

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.2999 OF 2013

Abhishek Kumar Jain .. Petitioner  
Versus  
Mrs.Swastika Abhishek Jain & Anr. .. Respondents

Mrs.Manjula Rao i/b. Manish Rai for petitioner  
Mrs.M.H.Mhatre, APP for State.

CORAM : S. C. DHARMADHIKARI &  
G.S. PATEL, JJ

Date : 5<sup>th</sup> September 2013.

P.C.:

1] Heard Mrs.Rao for petitioner. Perused the petition and the annexures thereto. Mrs.Rao places reliance upon the decision of the Supreme Court in the case of Navinchandra Majithia Vs. State of Maharashtra, reported in A.I.R. 2000 S.C. 2966 to urge that the Supreme Court has held that this court can exercise its jurisdiction under Article 226 of the Constitution of India even if the complaint is filed in the State of Nagaland on the footing that the cause of action has arisen within its territorial jurisdiction.

2] The cause of action in this case and which is arisen here is that the petitioner husband and the respondent No.1 complainant settled down in Mumbai after their marriage. On account of differences and disputes between them, the petition No.A-149 of 2013 was presented on 11<sup>th</sup> January 2013 before the Family Court, Bandra. The address of respondent No.1 was shown as residing at D-45 Shubham Enclave, Pachim Vihar, New Delhi and working at Tata Consultancy Services 4000 Regent Blvd., Irving. Texas, U.S.A.. She, therefore, has never resided as claimed by her and along with her father in the State of Nagaland and particularly at Dimapur. Therefore, the Chief Judicial Magistrate, Dimapur, Nagaland should not have entertained any complaint and issued a summons to the petitioner to appear, who is now based in Mumbai because of job requirement.

3] Mrs.Rao submits that the intent was to cause undue

harassment and immense inconvenience to the petitioner so as to force him to come to Nagaland. She submits that when the respondent No.1 wife was served with the proceedings in the family court, Bandra, the learned Judge who passed an order on the petition dtd. 30<sup>th</sup> May 2013 has noted that the wife has received a packet containing the proceedings but has not responded. She had engaged an Advocate and who did not contest the matter. However, the vakalatnama was filed and in such circumstances, prima facie, she has submitted herself to the jurisdiction of the family court, Bandra.

4] Having noted all these facts and circumstances and the law laid down by the Supreme Court in the case of Majithia (supra), we are of the prima facie opinion that arguable questions have been raised and, therefore, the petitioner deserves ad-interim protection. Hence, following order.

5] Issue notice to respondents returnable after four weeks.

Hamdust allowed. Liberty to serve privately granted. Learned APP waives service for respondent No.3. For a period of four weeks from today, there will be an ad-interim order in terms of prayer clause (b) of the petition, which is as under:-

“(b) Pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the summons dated 8.2.2013 and the warrant dated 1.08.2013 in the Complaint Case No.1 of 2013 pending in the Court of Chief Judicial Magistrate, Dimapur, Nagaland against the petitioner.”

(S. C. DHARMADHIKARI, J)

(G.S. PATEL, J)