

Kerala High Court

Dr.Satheesh N.V. vs The State Of Kerala on 15 July, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

CrL.MC.No. 1468 of 2009()

1. DR.SATHEESH N.V., S/O. VELUCHAMI.
... Petitioner
2. VELUCHAMI.
3. NIRMALA, W/O. VELUCHAMI.

Vs

1. THE STATE OF KERALA,
... Respondent

2. THE SUB INSPECTOR OF POLICE,

3. DR.SANGEETHA, D/O. A.B.THANKAPPAN,

For Petitioner :SRI.V.CHITAMBARESH (SR.)

For Respondent :SRI.A.X.VARGHESE

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :15/07/2009

O R D E R

M.SASIDHARAN NAMBIAR, J.

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CRL.M.C.No.1468 OF 2009 &
CrL.R.P.2068 of 2009
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Dated this the 15th day of July,2009

ORDER

Petitioners in CrL.M.C. 1468/2009 are the accused in C.C.494/2007 on the file of Additional Chief Judicial Magistrate, Thiruvananthapuram. Third respondent is the de facto complainant therein. She is the petitioner in CrL.R.P.2068/2009. Respondents therein are the petitioners in

Crl.M.C.1468/2009. Crl.M.C.1468/2009 is filed to quash Annexure D First Information Report No.55/2006 of Medical College Police Station, registered on receipt of Annexure C complaint filed by the third respondent before Additional Chief Judicial Magistrate and forwarded for investigation under section 156(3) of Code of Criminal Procedure by the Magistrate. After investigation Annexure E final report was filed alleging that petitioners in Crl.M.C.1468/2009 committed the offence under Section 498A read with section 34 of Indian Penal Code. It is the admitted case that first petitioner married third respondent on 18.1.2004 at Thiruvananthapuram. It is the case of the revision Crl.M.C.1468/09 & Crl.R.P.2068/09 2 petitioner that at the time of marriage, 15 sovereigns of gold was given to first petitioner in the Crl.M.C, when she was residing with the petitioners in the matrimonial house at Coimbatore with the knowledge and consent of petitioners 2 and 3, alleging that the dowry given was insufficient, Rs.5 lakhs more was demanded and when third respondent did not yield for the demand, she was treated with cruelty, mentally and physically during the period from 18.1.2004 to 7.5.2005, the day on which she was sent back to her parental home at Thiruvananthapuram and all the petitioners in the Crl.M.C thereby committed the offence. Learned Magistrate took cognizance of the offence based on the final report and issued summons to the petitioners. Petitioners filed the Criminal M.C under section 482 of the Code of Criminal Procedure contending that even if the allegations in Annexure C complaint are accepted, no part of the cause of action has arisen within the jurisdiction of Additional Chief Judicial Magistrate, Thiruvananthapuram and as the prosecution case is that third respondent after the marriage was taken to the matrimonial home at Coimbatore and she was residing there till 7.5.2005 and the cruelty alleged is during that period, the alleged cruelty could only be at Coimbatore and Additional Chief Judicial Magistrate, Thiruvananthapuram has no jurisdiction to take cognizance of the offence and therefore the cognizance Crl.M.C.1468/09 & Crl.R.P.2068/09 3 taken and all the proceedings taken on Annexure E final report is to be quashed. Relying on the decisions of the Apex Court in Y.Abraham Ajith and others v. Inspector of Police, Chennai (2004) 8 SCC 100), Ramesh and others v. State of T.N. (2005) 3 SCC 507), Manish Ratan and others v. State of M.P and another (2007) 1 SCC 262 and Bhuraram and others v. State of Rajasthan (2009(1) SCC 109) it was argued that on identical facts the Supreme Court, finding that no part of cause of action has arisen within the jurisdiction of the concerned Magistrate, who had taken cognizance, quashed the complaint with liberty to the wife to file a complaint before the competent court and therefore the same procedure is to be followed and the case is to be quashed. As the Supreme Court in Manish Ratan and others case (supra) finding that part of the cause of action has taken place within the jurisdiction of the Magistrate who had taken cognizance, case was transferred to the other court which has also jurisdiction to try the case, as an alternative plea petitioners sought to transfer the case to a court in Palghat District, which is nearer to Coimbatore.

2. Third respondent, finding that the complaint and the final report do not specifically disclose any cruelty meted out to the third respondent at Thiruvananthapuram, filed C.M.P 2890/2009 before the trial Magistrate under section Crl.M.C.1468/09 & Crl.R.P.2068/09 4 216 of Code of Criminal Procedure contending that the mental cruelty inflicted by the first petitioner was not confined to the period when she was residing at the matrimonial home but it continued at Thiruvananthapuram also and therefore the period in the charge framed by the court is to be altered to that extent. In that application third respondent also contended that there is material as against the 6th respondent shown therein, who is not facing trial as an accused in the case and contended that charge is to be

framed against him also. Under Annexur A4 order in Crl.R.P.2068/2009, learned Magistrate dismissed the petition. Crl.R.P. 2068/2009 is filed challenging Annexure A4 order.

3. Learned senior counsel appearing for the petitioners in Crl.M.C.1468/2009 and learned counsel appearing for the revision petitioner in Crl.R.P.2068/2009 who is the third respondent in Crl.M.C.1468/2009 were heard.

4. As the decision in Crl.R.P.2068/2009 would have a material bearing in the decision to be taken in Crl.M.C.1468/2009, both the petitions were heard together . The question whether the charge framed by the Magistrate is to be altered as sought for by the revision petitioner is to be decided first.

5. The argument of the learned counsel is that learned Magistrate did not consider her application to alter the Crl.M.C.1468/09 & Crl.R.P.2068/09 5 charge in the proper perspective and without considering the application on merit dismissed the petition for the reason that Crl. M.C is pending before this court and if it is allowed it would amount to contempt of court, which cannot be the case and therefore the order is to be quashed. It was vehemently argued by the learned counsel that Section 216 of Code of Criminal Procedure enables the Magistrate to alter or add to any charge, at any stage, before pronouncing the judgment and when it is pointed out to the learned Magistrate that the charge framed restricts the commission of cruelty to the period upto 7.5.2005 and it is prima facie shown that it is not the prosecution case and cruelty continued even thereafter the charge should have been altered.

6. Eventhough a petition under section 216 of Code of Criminal Procedure for alteration of the charge is maintainable at any stage before pronouncing the judgment, by such petition revision petitioner is not entitled to get a third party impleaded as an accused so that a charge could be framed as against him. After taking cognizance, a Magistrate could add a person who is not facing trial as an accused only as provided under section 319 of Code of Criminal Procedure. The power under section 319 of Code of Criminal Procedure could be exercised only if it appears from the evidence collected during trial or inquiry that Crl.M.C.1468/09 & Crl.R.P.2068/09 6 some other person who is not arrayed as an accused in that case, has committed the offence and that person should also be tried for the same offence together with the accused already facing trial (Michael Machado and another v. C.B.I (AIR 2000 S.C 1127).The evidence contemplated under section 319 is the evidence adduced before the court during trial of the case and not the materials produced by the prosecution based on which the charge was framed (Ranjith Singh v. State of Punjab (AIR 1998 SC 3148). When no evidence was let in before the Magistrate, there is no question of invoking the power under section 319 and without arraying that person as an accused, no charge can be framed as against that person. Therefore the prayer to frame a charge as against the 6th counter petitioner in the CMP can only be rejected.

7. Though Section 216 of Code of Criminal Procedure enables the court at any time before pronouncing the judgment, to alter or add to any charge, that could only be on the evidence before the Magistrate or on the materials produced in the case and available before the court. The charge was framed by the learned Magistrate under section 240 of Code of Criminal Procedure, on the

materials made available to him along with the final report submitted under section 173(2) of Code of Criminal Procedure. Thereafter the Magistrate can alter the charge or add to CrI.M.C.1468/09 & CrI.R.P.2068/09 7 the charge, invoking the power under section 216 of Code of Criminal Procedure only if it is found that the charge so framed by the Magistrate is not in accordance with the materials produced before him or on any subsequent evidence let in, it is found the charge framed is either to be altered or to be added. When recording of evidence in the case is yet to begin, learned Magistrate under section 216 of Cr.P.C can alter the charge, only if the materials produced along with the final report warrants an alteration or addition to the charge already framed. No document produced by the prosecutor or the de facto complainant before the Magistrate, subsequent to taking cognizance of the offence, could be looked into to decide whether the charge framed is to be altered or additional charge is to be framed. An alteration or addition to the charge is warranted based on any such additional material only on recording such evidence. Therefore based on the document if any produced by the revision petitioner alone, prosecution is not entitled to seek alteration of the charge. The only question, in such circumstance, is whether on the materials which were available before the Magistrate, framing charge, the charge so framed warrants alteration or addition. If that be the case, when evidence was not recorded the charge cannot be altered as sought for by the revision petitioner CrI.M.C.1468/09 & CrI.R.P.2068/09 8 when the charge framed is proper on the materials available.

8. The complaint does not show that all the petitioners or the first petitioner treated revision petitioner with cruelty subsequent to 7.5.2005, the day on which she left the matrimonial home. On the other hand, what was alleged by the prosecution is only the cruelty before she was sent to her parental home from the matrimonial home on 7.5.2005. Learned counsel appearing for the revision petitioner relying on the notice sent at the instance of the petitioners and produced in the Criminal M.C argued that the mental cruelty continued even after 7.5.2005 as it was alleged in the said notice that the revision petitioner is a sadist. But based on that document even if the contention is accepted, at this stage, before the evidence was recorded, the charge cannot be altered. Therefore though the learned Magistrate did not dismiss CMP 2890 of 2009 in the proper perspective, I find no reason to interfere with the dismissal of the petition, for the reasons stated above. Hence CrI.R.P.2068/2009 is dismissed.

9. The case of the petitioners in CrI.M.C.1468/2009 is that Additional Chief Judicial Magistrate, Thiruvananthapuram has no territorial jurisdiction to take cognizance of the offence or try the offence under section 498A as the CrI.M.C.1468/09 & CrI.R.P.2068/09 9 cruelty alleged in Annexure C complaint as well as found on investigation as is clear from Annexure E final report, is the alleged cruelty which was meted out to her while the third respondent was residing along with the petitioners at Coimbatore during the period prior to 7.5.2005. It is argued that therefore learned Additional Chief Judicial Magistrate, Thiruvananthapuram has no jurisdiction to take cognizance of the offence or try the case. The argument of the learned counsel appearing for the third respondent is that if the complaint is read as a whole, it would establish that the allegations is that the cruelty continued not only at Coimbatore but at Thiruvananthapuram also. The relevant pleading in paragraph 7 of the complaint reads as follows:-

"It is submitted that since the complainant and her parents did not heed to the illegal demand for more dowry the 1st accused became more angry. Thereafter the 1st accused started to abuse the complainant and her family members by most filthy language. Lastly he threatened that 'if your parents are not CrI.M.C.1468/09 & CrI.R.P.2068/09 10 amenable to satisfy the demand raised by them don't think to continue the marital relationship any more' and further threatened her to face its dire consequences."

The argument of the learned counsel appearing for the third respondent is that the allegations in paragraph 7 that thereafter first accused started to abuse the complainant and her family members by most filthy language refers to the period subsequent to 7.5.2005, after the third respondent was sent to her parental home and therefore the prosecution case is not that the cruelty was at Coimbatore alone but at Thiruvananthapuram also.

10. On reading paragraph 7 of the complaint I cannot accept the submission of the learned counsel. What is alleged in paragraph 7 is that the complainant and her parents did not heed to the illegal demand made by first accused for dowry and it caused first accused to get more angry and thereafter first accused started abusing the complainant and her family members. It is not that first accused started to abuse the complainant and her family after the third respondent was sent to her parental home as canvassed by the learned counsel. If that be so, in the absence of an allegation in Annexure C complaint or CrI.M.C.1468/09 & CrI.R.P.2068/09 11 the materials produced along with the final report filed under section 173(2) that after 7.5.2005, the day on which the third respondent returned to her parental home, from the matrimonial home, first petitioner either approached her at Thiruvananthapuram and treated her with cruelty or contacted her over phone and abused her and thereby treated her with cruelty it cannot be contended that the cruelty continued at Thiruvananthapuram after 7.5.2005. If so the cruelty alleged in Annexure C complaint as well as the final report could only be understood as the cruelty displayed by the petitioners and experienced by the third respondent before 7.5.2005, the day on which she returned to the parental home. If that be so, it can only be found that the alleged cruelty was only at Coimbatore and did not take place within the jurisdiction of Additional Chief Judicial Magistrate, Thiruvananthapuram.

11. Though learned counsel appearing for the third respondent sought to rely on the notice sent by the first petitioner subsequent to the filing of the complaint and produced in the Criminal M.C, that notice was not produced along with the complaint. In fact it was sent only after Annexure E final report was filed before the court. Hence it is not a material which could be looked into to find out whether the cruelty alleged in Annexure A complaint was during the period third respondent was staying at CrI.M.C.1468/09 & CrI.R.P.2068/09 12 Coimbatore alone or continued later at Thiruvananthapuram also. Learned counsel appearing for the third respondent pointed out that in Annexure A copy of the notice produced by the petitioners, which was sent to the third respondent by their lawyer, it is contended that third respondent left the house in October, 2005 and thereafter first petitioner contacted her over phone and based on that fact it was argued that it cannot be said that the cruelty did not continue at Thiruvananthapuram also, when there is no allegation in the complaint that first petitioner had contacted her over phone, after her return to Thiruvananthapuram and then she was either abused or scolded or treated with cruelty. Hence

based on that notice also it cannot be said that any part of the cause of action has arisen within the jurisdiction of Thiruvananthapuram Court.

12. Section 177 of Code of Criminal Procedure provides that every offence shall ordinarily be tried by a court within whose local jurisdiction it was committed. Section 178 provide the place of trial, when it is not certain in which of several areas an offence was committed or when it was committed partly in one area and partly in another area. Section 178 reads:-

" Place of inquiry or trial-)a) When it is uncertain in which of several CrI.M.C.1468/09 & CrI.R.P.2068/09 13 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 a 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."

As declared by the Apex Court in Purushottamdas Dalmia v. State of W.B (AIR 1961 SC 1589), L.N. Mukherjee v. State of Madras (AIR 1961 SC 1601), Mohan Baitha v. State of Bihar (2001) 4 SCC 350)the word 'ordinarily' used in Section 177 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 law permitting joint trial of offences by the same court. Ingredients constituting an offence under section 498A of Indian Penal Code are subjecting woman to cruelty by the husband or relatives of the husband. Cruelty under Explanation (a) is wilful CrI.M.C.1468/09 & CrI.R.P.2068/09 14 conduct which is of such nature as is likely to drive her to commit suicide or cause grave danger to life, limb or physical or mental health of the woman. Under Explanation

(b) cruelty is harassment of the woman with a view to coerce her or any person related to her to meet unlawful demand for dowry.

13. Hence if any part of the cruelty provided under section 498A has take place within the jurisdiction of that court, the concerned Magistrate has jurisdiction to try the offence. So also if parts of the cruelty has taken place within the jurisdiction of several courts Magistrate having jurisdiction of any of those local areas have jurisdiction to try the offence as provided under Section 178. The concept of cause of action is not alien to criminal cases. Apex Court in Abraham Ajith's case (supra) held:-

"13.While in civil cases, normally the expression 'cause of action' is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression 'cause CrI.M.C.1468/09 & CrI.R.P.2068/09 15 of action' is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of a bundle of facts which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the Crl.M.C.1468/09 & Crl.R.P.2068/09 16 maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in cause of action."

If that be so from Annexure C complaint, and Annexure E final report it is absolutely clear that the alleged acts constituting cruelty was committed during the period 18.1.2004 to 7.5.2005. It was the period third respondent wife was living with first petitioner husband in the matrimonial house at Coimbatore. The inescapable conclusion could therefore be that the cause of action has arisen at Coimbatore and not within the territorial jurisdiction of Additional Chief Judicial Magistrate at Crl.M.C.1468/09 & Crl.R.P.2068/09 17 Thiruvananthapuram. When no part of the cause of action has arisen within the jurisdiction of the Magistrate who has taken cognizance what is its effect? This is the question to be answered in this case.

14. In Abraham Ajith's case (supra) an identical question was considered by the Apex Court. That was a case where the complaint alleging commission of offences under section 498A and 406 IPC and Section 41 of Dowry Prohibition Act, was sought to be quashed by invoking the powers under section 482 of Code of Criminal Procedure which was rejected by the High Court and challenged before the Apex Court. As in this case complaint filed before the Magistrate was forwarded for investigation under section 156(3) of Code of Criminal procedure. After investigation final report alleging commission of offences under Section 498A and 406 IPC was submitted before Magistrate Saidapet Chennai. On the allegations in the complaint it was found that the cause of action which consist of bundle of facts per se took place at Nagarcoil and not within the jurisdiction of Chennai Court and therefore the Magistrate had no jurisdiction to deal with the matter. The proceedings was therefore quashed as follows:-

"When the aforesaid legal principles are applied, to the facts scenario disclosed by the complainant Crl.M.C.1468/09 & Crl.R.P.2068/09 18 in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and therefore, the Magistrate concerned had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned.

Respondent 2 who, if she so chooses, may file the same in the appropriate court to be dealt with in accordance with law. The appeal is accordingly allowed."

15. In Ramesh and others's case (supra) after registration of the F.I.R and investigation charge sheet for the offence under section 498 A and 406 of Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act was laid before Judicial Magistrate III, Trichy which was taken cognizance by the Magistrate. Petition was filed before the High Court of Madras to quash the proceedings or in the alternative to transfer the F.I.R to Mumbai. A Writ Petition was earlier filed before the Bombay High Court, which was later withdrawn with liberty to approach the High Court of Madras for appropriate relief and it is thereafter the petition was filed under section 482 of Code of Criminal Procedure for quashing the proceedings CrI.M.C.1468/09 & CrI.R.P.2068/09 19 before the Judicial First Class Magistrate, Trichy. The Madras High Court dismissed the petition. It was challenged before the Apex Court. Their Lordships on facts found that on looking at the complaint at its face value, though most of the alleged acts were done at Mumbai, part of the acts were done in Chennai and therefore it is not necessary to delve in the question of territorial jurisdiction. Their Lordships held:-

"10. The next controversy arising in the case is about the territorial jurisdiction of the Magistrate's Court at Tiruchirapalli to try the cases.

As already noted, the High Court was of the view that the questions raised in the petition cannot be decided before trial. It is contended by the learned counsel for the appellants that the issue relating to the place of trial can be decided even at this stage without going beyond the averments in the complaint filed by the respondents and the High Court should have, CrI.M.C.1468/09 & CrI.R.P.2068/09 20 therefore, decided this points of jurisdiction, when it is raised before the trial has commenced. Our attention has been drawn to a recent decision of this Court in Y.Abraham Ajith v. Inspector of Police. In that case, the Madras High Court refused to interfere under section 482 Cr.PC when the issue of territorial jurisdiction of the Magistrate concerned to take cognizance of the offence was raised. This Court did not endorse the approach of the High Court for not recording the finding on the question of jurisdiction. On reading the allegations in the complaint, the Court came to the conclusion that no part of the cause of action arose in Chennai and therefore the Metropolitan Magistrate at Chennai could not have taken cognizance and issued CrI.M.C.1468/09 & CrI.R.P.2068/09 21 summons. On this ground, the criminal proceedings were quashed and the complaint was directed to be returned to the respondent who was given liberty to file the same in an appropriate court. That was also a case of complaint for an offence under Sections 498A and 406 Cr.PC filed by the wife against the appellants therein."

"11. 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 Magistrate's court at Trichy. Prima facie, none of the ingredients constituting the CrI.M.C.1468/09 &

Crl.R.P.2068/09 22 offence can be said to have occurred within the local jurisdiction of the 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 498A 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 in 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 Crl.M.C.1468/09 & Crl.R.P.2068/09 23 and articles demanded.

12.Thus the alleged acts which according to the petitioner constitute the offences under sections 498A 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."

Finding that the proceedings between the parties are pending before Family Court, Mumbai, Apex Court transferred the case to Mumbai. So as distinct from the present case, in that case the complaint itself discloses that part of the cause of action has arisen within the jurisdiction of the Magistrate which has taken cognizance of the offences.

16. In Manish Ratan's case (supra) father of Meena the wife, lodged a complaint in Jabalpur Police Station alleging cruelty and demand for dowry against the son -in- law and in-laws. Later Meena herself lodged a complaint against the husband and in-laws at Datia Police Station based on which case was registered. The allegation in Crl.M.C.1468/09 & Crl.R.P.2068/09 24 the complaint was that during the time of Dussehra Manish her husband, Ratan the father-in-law, and Kiran the mother-in-law and Maneka the sister-in-law ill-treated her so much that she left her house and saved her life by some means and reached 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 questioning the jurisdiction of court of Chief Judicial Magistrate, Datia. It was dismissed holding that the offence being a continuing one, Datia Court had jurisdiction to take cognizance of the offence, following the decision of the Apex Court in Sujatha Mukherjee v. Prashant Kumar Mukherjee (1997) 5 SCC 30). The order was challenged before the Apex Court. Apex Court found that High Court did not consider the question on the touchstone of Section 177 and 178 of the Code of Criminal Procedure. After analysing the earlier decisions it was found that in Sujatha Mukherjee's case specific allegations were made against the husband that he had also gone to Raipur where the complaint was filed and had assaulted the wife therein and it is in such situation it was held that though cruelty alleged was mainly at Raigarh cruelty alleged as against the husband continued at Raipur and therefore the case as against the husband was maintainable at Raipur, though it is not maintainable as against others at Raipur. On facts Crl.M.C.1468/09 & Crl.R.P.2068/09 25 it was found that the alleged acts which according to complainant constitute the offences have not taken place within the jurisdiction of Court of Chief Judicial Magistrate, Datia and therefore that court has

no jurisdiction to take cognizance. It was found that in the criminal case lodged by the father at Jabalpur investigation is completed. Their Lordships therefore held:-

"17. 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.

18. 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,

Crl.M.C.1468/09 & Crl.R.P.2068/09 26 Datia to the Court of Chief Judicial Magistrate, Jabalpur. We accordingly do so."

In Bhuraram's case (supra) a complaint was lodged before Additional Chief Judicial Magistrate, Ganganagar. It was sent for investigation under section 156(3) of code of Criminal Procedure. After investigation a final report was filed before the same Magistrate showing that offence under section 498A and 406 of Indian Penal Code was committed. The Additional Chief Judicial Magistrate, Ganganagar took cognizance of the offence and later framed the charge also. Thereafter the accused raised a contention before the Magistrate that the said court has no jurisdiction to try the case as cause of action accrued within the jurisdiction of another court. When it was rejected it was challenged before the Sessions Court in revision and when it was rejected Crl.M.C was preferred before the High Court under section 482 of Code of Criminal Procedure. The High Court dismissed the petition holding that although the marriage was solemnised at Village Ramsara of Ferozpur District right from the marriage the complainant and her husband were living in Punjab with her in-laws and her husband died and she was then residing in Ganganagar District in Rajasthan along with her maternal relations but still offence under section 498A being a Crl.M.C.1468/09 & Crl.R.P.2068/09 27 continuing one the complaint cannot be dismissed on that ground as the offence

of cruelty being a continuing offence is still continuing within the local area of Rajasthan where at present the complainant was living and therefore Additional Chief Judicial Magistrate, Ganganagr had jurisdiction to try the case. It was challenged before the Apex Court. Their Lordships held:-

"3. It is contended by the learned counsel for the appellants that the question involved is squarely covered by the decision of this court in Y.Abraham Ajith and others v.

Inspector of Police, Chennai and Another, (2004) 8 SCC 100, wherein this court has held that cause of action having arisen within the jurisdiction of the court where the offence was committed, could not be tried by the court where no part of offence was committed.

4. The facts stated in the complaint disclose that the complainant left the place where she was residing with her husband and in-laws and came to the city of Sri Ganganagar, State of Crl.M.C.1468/09 & Crl.R.P.2068/09 28 Rajasthan and that all the alleged acts as per the complaint had taken place in the State of Punjab. The Court at Rajasthan does not have the jurisdiction to deal with the matter.

On the basis of the factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of the cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter.

As a consequence thereof, the proceedings before the Additional Chief Judicial Magistrate, Sri Gananagar are quashed. The complaint

be returned to the complainant and if she so wishes she may file the same in the appropriate court to be dealt with in accordance with law."

17. Learned counsel appearing for the third respondent relying on the decision of the Apex Court in Sohanlal and others v. State of Rajasthan (1990) SCC (Crl)

650) argued that the charge could be altered at any stage before pronouncing the judgment and eventhough the Crl.M.C.1468/09 & Crl.R.P.2068/09 29 complaint as now stands does not contain a specific allegation that the cruelty continued at Thiruvananthapuram in fact it continued even after third respondent returned to her parental home and Annexure A notice sent by petitioner to Thiruvananthapuram shows the cruelty and at the time of recording the evidence prosecution is entitled to get the charge altered, invoking the power under section 216 of Code of Criminal Procedure and meanwhile if the complaint is to be quashed it will prejudice her and so it cannot be allowed to be quashed for the reason that cruelty was only at Coimbatore. Relying on the decision of

the Apex Court in *Mushtaq Ahmad v. Mohd.Habibur Rehman Faizi*(1996 SCC (Crl.)443) it was argued that the court is not justified in quashing the complaint by considering the rival versions and entering into debatable area of deciding which of the versions was true in a petition under section 482 of Code of Criminal Procedure and the question whether the allegations in paragraph 7 of the complaint relates to the cruelty meted out to the third respondent at Coimbatore alone or continued at Thiruvananthapuram cannot be decided at this stage and therefore based on that fact,the complaint cannot be quashed. Learned counsel also argued that the court is competent to direct further investigation under section 173(8) of the Code of Criminal Procedure even after taking cognizance and in the light of allegations, a Crl.M.C.1468/09 & Crl.R.P.2068/09 30 further investigation could be ordered and whether there was cruelty after third respondent returned to her parental home at Thiruvananthapuram is to be investigated and based on want of specific allegations in the complaint alone, the complaint cannot be quashed. Learned counsel vehemently argued that the social purpose of enactment of Section 498A of Indian Penal Code will be defeated, if a restricted meaning is given to the pleadings in the complaint and interest of justice warrants that the case is not to be quashed invoking the inherent jurisdiction of the court under section 482 of Code of Criminal Procedure. Though learned counsel relied on the decision of the Bombay High Court in *Madhuri Mukund Chitnis v. Mukund Martand Chitnis* (1992 Crl.L.J.111), Allahabad High Court in *Azad Hussain v. State of U.P.*(1993(1) Crimes 1072), Rajasthan High Court in *Jagadish v. State of Rajasthan* (1998 Crl.L.J.554), Punjab and Haryana High Court in *Rajesh Kumar v. State of Punjab* (II (1990) DMC 404), facts are different and in the light of the decisions of the Apex court the decisions cannot be applied.

18. The allegations in the complaint along with the materials collected at the time of investigation, which form part of the final report submitted under section 173 (2) of Code of Criminal Procedure, establish that the cruelty alleged against the petitioners which constitute Crl.M.C.1468/09 & Crl.R.P.2068/09 31 the offence under section 498A, is only with respect to the specified period 18.4.2004 to 7.5.2005. It was admittedly the period when third respondent was residing at her matrimonial home at Coimbatore. If so, it can only be found that the alleged cruelty took place only at Coimbatore and not at Thiruvananthapuram. If so the Court at Thiruvananthapuram has no territorial jurisdiction to try the case as found by the Apex Court in *Abraham Ajith's case* (supra) and *Manish Ratan's case* (supra). As is clear from the complaint Annexure C as well as Annexure E final report the allegation of cruelty is only prior to 7.5.2005 when the third respondent was residing at Coimbatore. In the light of the settled legal position, it can only be found that learned Additional Chief Judicial Magistrate, Thiruvananthapuram has no jurisdiction to try the case. Hence the proceedings before the learned Magistrate can only be quashed. The complaint is to be returned to third respondent who is at liberty to file it before the appropriate court. Dismissal of the complaint will not affect her right to agitate the case before the appropriate court.

Criminal Revision Petition is dismissed. Crl.M.C is allowed. The proceedings before Additional Chief Judicial Magistrate, Thiruvananthapuram taken on Annexure E final report based on Annexure C complaint (CMP 394/2006) in Crl.M.C.1468/09 & Crl.R.P.2068/09 32 C.C.494/2007 is quashed. Return the original complaint filed by third respondent to her, if she chooses may file the same before the appropriate court to be dealt with in accordance with law.

sd/-

M.SASIDHARAN NAMBIAR JUDGE tpl/-

/true copy/ P.S to Judge M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT SEPTEMBER,2006