 2004 Cri LJ 4180 while contending that no cause of action arose at Ambikapur since the offence under Section 498A of IPC was alleged to have been committed wholly at Delhi and was not a continuing offence. Reliance was also placed on a decision rendered by this Court in case *Anil Kumar Saxena v. State of Chhattisgarh* in M.Cr.C. No. 2424/2005 (Reported in 2006 Cri LJ (NOC) 293). On this premise, it was prayed that the registration of F.I.R. at Police Station-Ambikapur, filing of charge-sheet and the subsequent trial before the Chief Judicial Magistrate, Ambikapur was without jurisdiction and liable to be quashed.

6. On the other hand, Shri Akhil Agrawal, learned P.L. and Shri Praveen Das, learned Counsel for the respondents No. 2 and 3 argued that under Section 179, Cr.P.C. where the 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. It was argued that although harassment on account of a demand for dowry and acts of cruelty initially commenced at Delhi, yet cruelty not only included physical cruelty but also mental cruelty. Within one year of the marriage, Kiran Sinha was forced to leave her matrimonial home on account of the extreme acts of cruelty and harassment by the petitioners on account of a demand for dowry. The consequence of such cruelty was not only the mental torture which Kiran Sinha had to undergo while she was at her maternal home, but also in having been forced to live separately from her husband on account of reluctance of the petitioners to take her back despite several letters written by her and father Madhusudan Sinha. Reliance was placed on *Bina Dey v. Pratibha Day* 2003 Cri LJ 3618 (Gau) and *Vijai Ratan Sharma v. State of U.P.* 1988 Cri LJ 1581 (Allah) wherein it was held that where the act or conduct, omission or commission is of such a nature which results in mental and physical harassment it will amount to an act of cruelty to a woman and it is immaterial that the woman is living at the relevant time at her matrimonial house or at her parents house. The offence under Section 498A is a continuing offence and if the act of cruelty continues even while, the woman is living at her parents house, the offence is triable by both the Courts in whose territorial jurisdiction the matrimonial house or the parents house is situate. Being unable to bear the alleged acts of cruelty or mental torture, the wife was compelled to go back to her parents' house for shelter and in case she was asked to prosecute her case under Section 498A, I.P.C. at her matrimonial place, it would amount to deprivation of her right to prosecute the case since a deserted lady would not be able to prosecute the same there properly.

7. Having considered rival submissions, I have perused the written complaint lodged by Madhusudan Sinha on 10-8-2005 in P. S. Ambikapur. It clearly shows that soon after her marriage to Amrendu Jyoti, petitioner No. 1, Kiran Sinha was repeatedly harassed by the petitioners on account of a demand for dowry. It was also alleged that petitioner No. 3 tortured her mentally by making insinuations as to her character and by preventing her from moving out of the house. Paragraphs 5 to 12 which are quoted above of the complaint depict the grave mental torture which Kiran Sinha had to undergo not only at the matrimonial home at Delhi.

8. An act of cruelty contemplated under Section 498A, I.P.C. can be either physical or mental. A woman may be subjected to acts of cruelty by mentally torturing her and making insinuations against her character. In this case, the written complaint lodged by Madhusudan Sinha prima facie shows that Kiran Sinha was subjected not only to physical cruelty but also to such an extent of mental cruelty on account of a demand for dowry that she was forced to leave the matrimonial home and to live with her father Madhusudan Sinha at Ambikapur. A perusal of paragraph 12 of the complaint also goes to show that despite several letters written by her and Madhusudan Sinha, no efforts were made by the petitioners to take Kiran Sinha back to her matrimonial home. These letters depict the state of mental torture being undergone by Kiran Sinha while she was living with her parents at Ambikapur. The petitioners continued the demand of dowry when contacted on telephone by Madhusudan Sinha from Ambikapur and also threatened Kiran Sinha on phone that she would return to Delhi only on payment of money. Threats to her life also continued when the

petitioners were contacted on telephone from Ambikapur. If a newly married woman is subjected to such cruelty, as is narrated in the complaint and also the letters written by Madhusudan Sinha and Kiran Sinha from Ambikapur, there is no element of doubt that after having been forced to live at her maternal home, the mental cruelty inflicted upon Kiran Sinha by the petitioners continued unabated on account of no effort having been made by the petitioners to take her back to her matrimonial home and the threats given by the petitioners over the telephone.

9. Section 178 of the Code of Criminal Procedure 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 areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

10. Section 179 of the Code of Criminal Procedure reads as under:

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.

11. A plain reading of Section 178, Sub-clause (c) and 179, Cr.P.C. makes it clear that where an offence is a continuing offence or where a consequence ensuing of an act is "also an offence, the Courts where such consequence has ensued would also have jurisdiction to try the offence. Similarly, where the offence is continuing one and also continued to be committed while Kiran Sinha was at Ambikapur the Court at Ambikapur would also have jurisdiction to try such offence. In this view of the matter, the offence under Section 498A, I.P.C. could be tried by any of the Court within whose local jurisdiction either the act of cruelty were committed or such consequence tantamounting to an offence under Section 498A had ensued.

12. Reliance was placed by the petitioners on Y. Abraham Ajith (supra). However, the facts are clearly distinguishable since in Y. Abraham Ajith (supra) the actual nature of the acts of cruelty or harassment has not been mentioned. It does not show in any manner that the acts of cruelty had, in any manner, continued at Chennai. It does not show whether the cruelty was physical or mental. It does not dwell with regards to the provisions in Section 179 of the Cr.P.C. It was held that since no part of the cause of action arose in the maternal home at Chennai but wholly arose at Nagercoil, the matrimonial home, the concerned Magistrate at Chennai had no jurisdiction to deal with the matter.

13. The case of Sujatha Mukherjee (Smt.) v. Prashant Kumar Mukherjee applies to the present case also. In that case, the husband also went to the maternal home of the wife and had assaulted her. In that factual background, Clause (c) of Section 178 of Cr.P.C. was attracted. It was held that the offence was a continuing offence and was also committed at the matrimonial home also giving jurisdiction to the Court situated there. In the present case, the petitioners continued threatening Kiran Sinha over the phone while she was at Ambikapur and the demand for dowry also continued unabated over the telephone.

14. The petitioners have also placed reliance on the order passed in M. Cr.C. No. 2424 of 2005 (Anil Kumar Saxena v. State of Chhattisgarh) by this Court vide judgment dated 23-1-2006 : 2006 Cri LJ (NOC) 293. However, the effect of Section 179, Cr.P.C. was not considered in that judgment and it was not considered whether due to the acts of mental cruelty such consequences had ensued at the maternal home which would give jurisdiction to the Court within whose local jurisdiction the maternal home was situated. In that case, there is nothing to show that any correspondence or telephonic conversation took place between the wife and the husband and her relatives showing continuance of mental torture on account of refusal to take her back due to non-fulfillment of demand of dowry. The facts of the present case are clearly distinguishable since in the present case it is clearly shown that after returning to the maternal home all efforts made by Madhusudan Sinha to send Kiran Sinha back to her matrimonial home failed since the petitioners paid no heed to several letters written by Kiran Sinha and Madhusudan Sinha to the petitioners and the threats and demand for dowry had continued. Therefore, in view of the aforesaid discussion, it can be said that due to the acts of cruelty, mental torture and harassment of Kiran Sinha committed by the petitioners, she was forced to leave her matrimonial home and to live with her father at Ambikapur where the threats and demand for dowry had continued unabated. As a consequence of the acts of cruelty committed upon her by the petitioners, Kiran Sinha was forced to live at Ambikapur under severe mental torture. Due to refusal by the petitioners to take her back to her matrimonial home despite best efforts made by Madhusudan Sinha and Kiran Sinha, the act of cruelty as defined under Section 498A, I.P.C. had thus continued at Ambikapur.

15. In Vijai Ratan Sharma (supra), it was held that when the wife fell ill at Ghaziabad and was not being called at her matrimonial home, the offence of cruelty to the wife was a continuing offence and under Section 179, Cr. P.C. the Court at Ghaziabad had jurisdiction to try the offence in question. In Bina Dey (supra), it was held by the Gauhati High Court while placing reliance on Vijai Ratan Sharma (supra) that if the conduct, omission or commission is of such a nature which results either in mental or physical harassment it will amount to an act of cruelty to the woman and it would be immaterial whether the woman at the relevant time was living at her matrimonial house or at her parents' house. The offence under Section 498A, IPC is a continuing offence and if the act of cruelty continues even while the woman is living at her parents' house, the offence is triable by both the Courts in whose territorial jurisdiction the acts of cruelty have been committed. In that case, the woman was subjected to cruelty at her matrimonial house at Binjbayala and was compelled to leave the matrimonial home and to live with her parents due to the threats given by the petitioners. It was held that the offence under Section 498A, I.P.C. was a continuing offence and being unable to bear the alleged cruelty or torture, the wife had to go back to her parents' house for shelter and in any case if she was asked to prosecute her case under Section 498A at her matrimonial home, it would

amount to deprivation of her right to prosecute the case since as a deserted lady she would not be able to prosecute the same properly there. It was also held that the place where the wife was forced to take shelter had jurisdiction to try the offence under Section 498A, I.P.C.

16. In this view of the matter, it is clear that due to physical as also mental cruelty inflicted upon Kiran Sinha by the petitioners, she was forced to live at Ambikapur despite best efforts made by her father to send her back to Delhi. The petitioners subjected her to cruelty even at Ambikapur, as stated in the above paragraphs, though over the telephone. It can, therefore, be said that the offence under Section 498A, I.P.C. initially committed by the petitioner at Delhi was not only a continuing offence but also that such consequence thereof had ensued at Ambikapur as would amount to an offence under Section 498A, IPC. In this view of the matter, under Clause (c) of Section 178 as also under Section 179, Cr.P.C. the Court at Ambikapur had jurisdiction to try the offence under Section 498A, I.P.C.

17. In the result and for the foregoing reasons, the petition under Section 482, Cr. P.C. being devoid of any merit is dismissed.