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**(2011) 10 AHC CK 0123**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 25318 of 2011

Abdul Samad

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 17-10-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156(2), 156(3), 177  
Penal Code, 1860 (IPC) — Section 498A

**Citation :** (2012) 1 ACR 202 : (2011) 11 ADJ 799

**Hon'ble Judges :** N.A. Moonis, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Hon"ble N.A. Moonis, J.—Supplementary affidavit filed on behalf of the applicant be kept on record.

2. By means of the instant application, the applicant has invoked inherent jurisdiction of this Court u/s 482 Cr.P.C. with a prayer to quash the order dated 7.4.2011 passed by the learned Chief Judicial Magistrate Bulandshahar in Misc. Application No. 245 of 2011 whereby the application moved by the applicant u/s 156(3) Cr.P.C. was rejected.

3. In a nutshell, the prosecution story is that the applicant who is the complainant filed an application u/s 156(3) Cr.P.C. before the Court of Chief Judicial Magistrate Bulandshahar on 25.2.2011 with the accusation that his daughter Rehana was married with Yusuf resident of Aurangabad Police Station Bhawanapur District Meerut on 17.5.2011 according to the Muslim Custom and Rites. At the time of marriage, sufficient dowry in cash and kind was given by the applicant. The in-laws of the daughter of the applicant were harassing and torturing for fetching more dowry. The victim went on bearing the brunt of husband and in laws and was subjected to thrashing and forcing her to fulfil their demand of dowry. The respectable persons of both sides intervened on various occasions and made their best possible efforts to harmonise their differences. On

4.1.2011, the victim was thrashed with kick and fist by her husband and in-laws and was ousted from the matrimonial house. The victim was again taken back by the husband and the in-laws on the intervention of some dignified persons of the locality. On 18.2.2011 the husband and the family members of in-laws again thrashed her with kick and fist, even the husband Yusuf strangled the victim by tethering her throat with the intention of putting end to her life. On the intervention of village folk, the victim was saved. On the same day at about 9.00 a.m., the victim was taken at Dhameda Police Station Kotwali Nagar District Bulandshahar in a vehicle by Yusuf, Shakir (father in law) and Anus (Devar) where she was again thrashed with iron rod (Sariya) and Danda. The said incident was witnessed by Harun son of Idris and Hasrat son of Hamid and other people of the village. On account of their intervention, the victim was saved from their clutches. While disappearing from the scene of occurrence, the husband and the family members of the in-laws again threatened the victim to fetch Rs. 1.00 Lac or Car otherwise her life will be ended. The said incident was informed to the applicant by Harun who had seen the inhuman and brutal act of the husband and the family members of the in-laws. On getting the information, the applicant reached at the place of occurrence and took the victim for medical examination at Government Hospital Bulandshahar. Subsequent thereto, the applicant alongwith victim went at the police station Kotwali Nagar to lodge the first information report but no report was lodged at the police station Kotwali Nagar. The copy of the same was sent to the Senior Superintendent of Police Bulandshahar yet no action was taken. In these circumstances, the applicant filed the application u/s 156(3) Cr.P.C. before the Chief Judicial Magistrate Bulandshahar with a prayer to direct the police station Kotwali to register and investigate the matter.

4. On the said application, the Chief Judicial Magistrate registered the Case No. 245 of 2011 and sought report from the police station Kotwali District Bulandshahar. A report was submitted by the investigating officer that no occurrence had taken place at Dhameda Adda and the incident alleged to have taken place on 18.2.2011 at 9.00 a.m. was found false. No incident had taken place at the concerned police station. On the basis of the said report, Chief Judicial Magistrate held that the complainant (applicant) is resident of village Sharifpur Police Station Agauta District Bulandshahar and the in-laws of the victim hail from police station Bhawanapur District Meerut. The incident is alleged to happened at Dhameda Adda Police Station Kotwali. The victim was subjected to beating and harassment at the house of in-laws. The offence u/s Dowry Act falls within the ambit of residence of the in-laws. The incident had taken place either at police Station Agauta District Bulandshahar or Police Station Bhawanapur District Meerut. The occurrence of the said incident does not come within the purview of police station Kotwali District Bulandshahar hence the Court below declined to entertain the application of the applicant u/s 156(3) Cr.P.C. on the ground of territorial jurisdiction thus the said application was rejected.

5. Learned counsel for the applicant laid emphasis that the order passed by the

Court below Is not in accordance with law and suffers from legal infirmity and perversity. The learned Magistrate has not applied his judicial mind while entertaining the application u/s 156(3) Cr.P.C. where the allegations were made against the in-laws with regard to demand of dowry and torture inflicted to her. Section 156(2) Cr. P.C. provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

6. Section 190(2) Cr P.C. provides that the Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under subsection (1) of such offences as are within his competence to enquire into or try.

7. It is the duty of the In-charge of the police station to have registered the first information report which discloses commission of cognizable offence. There was specific averments in the complaint that the daughter of the applicant was maltreated and assaulted time and again by the members of the matrimonial house and was also thrashed and beaten at Dhameda Adda Police Station Kotwali District Bulandshahar which falls within the jurisdiction of the Court at Bulandshahar. The demand of dowry is in continuance of an offence which was boosted up by the family members of the matrimonial house from the very inception and the victim was subjected to untold harassment and cruelty by inflicting physical and mental blows. The applicant (complainant) is resident of village Sharifpur Police Station Agauta District Bulandshahar and the application was given within the jurisdiction of district Court Bulandshahar and the offence u/s 498A IPC is continuation of an offence. Merely the concerned police station had given report that no incident had taken place within the said police station would not thwart the focus standi of the victim from taking cognizance by the concerned Court Sections 177, 178, 179 and 180 Cr.P.C which deals with jurisdiction of Criminal Courts in enquiries and trials. This material aspect of the case was completely overlooked by the Magistrate which normally provides that the offence shall ordinarily be enquired into and tried by a Court within whose jurisdiction it was committed. When the offence was committed in one local area partly another Court having not jurisdiction over such local area is competent to inquire into and tried within whose local area it was committed. In support of his contention, learned counsel for the applicant has drawn attention towards Section 177, 178 and 179 Cr P.C. which clearly contemplates that when an act is an offence by reasons of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

8. From the bald analysis of the aforesaid provisions, it is abundantly clear that an offence may be enquired into and tried by a Court within whose jurisdiction such thing has been done and the consequences have emerged. The learned Court below has overlooked the mandatory provisions of Section 201 Cr.P.C. where it is provided that if the magistrate is not competent to take cognizance of

the offence where the complaint is in writing, the magistrate shall return it to the proper forum for presentation with an endorsement to that effect but right now rejecting the application of the applicant on the ground of territorial jurisdiction would amount to scuttle down the legitimate prosecution at the pre-cognizance stage without conducting the enquiry/investigation, hence the order passed by the learned Magistrate is hit by the provisions contained in the Code of Procedure. The condition precedent for lodging the first information report is that there should be an information disclosing commission of cognizable offence. If such information is furnished, it becomes sine qua non for lodging the first information report.

9. The object of lodging the first information report is to put the police in motion in order to investigate in to the crime. Its evidentiary value is not very much as it is not a substantive piece of evidence but its value depends on the circumstances of each case including the nature of the crime and the position of the informant. The receipt and recording of the information by the police though may not be a condition precedent for setting in motion of a criminal proceeding but it is a statutory right of the complainant to lodge a report for the reason that an informant has a right to set the criminal law in motion and also from the point of view of the investigating authorities, it is important for obtaining information about the alleged criminal activity so as to take appropriate and suitable steps for tracing and bringing at the book the guilty.

10. Learned counsel for the applicant again submitted that lodging of the FIR u/s 154 Cr.P.C. is a statutory right and report can be lodged/registered before any Police Station in India, but if the Police Station where it is lodged comes to the conclusion that offence has been committed within the territorial jurisdiction of some other Police Station, it would transmit the FIR.

11. In view of the settled proposition of law, the order dated 7.4.2011 passed by learned Chief judicial Magistrate in Misc. Application No. 245 of 2011 u/s 156(3) Cr.P.C whereby the application of the applicant was rejected being per se illegal and untenable does not deserve to perpetuate. It may be quashed. It has further been submitted that any Court in whose territorial jurisdiction an offence has partly been committed, would have jurisdiction to hold the trial or enquiry.

12. Learned AGA has supported the order of the Court below and contended that the cause of action has arisen at Meerut where the victim was married and was beaten by the members of her in-laws which comes within the territorial jurisdiction of Meerut hence there is no illegality or perversity in the order passed by the Court below.

13. In the judgment of State (Delhi Administration) Vs. Sinha Govindji, , wherein it was held that in whose jurisdiction even an offence has partly been committed would have jurisdiction to hold a trial or enquiry. In The Public Prosecutor Vs. T.A. Rathnam Pillai, , the Hon'ble Court held that where an offence is a continuing offence, it may be enquired into or tried in any local area in which it continues to

be committed.

14. In the case of *Mohindra v. State of Punjab and others*, 2001 CRLR (SC) 132, wherein the Hon"ble Apex Court rejected the submission of the investigating agency that FIR u/s 154(1) of the Code cannot be registered for the reason that enquiry in the matter had already been conducted and held that enquiry cannot be conducted without registering a case.

15. In the matter of *State of Andhra Pradesh Vs. Punati Ramulu and others*, , wherein it was held that not recording the report on the ground that the concerned police station has no territorial jurisdiction over the place of crime, amounts to dereliction from duty and in such an event, the report must be accepted and furnished to the police having jurisdiction over the place of crime.

16. In the case of *Suresh Chandra Jain v. State*, JT 2001 SC 81, wherein the Hon"ble Apex Court held that it is the duty of the officer incharge of a Police Station to register an FIR regarding the cognizable offence disclosed by the complainant because the Police Officer would take further steps contemplated in Chapter XII of the Code of Criminal Procedure only thereafter.

17. Having analyzed the submissions canvassed by learned counsel for the applicant and learned AGA and also screening the order passed by the Court below, this Court is of the view that the order passed by the Court below is not in accordance with law A perusal of application filed u/s 156(3) Cr.P.C. partly discloses commission of cognizable offence at Meerut and partly at Bulandshahar. The Officer Incharge of the Police Station concern and the Magistrate concern would firstly have registered the case and would have directed the matter to be investigated. In case the Magistrate was of the view that it does not pertain to jurisdiction, the Magistrate was fully competent to transmit it to the police authority for being enquired and investigated by the concern police station. The allegations made in the complaint is of such nature which is a continuing offence and non-registration of the first information report that the concerned police station has no territorial jurisdiction over the place of occurrence would amount dereliction from duty. The incident had taken place from the parental house of the victim where the marriage was solemnized therefore, the Magistrate concern cannot pass on buck upon others by rejecting the application u/s 156(3).

18. In the result, this application is allowed. The order dated 7.4.2011 passed by Chief Judicial Magistrate Bulandshar is set aside. The Magistrate concern is directed to pass fresh orders in accordance with law keeping in mind the aforesaid legal propositions cited above."