

PREMKUMAR & ORS.

v.

STATE OF KERALA

(Criminal Appeal No. 2088 of 2008)

DECEMBER 19, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973:

ss.177 and 178 – Jurisdiction to conduct enquiry and trial – Determining factors – Discussed – Penal Code, 1860 – s.304B.

ss.177 and 178 – Suicidal death in State of Tamil Nadu – Father-in-law informed the Courtallam police station, Tamil Nadu – Case registered under s.174 – Inspector submitted report stating that deceased committed suicide on account of her mental illness – Investigation stopped – Father of deceased lodged FIR in State of Kerala – Application for quashing of FIR – Rejected – Held: In the interest of justice, investigation and consequent trial transferred to police officer in-charge of Courtallam Police Station, Tamil Nadu – All materials collected by Kodakkavoor Police Station, Kerala to be transferred to officer in-charge of Courtallam Police Station.

Penal Code, 1860 – s.304B – Essential ingredients – Discussed.

Prosecution case was that on 14.2.2003, the deceased, who was wife of appellant 1 and daughter-in-law of appellant 2 committed suicide by hanging, in the State of Tamil Nadu. Appellant 2 informed the Courtallam police station about the unnatural death pursuant where to case u/s. 174 Cr.P.C. was registered. The Inspector of Police, Courtallam submitted a report stating that deceased committed suicide on account of her mental illness. The investigation pursuant to report u/s.

A 174 was stopped.

The father of deceased lodged a complaint on 4.3.2003 with Kadakkavoor Police in State of Kerala on the basis whereof an FIR was lodged for an offence u/s. 304B r/w. s.34 IPC. A charge sheet was filed by

B Kadakkavoor Police.

Appellants filed an application under s.482 Cr.P.C. before the High Court Kerala, Ernakulam, contending that the Kadakkavoor Police Station in the State of Kerala had no jurisdiction to conduct an investigation in view of the provision contained in s.177 Cr.P.C. and in any event one FIR having already been lodged by appellant no.2, the second FIR was not maintainable. The said application was dismissed. Hence the instant appeal.

Partly allowing the appeal, the Court

D HELD: 1.1. Jurisdiction to make an enquiry and trial is laid down in Chapter XIII of Cr.P.C. s.177 thereof provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. S.178, however, provides that when it is uncertain in which of the 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 continuing one, and continues to be committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas. [Para 8] [1432-A-C]

Vidhya Devi & Anr. v. State of Haryana, (2004) 9 SCC 476, relied on.

2. The word, 'ordinarily' occurring in s.177, Cr.P.C. must be given its natural meaning. The provisions contained in s.178 and other provisions would be attracted when s.177 cannot be given effect to. These provisions in the Code governing the field emanate from the doctrine that all crimes are local. Investigation into a

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crime, the witnesses who are required to be examined for the purpose of proving the commission thereof and other relevant factors which are required to be taken for consideration thereof lead to the aforementioned inference. For the purpose of finding out in regard to the place, where the enquiry or trial should be conducted, would be that the offence has taken place wholly or partly in the jurisdiction of one police station or wholly or partly in the jurisdiction of another police station and, thus, would depend upon the fact situation obtaining in each case. [Para 9] [1432-C-F]

Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr. (2004) 8 SCC 100 and *Naresh Kavarchand Khatri v. State of Gujarat & Anr.* (2008) 8 SCC 300, relied on.

Asit Bhattacharjee v. M/s. Hanuman Prasad Ojha & Ors. 2007(7) SCALE 241, referred to.

2. The provisions of the Penal Code under which the accused is charged would also play an important role. Appellants were charged for commission of an offence under s.304B of the IPC. The said provision was inserted by Act 43 of 1986 with effect from 19.11.1986. By reason thereof a new offence was created. A new procedure for trial has been laid down. The ingredients of the said offence must be proved for bringing home a charge, namely, that the accused had killed the deceased for not satisfying his demand of dowry and she was subjected to cruelty or harassment by her husband or any relative of his for or in connection with demand for dowry. By reason of the said provision, a legal fiction has been created. What is, therefore, necessary is that such cruelty or harassment for or in connection with any demand for dowry must have been made 'soon before her death'. The said words do not lead to fixation of a time-frame. It will depend upon the facts and circumstances of each case. In this case, nothing happened even a week prior to her death. Admittedly, no torture or harassment had taken place in regard to demand of sale of land in her favour.

A However, that may be a subject-matter of proof. [Paras 10, 12] [1432-F-H; 1434-E-D]

3. In view of the fact that the police at Courtallam, Tamil Nadu had already been informed, although *stricto sensu*, the same cannot be construed to be an FIR within the meaning of provisions of s.154, Cr.P.C., and, thus, B F.I.R. lodged at Kadakkavoor Police Station was maintainable, the interest of justice would be subserved if the investigation and consequent trial is transferred to Police Officer in charge of Courtallam Police Station, Tamil Nadu. All the materials collected by Kadakkavoor C Police Station, Kerala shall be transferred to the officer in-charge of Courtallam Police Station, Tamil Nadu. The officer in-charge of Kadakkavoor Police Station, Kerala, must ensure that in the event a charge-sheet is filed and cognizance of offence under s.304B, IPC is taken, D witnesses who are available within his jurisdiction should be produced. [Para 17] [1438-A-D]

4. Such an unusual order is passed keeping in view the specific defence raised by the appellants that the deceased had been suffering from some mental illness. E However, with a view that a fair investigation is carried out the Superintendent of Police of the concerned district at Tamil Nadu is directed to make an investigation himself and/or cause the same to be made by a highly responsible officer. [Para 17] [1438-D-E]

F Case Law Reference:

(2004) 9 SCC 476	relied on	Para 11
(2004) 8 SCC 100	relied on	Para 13
(2008) 8 SCC 300	relied on	Para 16
2007(7) SCALE 241	referred to	Para 15

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2088 of 2008.

H From the Judgment and final Order dated 11.2.2008 of the High Court of Kerala at Ernakulam in Criminal M.C. No. 3267 of 2004 (C).

K.V. Vishwanathan, M. Gireesh Kumar, Avjeeth Kr. Lala and Vijay Kumar for the Appellants. A

P.V. Dinesh for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J : 1. Leave granted.

2. Jeeja, the deceased was married on 12.09.1998 with the first appellant herein, Dr. Premkumar at Attingal. They had been residing at Chenkkottah, in the district of Tenkasi in the State of Tamil Nadu. She committed suicide at her matrimonial house which is in the State of Tamil Nadu on 14.02.2003. Appellant no.2 herein, father-in-law of the deceased, informed the Courtallam Police about the said unnatural death pursuant where to a case being Crime No.64/2003 under Section 174 of the Code of Criminal Procedure (Cr.P.C.) was registered. The body of the deceased was subjected to inquest by the Sub Divisional Executive Magistrate and Revenue Divisional Officer, Tenkasi and an enquiry was conducted by the said officer and a report was submitted before the Deputy Superintendent of Police, Tenkasi wherein, inter alia, it was stated :

"On the basis of the inquest conducted, and on the basis of the enquiries made with the husband, father-in-law, mother-in-law, brothers-in-law, father, mother, brothers and sisters of the deceased, and on the basis of the evidence adduced by the reputed locals, and viewing the position and situation of the room in which the dead body was lying and other circumstances, I come to the conclusion that the death of Jeeja by hanging is not one due to dowry based cruelty.

I request to make detailed investigation as to under what circumstances Smt. Jeeja died by hanging."

The Inspector of Police, Courtallam submitted a report before the Sub-collector and Revenue Divisional Officer stating that Jeeja committed suicide on account of her mental illness. The investigation pursuant to the report under Section 174, Cr.P.C. was stopped stating :

A "It is truly evident that Jeeja, knowing that the fact of her
mental illness had come to the knowledge of her husband
and parents-in-law, and that despite the homeopathy,
ayurveda and allopathic treatment the mental disease had
not subsided, became mentally depressed and as a result
B of the mental agony she had undergone she came to the
decision of committing suicide by hanging, and
accordingly on 14.2.2003 at 9.00 AM after telling her
husband that she would not speak to him, and after the
departure of her husband and father-in-law to the clinic at
9.30 AM, she went to wash and dry the clothes at 10.30
C AM and after that she went into the first room at the
upstairs and after locking from inside the box lock of the
wooden plank shutter of the door and placing the key on
the table, and locking from inside of the glass windows on
the south, lower and north side of the said room, she went
D into the bed room, and after locking the bed room door
from inside, she climbed on the small stool and the cot in
the room and after tying a nylon churidar shawl at the
ceiling fan clamp at the roof by a knot and tying the other
end of the shawl around the neck by making a knot by
E herself and jumped down from the cot and as a result of
hanging the knot around her throat got tightened and
caused suffocation that resulted in her death.

Therefore the investigation of this case is stopped and
further action dropped, and this final report is submitted."

F Father of the deceased, however, lodged a complaint with the
Kadakkavoor Police in the State of Kerala on or about
04.03.2003 on the basis whereof a First Information Report (for
short, 'FIR') was lodged for an offence punishable under Section
304B read with Section 34 of the Indian Penal Code (IPC).

G 3. Appellant no.1 was arrested from his residence at
Shenkottai (Tamil Nadu) and produced before Judicial
Magistrate First Class, Varkkala. A charge-sheet was filed by
Kadakkavoor Police on or about 13.04.2004.

4. Appellants filed an application under Section 482 of the

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Cr.P.C. before the High Court Kerala, Ernakulam, inter alia, contending that the Kadakkavoor Police Station in the State of Kerala had no jurisdiction to conduct an investigation in view of the provision contained in Section 177 of the Cr.P.C. and in any event one FIR having already been lodged by appellant no.2 herein, the second FIR was not maintainable.

5. By reason of the impugned judgment, the said application having been dismissed, the appellants are before us.

6. Mr. K.V. Viswanathan, the learned counsel appearing on behalf of the appellants would contend :

- (i) As the entire cause of action arose within the jurisdiction of the Police Station Courtallam in the State of Tamil Nadu, the impugned order cannot be sustained;
- (ii) By reason of insertion of Section 304B of the IPC, a legal fiction having been raised, before a person can be prosecuted under the said provision all ingredients thereof must be strictly proved;
- (iii) All crime being local, the provisions of Section 177, Cr.P.C. subject to the exceptions contained in Sections 178, 179 etc., must ordinarily be followed; and
- (iv) In any view of the matter, the second FIR in the State of Kerala was not maintainable.

7. Mr. P.V. Dinesh, the learned counsel appearing on behalf of the State of Kerala, however, would contend that the report made under Section 174, Cr.P.C. cannot be said to be a First Information Report within the meaning of Section 154 thereof as the same was meant to hold an inquest and submission of a report in respect thereof by an Executive Magistrate. The learned counsel would contend that one of the ingredients of an offence under Section 304B of the IPC being demand of dowry and/or harassment of the deceased by her husband or relatives of the husband and a part thereof having taken place in the State of Kerala, the Kerala Police had also

A jurisdiction to investigate into the said offence.

8. Jurisdiction to make an enquiry and trial is laid down in Chapter XIII of Cr.P.C. Section 177 thereof provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178, however, inter alia, provides that when it is uncertain in which of the 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 continuing one, and continues to be committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

9. The word, 'ordinarily' occurring in Section 177, Cr.P.C. must be given its natural meaning. The provisions contained in Section 178 and other provisions would be attracted when Section 177 cannot be given effect to. These provisions in the Code governing the field emanate from the doctrine that all crimes are local. Investigation into a crime, the witnesses who are required to be examined for the purpose of proving the commission thereof and other relevant factors which are required to be taken for consideration thereof lead to the aforementioned inference. For the purpose of finding out in regard to the place, where the enquiry or trial should be conducted, would be that the offence has taken place wholly or partly in the jurisdiction of one police station or wholly or partly in the jurisdiction of another police station and, thus, would depend upon the fact situation obtaining in each case.

10. The provisions of the Penal Code under which the accused is charged will also play an important role. Appellants have been charged for commission of an offence under Section 304B of the IPC. The said provision was inserted by Act 43 of 1986 with effect from 19.11.1986. By reason thereof a new offence was created. A new procedure for trial has been laid down. The ingredients of the said offence must be proved for bringing home a charge, namely, that the accused had killed the deceased for not satisfying his demand of dowry and she was subjected to cruelty or harassment by her husband or any

relative of his for or in connection with demand for dowry. By A
reason of the said provision, a legal fiction has been created.
What is, therefore, necessary is that such cruelty or harassment
for or in connection with any demand for dowry must have been
made 'soon before her death'. The said words do not lead to
fixation of a time-frame. It will depend upon the facts and B
circumstances of each case. In support of the case of the State,
Mr. P.V. Dinesh has drawn our attention to paragraphs 7 and 8
of the First Information Report lodged by the father of the
deceased which is in the following terms :

"7. Three months after the delivery, the petitioners daughter C
and child were again taken to Shengottai. Another
complaint made by the 2nd counter petitioner alleging that
the petitioner and the family members have
misappropriated some gold ornaments gifted to the child
by close relatives. Thereafter there were *not much* D
communications and the petitioner was under an
impression that things were going on smoothly.

8. During December 2002 the counter petitioners along
with the daughter of the petitioner came to their residence
at Trivandrum and stayed there for some days. During this E
period, the counter petitioners again made a demand for
sale of the property stands in the name of the daughter of
the petitioner and to hand over the sale proceeds to them.
This demand was negated by the petitioners daughter
and she was manhandled by the counter petitioners and
she was harassed repeatedly and even she was deprived F
of food for a day or two in this connection. She could not
with stand the harassment for longer period during last
week of January 2003, the 1st counter petitioner along with
Jeeja and child came to the petitioners residence. She
came there agreeing the 1st counter petitioner to discuss G
this issue with the petitioner, but ignoring the said
agreement, she did not speak much about the sale of
property is sold and the amount is paid to the counter
petitioners. The petitioner advised her to relax and stay
here for some days. The wife of the petitioner was ailing H

A as she underwent an operation and that may be reason
why the demand of the counter petitioners was not exactly
disclosed to the petitioner. While she was staying at the
petitioners house she was taken by the first counter
petitioner a week prior to 14-2-03, disregarding the
B petitioners request to retain her at the petitioners house."

11. This Court in the case of *Vidhya Devi & Anr. v. State of Haryana* reported in (2004) 9 SCC 476 observed as under

C "6. The expression "soon before" is a relative term
which requires to be construed in the context of specific
circumstances of each case and no hard-and-fast rule of
any universal application can be laid down by fixing any
time-limit."

D 12. In this case nothing happened even a week prior to
her death. Admittedly, no torture or harassment had taken place
in regard to demand of sale of land in her favour. However, that
may be a subject-matter of proof. We are making these
observations only for the purpose of disposal of this application.

E 13. So far as the jurisdiction of Kadakkavoor Police Station
vis-à-vis the provisions of Section 177, Cr.P.C. is concerned,
we may notice that in the case of *Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Anr.* (2004) 8 SCC 100 this
Court in a case arising under Sections 498A and 406 as well
as Section 4 of the Dowry Prohibition Act, 1961 held as under

F "9. "All crime is local, the jurisdiction over the crime belongs
to the country where the crime is committed", as observed
by Blackstone. A significant word used in Section 177 of
the Code is "ordinarily". Use of the word indicates that the
provision is a general one and must be read subject to the
G special provisions contained in the code. As observed by
the Court in *Purushottamdas Dalmia v. State of W.B.* AIR
1961 SC 1589 : (1962) 2 SCR 101, *L.N. Mukherjee v. State of Madras* AIR 1961 SC 1601 : (1962) 2 SCR 116,
H *Banwarilal Jhunjunwala v. Union of India* AIR 1963 SC

1620 : 1963 Supp.(2) SCR 338 and *Mohan Baitha v. State of Bihar* (2001) 4 SCC 350 exception implied by the word "ordinarily" need not be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand." A

The question, therefore, which is required to be posed was as to whether any part of the cause of action arose within the jurisdiction of the Court concerned. B

14. This Court applied the meaning of the expression 'cause of action' to hold : C

"17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In *Black's Law Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf." D E

15. An identical question recently came up for consideration in the case of *Asit Bhattacharjee v. M/s. Hanuman Prasad Ojha & Ors.* 2007(7) SCALE 241 wherein this Court in the peculiar facts obtaining therein although opined that a part of cause of action arose within the territorial jurisdiction of the Metropolitan Magistrate, Kolkata as a larger part arose in U.P. directed as under : F G

"37. We, therefore, are of the opinion that interest of justice would be subserved if this appeal is disposed of with the following directions :

(i) Further investigation shall be carried out by C.B.C.I.D. H

A of the State of Uttar Pradesh.

(ii) Accused/respondents shall surrender before the Chief Judicial Magistrate, Allahabad and their applications for grant of bail, if any, may be considered by the said court on its own merits.

B (iii) The accused/respondent shall render all cooperation with the Investigating Officer. They shall appear before the Investigating Officer as and when directed, if released on bail.

C (iv) Investigation shall be carried out inter alia on the premise that the jurisdiction to make investigation shall be subject to the ultimate decision of the Court of the Chief Metropolitan Magistrate, Calcutta as if investigations are being carried out by the C.B.C.I.D. of the State of Uttar Pradesh in continuation of the investigation made by the Officer-in-charge of the Shakespeare Sarani Police Station. The Chief Metropolitan Magistrate, Allahabad shall be entitled to pass appropriate orders from time to time in this behalf.

E (v) The Report on completion of the investigation shall be forwarded to the Chief Metropolitan Magistrate, Calcutta who shall determine the question of his own jurisdiction at an appropriate stage.

F (vi) This order, it is made clear, is being passed in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India. All concerned authorities are directed to carry out these directions."

16. Yet recently in the case of *Naresh Kavarchand Khatri v. State of Gujarat & Anr.* (2008) 8 SCC 300 this Court directed as under :

G "11. Mr. Sorabjee, learned Senior Counsel and Mr. Huzffa Ahmadi, appearing for Respondent 2 in each of the appeals, however, brought to our notice that charge-sheet has already been submitted. It was contended that proper investigation has been carried out in the matter and even
H the respondent-accused had been taken into custody and,

thus, this Court, in a situation of this nature, should not exercise its jurisdiction under Article 136 of the Constitution of India. A

12. Investigation has been carried out by the officer in charge of Police Station Waghodia only pursuant to the order of the High Court. If the order of the High Court is to be set aside, the investigation must be held to have been carried out without any jurisdiction. We are not herein concerned with the quality of the investigation but the effect of the order passed by the High Court. We do not know as to whether (sic the issue of) proper investigation as contended, has in fact been considered by the court or not. B C

13. The first information report was lodged on 23-12-2006. The High Court appears to have been approached within a few days, namely, 26-12-2006. The impugned order has been passed on 28-12-2006. The first information report prima facie shows that a part of cause of jurisdiction arose within the territorial jurisdiction of Vadodara Police Station. We fail to understand as to how at such an early stage, the investigation should have been directed to be transferred, having regard to the fact that Waghodia Police Station where the "institution" in question is situated is within the jurisdiction of Vadodara (District) and is, therefore, not a case where the accused would have been even otherwise gravely prejudiced in joining investigation. D E

14. We, therefore, are of the opinion that it is not a case where we should refuse to exercise jurisdiction under Article 136 of the Constitution of India. We, therefore, set aside the impugned orders. Consequently, the charge-sheets filed by Waghodia Police Station stand set aside. The police officer concerned of Vadodara Police Station would initiate appropriate investigation in the matter in accordance with law. Any document collected as also the statements of any witnesses recorded by the officer in charge of Waghodia Police Station, however, may be sent to the incharge of Vadodara Police Station." F G

A 17. In a case of this nature and following the
aforementioned decisions and particularly in view of the fact that
the police at Courtallam, Tamil Nadu had already been informed,
although *stricto sensu*, the same cannot be construed to be an
B FIR within the meaning of provisions of Section 154, Cr.P.C.,
and, thus, F.I.R. lodged at Kadakkavoor Police Station was
maintainable, we are of the opinion that the interest of justice
would be subserved if the investigation and consequent trial is
transferred to Police Officer in charge of Courtallam Police
Station, Tamil Nadu. All the materials collected by Kadakkavoor
C Police Station, Kerala shall be transferred to the officer incharge
of Courtallam Police Station, Tamil Nadu. The officer incharge
of Kadakkavoor Police Station, Kerala, must ensure that in the
event a charge-sheet is filed and cognizance of offence under
Section 304B, IPC is taken, witnesses who are available within
his jurisdiction shall be produced.

D We have passed this unusual order keeping in view the
specific defence raised by the appellants that the deceased had
been suffering from some mental illness. However, with a view
that a fair investigation is carried out we would direct that the
Superintendent of Police of the concerned district at Tamil Nadu
E shall himself make an investigation and/or cause the same to
be made by a highly responsible officer.

18. The appeal stands allowed to the aforementioned
extent accordingly.

D.G.

Appeal partly allowed.