

SMT. SUJATA MUKHERJEE
v.
PRASHANT KUMAR MUKHERJEE

APRIL 30, 1997

[G.N. RAY AND G.T. NANAVATI, JJ.]

Code of Criminal Procedure, 1973 :

S. 178(c)—Complaint by wife against husband and other members of his family for dowry demand and maltreatment—Complaint filed in Raipur—Accused contending before Chief Judicial Magistrate, Raipur that case at Raipur was not maintainable as alleged offence was committed at Raigarh—Chief Judicial Magistrate Raipur refusing to transfer the case from Raipur to Raigarh—Held—Complaint reveals continuing offence—Clause (c) of s. 178 is clearly attracted—Chief Judicial Magistrate Raipur to proceed with the case.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 46 of 1991.

From the Judgment and Order dated 31.8.89 of Madhya Pradesh High Court in CrI. Revision No. 463 of 1989.

With

Criminal Appeal No. 47 of 1991.

From the Judgment and Order 30.8.89 of the Madhya Pradesh High Court in CrI. Revision No. 481 of 1989.

S.K. Gambhir for the Appellant.

Anoop Choudhary, Sakesh Kumar and Uma Nath Singh for State of M.P. for the Respondent.

K.M.K. Nair and S.K. Mehta for the Respondent.

The following Order of the Court was delivered :

These two appeals are directed against the order dated 31.8.89

- A passed by the Madhya Pradesh High Court disposing of Criminal Revision No. 481 of 1989 and Criminal Revision No. 463/89. Criminal Revision No. 481/89 was preferred by all the five respondents against refusal by the learned Chief judicial Magistrate, Raipur to transfer the case from Raipur to Raigarh. Criminal Revision No. 463/89 was preferred by four of the respondents challenging the assumption of jurisdiction of the Chief Judicial
- B Magistrate, Raipur in the complaint made by the appellant for offences under Section 498 A and 506 B and 323 of the Indian Penal Code. The respondents are 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 is that on account of dowry demands, she had been
- C maltreated and humiliated not only in the house of the 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 had also assaulted her.

- The respondents contended before the learned Chief Judicial
- D 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
- E was not inclined either to quash the summons or to transfer the criminal case to the competent Court at Raigarh, the aforesaid criminal revision petitions were filed; 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
- F Raipur and had assaulted the appellant and as such husband could not plead want of territorial jurisdiction. Both the said criminal revisions case have been disposed of by a common order dated 31.8.89 by the High Court. The High Court having held that excepting against the husband, the complaint against other respondents related to the incidents taking place at Raigarh. Hence, the criminal case on the basis of complaint made by
- G the appellant was not maintainable against the said other respondents at Raipur but such case was maintainable so far as the husband of the appellant, namely Sri S.S. Mukherjee is concerned.

- At the hearing of these appeals, Mr. Gambhir, the learned counsel
- H 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 proceeded on the footing that several isolated events had been 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.

In this connection, Mr. Gambhir has drawn our attention to Section 178 of the Code of Criminal Procedure in particular clauses (b) and (c) of Section 178. Clause (b) envisages that "where an offence is committed partly in one local area and partly in another" such offence can be tried by a Court having jurisdiction over any such local areas. Clause (c) contemplates that "where an offence is a continuing one, and continues to be committed in more local areas" then such offence can be tried by a Court having jurisdiction over any of such local areas.

Mr. Gambhir has submitted that complaint made by the appellant Sujata Mukherjee discloses offence committed partly in one local area and partly in another local area. The complaint also discloses that the offence was 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.

Mr. Anoop Choudhary, learned senior counsel appearing for the State has submitted that Clause (b) of Section 178 is not attracted but if this Court is inclined to accept the submission of Mr. Gambhir that the offence was continuing one and the episode at Raipur was only a sequence of the continuing offence of harassment and ill treatment meted out to the complainant, clause (c) of the Section 178 may be attracted. Mr. Choudhary has submitted that from the complaint it cannot be reasonably held that all the accused had committed the offence partly in one area and partly in another local area. Therefore, it will not be appropriate to apply clause (b) of Section 178 of the Code of Criminal Procedure. In our view, there is force in such submission of Mr. Choudhary.

- A Despite service being effected on the private respondents, no one has appeared for any of the accused respondents. We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of mal treatment and humiliation meted out to the appellant in the hands of all the accused-respondents and
- B 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. Since the matter is pending for long, steps should
- C be taken to expedite the hearing. The appeals are accordingly allowed.

R.P.

Appeals allowed.