

CASE NO.:
Appeal (civil) 4110 of 2007

PETITIONER:
Y.A. Ajit

RESPONDENT:
Sofana Ajit

DATE OF JUDGMENT: 07/09/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4110 OF 2007
(Arising out of S.L.P. (C) No. 15646 of 2004)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the legality of judgment rendered by a learned Single Judge of the Madras High Court allowing the transfer petition filed by the respondent in terms of Section 24 of the Code of Civil Procedure, 1908 (in short the 'CPC'). By the transfer petition the respondent had sought for transfer of IDOP No.46 of 2003 pending in the Court of District Judge, Kanyakumari at Nagercoil to the Court of Family Judge, Chennai. The High Court accepted the prayer.

3. Learned counsel for the appellant submitted that between the parties there was an earlier proceeding which came before this Court in Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. (2004 (8) SCC 100). It is submitted that in view of what has been stated in the said case the impugned order cannot be maintained. Learned counsel for the respondent on the other hand supported the order of the High Court.

4. In Y. Abraham Ajith's case (supra) it was, inter alia, observed as follows:

"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 of Criminal Procedure, 1973 (in short the 'Code') is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia v. State of West Bengal (AIR 1961 SC 1589), L.N.Mukherjee v. State of Madras (AIR 1961 SC 1601), Banwarilal Jhunhunwalla and Ors. v. Union of India and Anr. (AIR 1963 SC 1620) and Mohan Baitha and Ors. v. State of Bihar and Anr. (2001 (4) SCC 350), exception implied by the word "ordinarily" 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 provisions of law permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand.

As observed by this Court in *State of Bihar v. Deokaran Nenshi and Anr.* (AIR 1973 SC 908), continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

A similar plea relating to continuance of the offence was examined by this Court in *Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee* (1997 (5) SCC 30). There the allegations related to commission of alleged offences punishable under Sections 498A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier, the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

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 of action" is therefore not a stranger to criminal cases.

It is settled law that cause of action consists of 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.

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 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".

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

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. (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.

5. In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a

right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

6. No doubt the decision was rendered in the background of the Code, they have relevance so far as the present dispute is concerned.

7. In view of what has been stated in the aforesaid case, it would be appropriate for the High Court to re-consider the matter. The appeal is accordingly disposed of without any order as to costs.

JUDIS