

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: INDIAN PENAL CODE

WP(Crl.)No. 415/04

Reserved on: 22.10.2007

Date of Decision: 04.01.2008

Niraj Trivedi

Petitioner
Through : Mr.Sushil Kumar, Sr. Advocate with
Mr. Himanshu Shekhar and Ms.
Anita, Advocates.

versus

State of Bihar and Ors. ...

Respondents
Through : Mr. Ranjeet Kumar, Advocate

WP(Crl.)No. 235/04

Parimal Trivedi and Anr.

Petitioners
Through : Mr.Sushil Kumar, Sr. Advocate with
Mr. Himanshu Shekhar and Ms.
Anita, Advocates.

versus

State of Bihar and Ors. ...

Respondents
Through : Mr. Ranjeet Kumar, Advocate

SHIV NARAYAN DHINGRA, J.

1. The above writ petitions have been filed by the petitioners under Article 226 of the Constitution of India for quashing of an FIR No. 0188/02, P.S. Digha, Patna, Bihar registered against the petitioners in respect of offences under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. It is stated by petitioner Niraj Trivedi that he was a permanent resident of Delhi and was working in USA. Petitioners Parimal Trivedi and Anju Trivedi state that they were permanent resident of Delhi but were working for gains at Aruba, Holland. An FIR was got registered against the petitioners being FIR No.0188/02 at P.S. Dhiga, Patna, Bihar under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act by Mr. Vijay Kumar Singh, father-in-law of Niraj Trivedi. In the FIR, he alleged that his daughter Shweta was seen and liked by the family of the petitioners at Patna before marriage, so marriage was finalized between Niraj Trivedi and Shweta. He decided to give gifts worth Rs.8 Lac at his daughter's marriage to be delivered at New Delhi. On 18th June, 1998, marriage between Shweta and Niraj took place at Delhi and after marriage she went to her in-laws' house at Delhi. He (father of Shweta) alleged that after 2 days of marriage mother-in-law, husband's elder brother and his wife and husband started harassing Shweta for dowry. Shweta and Niraj came to Patna for two days and Niraj told

him (Mr. V.K. Singh) that he will go to USA on 11th July. On 11th July Niraj went to USA alone. Shweta lived at Delhi. Shweta left for USA on 15th January, 1999. On 22nd January, 1999, Shweta telephoned him that her in-laws (mother-in-law, brother-in-law Parimal Trivedi and his wife Anju) living in USA all gave beatings to her and abused her in USA and took away her ornaments and she was turned out from the house. She asked her father to send some money to them (in-laws) or she would be killed. After some time, Shweta from USA informed him (Mr.V.K. Singh) on phone that she was made to abort against her wishes. She was told that unless her father gives money she cannot become mother. On 26th November, 2000, Shweta came to India and lived at Delhi at her in-laws' house. Her father alleged that she told that her in-laws again gave her beatings. As she was pregnant, she left her in-laws home in Delhi and came to her uncles' home at Lodi Road, Delhi wherefrom her father brought her to Patna. On 27th July, 2001, Shweta gave birth to a baby girl and her father talked to Niraj in USA on telephone and asked her to take Shweta to USA, as Shweta wanted to go to USA since she had no differences with her husband. Shweta's father got her visa ready and sent her to USA. When Shweta went to USA nobody came to airport to pick her up. However, she went to husband's house at USA where she came to know that her husband had left that house and shifted somewhere else. She was told by neighbours that some girl used to live with her husband. She took help of a friend of her father and got arranged an accommodation for her in USA. She also learnt about her husband's address through her father's friend. Complainant V.K.Singh reported to the police that he was sure that Shweta's mother-in-law would soon dispose of her property in Delhi and after selling ornaments of his daughter would flee to USA.

2. It is stated by the petitioners that on 14th November, 2002 when this FIR was lodged, Shweta was in USA and her father in Patna lodged this FIR. Niraj, Shweta's husband had filed a divorce petition in New Jersey, USA against Shweta Trivedi on 8th October, 2002. Shweta returned from USA to Patna on 21st November, 2002. She made statements under Sections 161 and 164 Cr.P.C. On 8th December, 2002, Patna Police came to Delhi and arrested Prabha Trivedi, mother- in-law of Shweta from Delhi. She was granted transit bail by learned MM, Delhi. After getting her mother-in-law arrested, on 8th December, 2002, Shweta flew back to USA and contested divorce suit of husband. On 16th December, 2002 Shweta filed reply to the marriage dissolution complaint filed by Niraj in Superior Court of New Jersey, USA and also filed a counter claim against the petitioner, Niraj.

3. The petitioners seek quashing of the FIR in the alternate transfer of this FIR to Delhi on the ground that even if all the allegations made in the FIR are accepted on the face value, the Patna Police had no jurisdiction to investigate the matter since no part of the alleged offence was committed within the jurisdiction of Patna Police. It is also stated that the allegations made by Mr. V.K. Singh, father of Shweta were without any basis and criminal proceedings instituted in Patna were only malafide. Alleged incidents had taken place either in Delhi or USA. No part of alleged crime had taken place in Patna. The alleged dowry admittedly was given at Delhi not in Patna. It is submitted that Patna Police had illegally registered FIR and undertaken investigation.

4. The statements made by Ms. Shweta u/S 161 and 164 Cr.P.C. are also on record. In her statement under Section 164 Cr.P.C. recorded before the Judicial Magistrate, Patna, she narrated that her marriage with Niraj was solemnized on 18th June, 1998 (at Delhi). After marriage she went to her in- laws' place (at Delhi). For 2-3 days the behavior of her in-laws was okay. Thereafter, her in-laws started asking money from her. They used to abuse and slap her and pull her hairs. She used to be pushed against the wall. These incidents occurred in June 1998 itself. Her husband was a graduate. He was a journalist living in USA. He never cared for her disease. Her father gave dowry worth Rs. Eight lakh. She had a daughter aged 16 months. Her husband

got her aborted without her consent. Her in-laws made dowry demands. People from her in-laws gave her mental harassment. Mr. Sushil Tiwary and Mrs. Pramila Tiwary (her husband's elder brother's) gave her physical trouble. She wanted to live with her husband.

5. Reply to the Writ Petition was filed by the respondent no. 3, who opposed the petition and stated that Writ Petition was not maintainable. It was also stated that petitioner was absconding and non-bailable warrants as well as process under Sections 82 and 83 Cr.P.C. had been issued against the petitioner by a Court of competent jurisdiction. Patna Police was competent to investigate the matter. The factual situation was denied but it was stated that in view of the atrocities met to Shweta at the hand of accused persons and the fact that she was left alone and helpless, she had no alternative but to take recourse to law at Patna where she was born and brought up and which was her shelter in distress.

6. It is alleged by the respondent that the petitioner Niraj had come to Patna and told V.K. Singh, father of the girl that in case he gives some money, Shweta could go to USA within a month. It is submitted that this was sufficient to invoke the jurisdiction of Patna police. It is further stated that father of Shweta had also arranged a conciliation meeting at Patna and this was another ground for invoking jurisdiction of Patna.

7. It is not disputed that petitioner Niraj had filed a divorce petition at New Jersey, USA and Ms. Shweta, daughter of the complainant V.K.Singh had contested the petition. Reply filed by Ms. Shweta in USA Court also contained allegations against Niraj, her husband, though, the nature of allegations differ. In order to see as to what was the controversy between the parties, it would be appropriate to have a look at the reply filed by Ms. Shweta in US Court to the divorce petition of Mr. Niraj. Her reply reads as under :- COUNTERCLAIM The defendant, Sweta Trivedi, by way of Counterclaim against the plaintiff says:-

1. That she was lawfully married to plaintiff Niraj Trivedi, on June 18, 1998, in a religious ceremony in New Delhi, India.

2. That defendant has resided in New Jersey from January 1999 to November 26, 2000; from October 7, 2002 to November 14, 2002; and from December 8, 2002 to present.

3. That since the cause of action arose, plaintiff has been a bona fide resident of the State Jersey and has ever since and for more than one year next preceding the commencement of this case, continued to be such a bona fide resident.

4. That plaintiff now resides at 82 Liberty Ave, in the city of Jersey City, County of Hudson and State of New Jersey.

5. The plaintiff has perpetrated acts of extreme mental cruelty against the defendant that in the past and present both endanger her health and make it improper and unreasonable for the defendant to cohabit with the plaintiff under the same roof. All of the acts that are stated below occurred more than three months prior to the filing of this suit and any acts that are included below which occurred thereafter are merely to demonstrate the continued nature of the plaintiff's acts.

(a) Defendant traveled from India to United states to join her husband in January 1999. Thereafter, on or about April 1999, plaintiff was diagnosed with Hepatitis. B. Several weeks later, defendant learned that plaintiff had transmitted virus to her. Despite defendant's illness,

plaintiff failed to show any warmth or affection towards the defendant. Plaintiff's actions caused defendant much humiliation and distress.

(b) During the course of defendant's treatment for Hepatitis B, defendant learned she was pregnant. Upon learning of the pregnancy, plaintiff insisted that defendant get an abortion. Although defendant expressed her desire to have the baby, plaintiff pressured defendant to undergo an abortion procedure on or about June 1999.

(c) On or about February 2000, plaintiff and defendant learned that defendant was again pregnant. Despite defendant's wishes, plaintiff again pressured her to undergo an abortion procedure.

(d) On or about November 2000, when defendant learned that she was pregnant, plaintiff initially insisted that defendant have an abortion. As defendant refused, plaintiff initially suggested that defendant spend time in India to improve her health. Due to the fact that defendant was afraid she would be pressured to have a third abortion, she decided to travel to India to spend a few months with her family. Although plaintiff purchased what defendant assumed was a roundtrip ticket to India, she later learned that he had actually purchased a one way ticket to India. Plaintiff's actions caused defendant to feel deceived and humiliated.

(e) Although defendant attempted to contact her husband during the course of the pregnancy, plaintiff avoided all communication with defendant. Plaintiff's lack of support caused defendant much distress and humiliation during her pregnancy.

(f) On or about March 2001, plaintiff emailed the defendant and informed her he had not want her to join him in the United State. Plaintiff also informed her that defendant would not be able to return to the United State unless he wanted her to. Plaintiff's actions caused defendant to feel severely depressed.

(g) Defendant gave birth to a baby girl on July 27, 2001 in India. After giving birth, defendant immediately emailed her husband to inform him of the birth. Although plaintiff responded by email to the defendant, he merely informed her that he was very busy in the United State and would call her when he found some time. Plaintiff's lack of response cause defendant much stress.

(h) Defendant remained in India after giving birth to the baby because plaintiff and his family informed defendant that plaintiff was scheduling a trip to India to see her. However, plaintiff postponed many scheduled trips and ultimately never traveled to India to see the defendant and the baby.

(i) On or about September 2002, defendant attempted to contact the plaintiff to arrange for financial support documents to allow defendant and the baby to apply for a visa and join the plaintiff in the United States. However, plaintiff did not return defendant's email or telephone calls. Plaintiff's abandonment caused defendant to experience severe depression and distress.

(j) On or about September 2002, defendant managed to attain a visa to allow her to travel to the United States. As the plaintiff failed to provide financial support and immigration documents, the baby was unable to attain a visa and remained in India with the defendant's parents. Plaintiff's lack of support for his daughter caused defendant much distress.

(k) Upon arrival to the United State on October 7, 2002, defendant went to her marital home in Jersey City, New Jersey. At this point she discovered through neighbours that the plaintiff had moved to new location without informing the defendant. Plaintiff's actions caused defendant much humiliation.

(l) On or about October 2002, defendant learned through neighbors that the plaintiff was residing with a female during the time that defendant was abroad in India.

(m) Although family friends attempted to intervene and arrange for mediation between the plaintiff and the defendant, plaintiff has never inquired about the welfare of his daughter.

(n) To date, plaintiff has not provided any financial support for the defendant and their daughter, Nandini Trivedi.

8. It is apparent from perusal of the FIR, statement made by Shweta under Section 164 Cr.P.C. before the Judicial Magistrate, Patna and from the counter claim lodged by her in USA Court that at no point of time parties lived together in Patna, the marriage was performed in Delhi. Parties lived together either in Delhi or in USA. Except a short visit of two days to Patna made by her husband Niraj, there has been no other allegations of her husband visiting Patna after marriage. Living of Shweta before marriage at Patna, her father's arranging gifts of Rs. 8 lac for Shweta to be given in her marriage or receiving telephone calls by her father from Shweta about her matrimonial life or alleged atrocities on her, does not create jurisdiction of Patna Police. The alleged criminal acts either were committed in Delhi or in USA Instead of getting an FIR registered at Delhi, girl's father who was living at Patna chose to get an FIR registered at Patna while the girl herself was not in Patna and was living in USA.

9. The question of registration and investigation of an FIR has arisen in 1999 SC 3596 Satvinder Kaur vs. State (Government of NCT, Delhi) wherein Hon'ble Supreme Court observed that if the crime was not committed within the territorial jurisdiction of Police station, though the FIR can be registered by that Police Station but FIR in such cases should be forwarded to the Police Station having jurisdiction over the place where crime is committed.

9. An argument has been advanced that this Court has no jurisdiction to entertain the Writ Petition for quashing of FIR registered at Patna. I consider this argument must fail. This Court can exercise jurisdiction in all those cases where though the crime should have been registered in Delhi because the cause of action arose in Delhi but under influence the Police of some other State registers the crime in that State.

10. Cr.P.C. specifically provides for the jurisdiction of Police Stations regarding registration of FIR and investigation of case. The FIR can be registered even if a part of the crime has taken place within the jurisdiction of that Police Station. If the crime is spread over the various Police Stations, then FIR can be registered at any of the Police Station within which the crime has taken place. Crime cannot be registered on the basis of residence of the complainant or the residence of the father of the complainant or the effect of the crime. If the murder is committed in Delhi and the effect is that the wife of the deceased living at Mumbai has become widow, the crime cannot be registered at Mumbai Neither if the alleged matrimonial atrocities have been committed in Delhi, the crime can be registered in Patna in respect of those atrocities because the parents of the wife were living in Patna. In the present case, the wife had either lived in Delhi or in USA. She had contested her divorce petition in USA and had made allegations of cruelties done on her

in USA. Thus, place of crime was either Delhi or USA and FIR could have been registered either in Delhi or in USA.

11. In view of above discussion the petitions are allowed to the extent that FIR No. 0188/02, P.S. Digha, Patna, Bihar registered against the petitioners in respect of offences under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act be transferred by the Police of Patna to Commissioner of Police, Delhi, who shall mark it to the appropriate Police Station for further investigation and action. Both the writ petitions stand disposed of.

January 04, 2008

Sd./-
SHIV NARAYAN DHINGRA, J.