Gr 2375/16

04/09/17

An application for discharge taken out at the instance of the accused was heard on multiple days in the months of July and August. With the completion of the State's submissions on the 24th of the last month I could fix this day for pronouncing the order.

The present case is a prosecution under sections 498A/323/34 of the Penal Code read with section 4 of the Dowry Prohibition Act. After ten long years from the lodging of the written complaint police could manage to find trial-worthy evidential materials only against the husband and two of his sisters. This was not to the wife's liking; consequently, she came up with a protest petition which inter alia questioned the investigating officer's act of reducing the number of accused persons.

The protest petition met with partial success in the sense that after going through the case diary, this court could find sufficient materials to summon the father-in-law, the third sister and the husbands of the two sisters whose names had already managed to find a place in the chargesheet.

With the accused-husband and his entire family (the mother-in-law being snatched away by death, her presence could not be procured) before the court, the stage was set for consideration and framing of charge. It is at this juncture that the defence took out the instant application for discharge.

Before I proceed further, I should state the grounds on which the prayer for discharge is sought to be supported. It is the contention of the accused that this court, in view of the contents of the written complaint and the subsequent 161 (3) statements, lacks territorial jurisdiction to conduct a trial. It is also the defence plea that the statements of the material witnesses being clear successive improvements and being indicative of concocted embellishments cannot be relied upon to frame formal charge. It goes without saying that the second ground of attack in the instant application never had much hope of success in view of the phraseology of section 239 and the degree of certainty it demands of the potential evidential materials. If the prosecution papers [including of course the 161 (3) statements] taken as a whole are found sufficient to raise and sustain a presumption of criminality, and a reasonable reading of the same materials do not lead to the conclusion that the allegation against the accused is baseless or patently improbable, charge must be framed. This is not the stage to test the veracity of prima facie acceptable accusations by subjecting them to the cleansing filters of contradiction or wilful concoction or motivated embellishments. These are matters to be gone into at the stage of trial. Having said this, I should move on to the first ground of attack based upon territorial jurisdiction and the territoriality of offences which requires a deeper probing.

A textual analysis of section 239 is liable to lead the interpreter to the conclusion that lack of territorial jurisdiction cannot be a ground for discharge. But this would be taking a very superficial view of the matter; adopting a pharisaical attitude at the expense of utter disregard of the relevant rules and the just equilibrium which the law seeks to maintain between an aggrieved and an accused. It is beyond the pale of controversy that barring a few promulgated exceptions, every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed (section 177). The power of police to investigate any cognizable case is linked to Chapter XIII of the Code which actually contains the provisions relating to the jurisdiction of criminal courts. According to section 156 (1), police can investigate only that cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to enquire into a try. Therefore, police cannot lawfully investigate a case and file chargesheet in respect of offences which cannot be tried by the court which exercises territorial jurisdiction over the police station concerned. In the face of these legal mandates and in clear violation thereof, when the de facto complainant chooses the wrong police station to lodge her complaint and the investigating agency obliges by not pointing out its territorial incompetence, the accused who never had any role to play in this mix-up, cannot be forced to acquiesce in the ploy of forum-hopping.

One must note in this regard that the situation covered by the challenge thrown to the prosecution by the present accused is not met by any provision in the Code. One cannot apply either section 201 or section 322 to the facts and circumstances of the present case. Hence, the defence contention that lack of territorial jurisdiction may well be found potent enough to generate an order of discharge cannot be brushed aside lightly. The absence of any similar provision to cater to cases of the present type which exhibit a conscious attempt to pick a place of prosecution of one's own choice, leads to the possible conclusion that it may well have been the legislative intent to endorse the snuffing out of such opportunistic and harassive endeavours at the instance of the oppressed accused.

The lexicographic texture of section 239 does not necessarily warrant the conclusion that the enactment cannot accept within its folds a legal challenge based on specific instances of violation of the positive rules regulating the territorial jurisdiction of courts and police. Although the benchmark is that the allegations against the accused must be found to be groundless, this does not by itself shut the doors to the plausible contention that framing the charge would be unlawful and baseless as the court lacks jurisdiction to try the accused. I must, at this juncture, place section 462 of the Code. This provision declares that no finding, sentence or order of any criminal court is liable to be set aside only on the ground that the proceedings had taken place in a wrong sessions division, district, subdivision or local area, unless it appears that such error has in fact occasioned a failure of Justice. A dispute raised by an accused regarding the territorial incompetence of a court cannot be answered with the assistance of section 462. This particular fragment of the processual law does not envisage or support intentional jurisdictional errors. This provision is meant to assuage unwitting wrongs touching the place of enquiry or trial. Additionally and most importantly, when the accused raises the issue of lack of territorial jurisdiction at the earliest possible opportunity, one must assume prejudice if necessary corrective action is not taken despite reaching a positive finding in respect thereof.

As a result of the discussion made in the foregoing paragraphs I am sufficiently convinced regarding the legal tenability of the first ground for discharge which is being canvassed on behalf of the accused in the case before me. It is time I stepped into the apparent factual rugose, as I hope to find them in the prosecution papers, in order to find out as to whether such ground is destined to succeed or is liable to be defeated by any provision(s) in the Code.

The written complaint so far as it relates to the relations of the accused-husband mentions occurrences and instances which had taken place in Delhi and Rajasthan. The 161 (3) statements which are attributed to non-relation witnesses (Patit Paban Mukherjee, Gopal Patro, Prititosh Roy, Satyabrata Mukherjee, Dinabandhu Dey and Rita Banerjee) do not contain a single word regarding the in-laws of the de facto complainant. There is in the case diary a statement purportedly made by Gopeshwar Singh, assistant sub inspector of police and caretaker of the officers' mess at Barrackpore. This potential witness would only state that the parents of the accused-husband along with two other relatives had come to Barrackpore and 7 January 2006. The investigating officer examined the parents and sister of the de facto complainant. While the sister was examined once, the parents were examined on two occasions – first on 21 November 2006 and secondly on 7 July 2016. Not commenting upon the gross impropriety on the part of the later investigating officer in examining the parents for the second time and thus giving them the opportunity to substantially improve upon their former statements, suffice it to say at this stage that none of these close relations of the de facto complainant would ascribe any overt or covert act to the in-laws within the territorial limits of the State of West Bengal.

Coming now to the de facto complainant, she was examined first on 28 June 2016, then again on 29 June 2016 and finally on 30 June 2016. A cursory reading of the statements purported to have been recorded on these dates gives us the idea that the de facto complainant had been building up her case against the accused with the passage of each passing day. Ignoring this disturbing trend and the highly suspect police practice of affording the protagonist multiple opportunities to better her case against the accused, I should once again note that in none of these three statements do we find the de facto complainant alleging specifically that her in-laws had demanded dowry and/or cash or had assaulted her or had tortured and tormented her within the boundaries of the State of West Bengal. The accusations in this regard once again relate to New Delhi and Rajasthan. There are however, manifestations of imperfect attempts at bestowing jurisdiction upon the courts of this State in the written complaint and the statement of 28 June 2016. These documents try to tell us that while the de facto complainant was in Srirampur, the in-laws would regularly telephone her, use filthy language and advice to leave if the dowry demands were not met. It is also recorded in these papers that the parents-in-law while they were at Barrackpore on 7 January 2006 had threatened the de facto complainant and pressurised her to slake the demands for dowry.

Standing by themselves, unaided by the law and certain additional facts, these twin accusations designed to invigorate the concept of 'continuing offence' would not have had a chance to salvage the prosecution case from the malady of lack of territoriality. There are sufficient indicators in the prosecution papers to detoxify their deleterious effects. The day is however saved by the harmonious and continuous flow of the prosecution case and the provisions of the law which get triggered as its necessary consequence.

It is beyond the pale of controversy that the de facto complainant's story taken as a whole, with the accused-husband featuring in its every part, unmistakably project a continuous transaction which had commenced from the time of the marriage negotiation and has continued till the lodging of the written complaint. It is also clear that the transaction had its genesis in Delhi and Rajasthan but it was not confined to these two States. The allegation that the accused-husband, animated by common intention which is supposed to be shared by all the other accused, continued the torture and harassment in connection with the demands for dowry within the limits of the State has the effect of spreading the transaction from the places of its origin to the eastern part of India. According to the honourable Supreme Court, it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. If several acts committed by a person show unity of purpose design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to be an essential ingredient for those acts to constitute the same transaction. A transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute different transaction or transactions [**AIR 1963 SC 1850**].

Here, although the in-laws (along with the accused-husband) may have had breached the law outside the State, their acting together with the accused-husband, all of them sharing the common intention or possibly, goaded by criminal conspiracy, and then the husband propelled by the same common intention or acting in furtherance of the selfsame criminal conspiracy, bothering the de facto complainant within the territorial limits of the courts of this State, is more than sufficient to encapsulate all of the acts and offences – intra-territorial as well as extraterritorial within the catchphrase of 'same transaction'. The available materials on record portraying the acts and conduct of each of the accused persons and indicating the offences prima facie constituted by them are clear pointers to "unity of purpose and design or continuity of action". For one cannot logically contend that what the in-laws did in Delhi and Rajasthan were completely separate and in no way connected to what the accused-husband did in those places and then within the State of West Bengal. Going by the allegations and accusations, each of the accused was acting in furtherance of the common intention or their conspiracy to treat the de facto complainant with cruelty. This stage of the drama may have shifted from Delhi and Rajasthan to West Bengal but once it is found that one of the dramatis personae has been continuing the antics in the latter place there is no way one can successfully maintain the argument that there is no jurisdiction in this court to try the in-laws.

The conclusions which I have drawn in the last few lines of the preceding paragraph owe their origin to sections 184 (b) and 223 (a) and (d) of the Code. According to the first of these provisions, where the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section 223, the offences may be enquired into and tried by any court competent to enquire into or try any of the offences. The relevant parts of section 223 tell us that: persons accused of the same offence committed in the course of the same transaction as well as persons accused of different offences committed in the course of the same transaction may be charged and tried together. Here, the accused persons in the course of the same transaction are sought to be made liable for the offences punishable under sections 498A/323 of the Penal Code and also under section 4 of the DP act. Thus, we find the concatenation of 'several persons', committing the 'same' as well as 'different' offences and most importantly, in the course of the 'same transaction'. This is what section 223 (a) and (d) require. Consequently, it would have always been legitimate to charge and try together all the accused persons. Once we are satisfied with the applicability of this particular provision, the functioning of section 184 (b) becomes automatic. This court always possessed the jurisdiction to try the accused-husband [section 220(1)] in respect of all his acts and conduct. The provisions of section 223 makes it possible for this court to try along with the accused-husband all the other accused. Therefore, this court, in terms of section 184(b) also gets the undoubted jurisdiction to try the each and every (alleged) offences imputed to each and every one of the accused irrespective of the places of their commission.

An excellent working example of the utilisation of these rules is provided by the Division Bench judgment of the honourable High Court at Bombay [(2006) CR LJ 564 (Bombay) (DB)].

The accused would cite the judgment of the Hon'ble Supreme Court delivered in Criminal Appeal no. 1265 of 2017 (Rajesh Sharma & Ors. Vs. State of UP & Anr.) in order to strengthen the claim for discharge. A bare reading of the judgment is however more than sufficient to lead one to the conclusion that it has no bearing on the facts and circumstances of the present case. In the matter before the Hon'ble Supreme Court, the question was whether any directions are called for to prevent the misuse of section 498A. In disposing of the appeal the Hon'ble Supreme Court, in paragraph 19 of the judgment was pleased to formulate and lay down a number of directions which in my respectful opinion are prospective and hence, not applicable to pending prosecutions which have ripened and are ready for trial. Thus, precedent does not come to the aid of the accused.

The decision which I have reached regarding the impotency of the discharge application makes it redundant that I critically analyze the precedent that have been cited and relied upon by the defacto complainant.

With the failure of the application for discharge the stage is set for the framing of formal charge as the potential and incriminatory evidential materials on record successfully weed out the idea that the accusations against the accused are baseless.

Hence, fix 15 September 2017 for framing of charge.

CMM, Calcutta