
(2013) 01 AHC CK 0102

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 29000 of 2007

Anurag Pandey and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 157, 168, 169
Penal Code, 1860 (IPC) — Section 323, 406, 498A, 504, 506

Citation : (2013) 2 ACR 1972 : (2013) 3 ADJ 251 : (2013) 4 ALJ 17 : (2013) 81 ALLCC 142

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : V.P. Srivastava and Alok Dwivedi, for the Appellant; Rajesh Singh and Vijay Gautam, for the Respondent

Final Decision : Allowed

Judgement

Sunil Hali, J.—Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. Little matrimonial clash between the parties suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about reconciliation are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different Courts, like the present case. By means of this application, applicants have prayed for quashing of the charge-sheet No. 227/2006, submitted in Case Crime No. 306 of 2006, under Sections 498-A, 406, 504 and 506 IPC and Section 3/4 D.P. Act, P.S., Cantt, District Varanasi alongwith its consequential proceedings including the cognizance order dated 9.11.2006 and summoning order dated 17.3.2007

passed by the CJM, Varanasi.

2. The facts giving rise to the present controversy is on account of matrimonial discord between the applicant No. 1 and opposite party No. 2. It appears that they were married on 6.2.2005 and the marriage took place at District Varanasi. Applicants were residing at Indira Nagar, Lucknow. Husband of the opposite party No. 2 was posted in Jaipur and after marriage they started living in Jaipur. It appears from the record that an FIR was lodged by opposite party No. 2 on 4.2.2006 at Manila Police Station, Gandhi Nagar, Jaipur. Allegations contained in the FIR reveals the following things:

3. The engagement of opposite party No. 2 with the applicant No. 1 took place at Lucknow on 8.11.2004. Till marriage, various items of dowry including Rs. 3.50 Lacs cash were given by the parents of opposite party No. 2 to the parents of applicant No. 1. Marriage took place on 6.2.2004 at Varanasi in which elaborate arrangements were made by the parents of opposite party No. 2. It is further revealed that after the marriage the applicants started complaining that the dowry as promised has not been given as a result of which applicants started harassing the opposite party No. 2. Thereafter, both the applicant No. 1 and opposite party No. 2 started living in Jaipur. A telephonic call of Km. Gargi from Pune was received by the opposite party No. 2, who is said to have threatened the opposite party No. 2 to break her relationship with her husband. In march 2005, the opposite party No. 2 went to Lucknow alongwith her mother in law to celebrate Holi festival alongwith her in-laws. Where she was harassed for not bringing the dowry and was beaten. Husband of the opposite party No. 2 started misbehaving with her. It is further stated that she suspected some illicit relationship between her husband and one Gargi. In May, 2005, brother in law Manas Pandey came to Jaipur and misbehaved with her. After returning back from Lucknow she came back to Jaipur to live with her husband. Her husband started harassing her as a result of which she filed a complaint against her husband before the Police Station Mahila Thana, Jaipur, The In-charge, Police Station tried to settle the dispute between the parties but failed.

4. It is further revealed that on account of torture being given to her by her husband she became unconscious thereafter she was locked inside the room. Thereafter, she phoned her parents to come to Jaipur and take her away. These are the crux of allegations levelled by the opposite party No. 2 against the applicants. On the basis of which FIR was registered vide Case Crime No. 3 of 2006, under Sections 498-A and 406 IPC, P.S. Mahila (East), District Jaipur (Rajasthan) against the applicants. It appears that said investigation was transferred to Varanasi Police and a new case Crime No. 306 of 2006, under Sections 498-A, 406, 323, 504 and 506 IPC and Section 3/4 D.P. Act was registered at P.S. Cantt, District Varanasi on 24.8.2006.

5. Investigation in the aforesaid case was initiated and statements of witnesses were recorded. An application was filed by the applicants before the D.G.P., UP Lucknow seeking transfer of the case from Varanasi District to any other district

of the State. It is alleged that the then SSP, Varanasi was close relative of opposite party No. 2. The application was forwarded to the Deputy Inspector General of Police, Varanasi Range, Varanasi who was pleased to pass an order transferring the case from Varanasi police to District Jaunpur police for investigation vide order dated 3.10.2006. The said investigation was completed and charge-sheet was submitted on 9.11.2006 in the Court of CJM, Varansi. On submission of chargesheet, accused was summoned by the trial Court, Hence this application.

Principle ground taken by the applicants in the application is that the Police Station Varanasi had no jurisdiction to investigate the matter as the cause of action had accrued at Jaipur where the FIR was lodged.

6. It was contended that the Incharge, police station, Jaipur could not have transferred the investigation to Varanasi Police. Further, none of the cause of action accrued at varanasi.

7. On the other hand, stand of the respondents is that investigation in the matter has been concluded and charge-sheet has been submitted and hence accused are required to face trial. It is alleged that the Police at Varanasi had the requisite jurisdiction to investigate the matter as part of the cause of action had accrued within the territorial jurisdiction of Varanasi. In this regard, reliance has been placed on Section 178 Cr.P.C.

8. I have heard learned counsel for the parties and perused the material on record.

While scanning through the contents of the allegations, it reveals that the alleged act of demand of dowry has either been made at Lucknow or at Jaipur. Harassment inflicted on the respondent No. 2 has also been taken place either in Jaipur or at Lucknow. What reveals is that the marriage had taken place at Varanasi where the dowry is said to have been given to the applicant and his family members. There is no allegations in the FIR that the demand of dowry was made at Varanasi.

9. The question that calls for consideration is as to whether the police of Varanasi had jurisdiction to investigate the matter and submit the charge-sheet in this behalf.

To appreciate the controversy, it is, necessary to refer the relevant provisions of the Code of Criminal Procedure 1973, which runs as under:

Section 156 of the Criminal Procedure Code empowers the Police Officer to investigate any cognisable offence. It reads as under:

156. Police Officer's power to investigate cognisable case.--(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions

of Chapter XIII.

(2) 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.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

Sub-section 1 of Section 156 invests the Officer in charge of a police station to investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing 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 to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/ or investigate it.

10. Chapter XIII of the Code provides for "Jurisdiction of the Criminal Courts in inquiries and trials". It is to be stated that under the said Chapter there are various provisions which empower the Court for inquiry or trial of a criminal case and that there is no absolute prohibition that the offence committed beyond the local territorial jurisdiction cannot be investigated, inquired or tried. This would be clear by referring to Sections 177 to 189. For the purpose, it would be suffice to refer only to Sections 177 to 180 which are as under:

Section 177. Ordinary place of inquiry and trial.--Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Section 178. Place of inquiry or trial:

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local area has one, or

(d) Where it consists of several acts done in different local areas, It may be inquired to or tried by a Court having jurisdiction over any of such local areas.

Section 179. Offence triable where act is done or consequence ensues.-- When an act is an offence, due to 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.

Section 180. Place of trial where act is an offence by reason of relation to other offence.--When an act is an offence by reason of its relation to any other act which is also all offence or which would be an offence if the doer were capable of committing all offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

11. Conjoint reading of the aforesaid provisions would make it clear that Section 177 provides for "ordinary" place of inquiry or trial of the offence within whose local jurisdiction it was committed. The Court will have jurisdiction to try all such offence which have been committed within the local area. Section 178 inter alia provides for place of inquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in other and where it consisted of several acts done in different local areas, it could be inquired into or tried by a Court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that S.H.O. does not have territorial jurisdiction to investigate the crime. Section 178 Cr.P.C. provides that when it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and party in another, or where an offence is a continuing one, and continues to be committed in more local area has one, or where it consists of several acts done in different local areas, It may be inquired to or tried by a Court having jurisdiction over any of such local areas. Section 179 Cr.P.C., makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

12. Keeping the above provisions in mind, let us consider the allegations made in the present case. FIR does not mention that the offence was partly committed at Jaipur and partly at Varanasi nor there is any whisper to suggest that the offence is continuing one. The FIR is absolutely silent in this behalf. All that it reveals is that the offence was committed at Lucknow when the complainant had gone there with her in-laws on account of Holi Festival and consequently when she had to leave the house of her husband at Jaipur where she was tortured by him. It is no where mentioned that the husband or other applicants continued to harass the opposite party No. 2 at Varanasi after she had left Jaipur.

13. As a matter of fact there is nothing indicated in the complaint that after she left Jaipur any offence was committed by the applicants which can be brought within the purview of Section 178 Cr.P.C.

14. Suggestion made by learned counsel for the respondents that since the marriage was solemnised at Varanasi and dowry was handed over at Varanasi it by itself constitutes that an offence has been committed at Varanasi. It is not in dispute that the marriage had taken place at Varanasi and dowry was demanded by the applicants and handed over at Varanasi, There is no allegations or suggestion that opposite party No. 2 or her parents were harassed at Varanasi to give more dowry. Dowry was given voluntarily, There is no averment that the opposite party No. 2 and her parents were harassed at the time of marriage to meet the unlawful demand of dowry. What is reflected from the allegations is that the first demand for dowry is said to have been made at Lucknow when the opposite party No. 2 had gone to perform the Holi festival with her in-laws. From the aforesaid facts, it clearly reveals that no part of offence was committed at Varanasi. No harassment with a view to coerce her or her family members to meet any unlawful demand for dowry or valuable security was made at Varanasi.

15. It is important to note that in order to constitute an offence u/s 498-A IPC, it must be necessarily shown that the woman is subjected to any cruelty by the husband or the relatives of the husband.

"Cruelty" has been defined as harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The essential feature is that even if dowry has been demanded and failure on the part of the wife or any person related to her is unable to meet, it would constitute cruelty. Assuming that the dowry was demanded and given at Varanasi the said demand has been met by the parents of the non-applicant No. 2.

16. From all counts, it clearly appears that no offence was committed at Varanasi, consequently, the police at Varanasi had no jurisdiction to investigate the matter. It is also not discernible from the record as to how the said investigation of the case was transferred from Jaipur to Varanasi. No order has been produced by the respondents to show as to how this FIR was transferred from Jaipur to Varanasi. Nothing has been shown in this behalf.

17. Other aspect of the matter is that once the FIR was registered at P.S. Mahila (East), Jaipur, it did not have any authority to transfer the same to any police station, more particularly, to the police station which is located in other State. Why the investigation was not initiated by the police of Jaipur where the FIR was lodged is also not reflected from the record. After the registration of the FIR the concerned police Station had the jurisdiction to investigate the matter. This was the mandate of the Statute which for unknown reasons have not been complied with. Section 156 Cr.P.C. clearly enjoins upon the police officer incharge of a

police station to investigate any cognizable case which the Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Section 157 Cr.P.C. provides that if, from information received or otherwise, an officer in charge of a police station has reasons to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report to the same to a Magistrate empowered to take cognisance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank who shall proceed to investigate the facts and circumstances of the case.

18. Section 157 Cr.P.C. enjoins upon the Officer incharge of a police station to embark upon investigation once he has reasons to believe to suspect commission of a cognizable offence which he is empowered u/s 156 Cr.P.C. to investigate.

19. Admittedly, in the present case, FIR was lodged for commission of cognisable offence at Jaipur. Investigating Officer after the receipt of the information was required to proceed with the investigation of the case which he has failed to do. Instead he has transferred this investigation to Police Station Varanasi which he could not do as admittedly the offence was committed at Jaipur and he was obliged to proceed with the investigation in the matter. It is not a case that the Incharge Police Station at Jaipur did not have territorial jurisdiction to proceed with the investigation. It is only in cases where the report had been submitted and the concerned police station lacks the territorial jurisdiction to investigate the matter, same can be transferred to any other police station. In the present case, Jaipur police had the jurisdiction to investigate the matter as such it could not abdicate its responsibility in conducting the investigation and transferring the same to the Varanasi.

20. Reliance has been placed by the learned counsel for the respondents on the judgment in *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi)* and Another, . Report of the judgment reveals that the Court does not have any power to trench upon the investigation undertaken by the Investigating Officer. Reference is made to Section 156(1) and (2) of the Cr.P.C. which empowers the Magistrate to proceed with the investigation of the non-cognizable offence. No proceedings 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 to investigate. While analysing the import of Section, Hon''ble Apex Court stated that once the Investigating Officer enters upon investigation of the case then the Courts cannot trench upon the power of Investigating Officer in this behalf. If the I.O. after conclusion of the investigation arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, he may submit a report accordingly in this behalf. Once the investigation is undertaken the Courts cannot interfere with the power of investigating Officer till he concludes the investigation. Once the charge-sheet is submitted it is for the trial Court to examine this aspect. Hon''ble Apex Court further held that at the time of

investigation, material collected by the Investigating Officer cannot be judiciously scrutinised for arriving at a conclusion that the Investigating Officer cannot have the jurisdiction. The matter is left to the Court to decide whether it has the power to try the case in respect of offence which has not been committed in territorial jurisdiction of that Court. In the present case, investigation has been concluded and charge-sheet has been submitted. Question that calls for consideration is as to whether the Court has jurisdiction to try the offence which has not been committed in the territorial jurisdiction of that Court. Section 177 of the Code, provides that every offence shall ordinary be inquired into and tried by a Court within whose local jurisdiction it was committed. From the aforesaid facts, it clearly emerges that the Court at Varanasi did not have the jurisdiction to try the case as no offence has been committed within the territorial jurisdiction of that Court. Offence has been committed either at Lucknow or at Jaipur. Other aspect is that P.S. Mahila (East), Jaipur was not authorised to transfer the case to District Varanasi of State of Uttar Pradesh. There is nothing to indicate as to under whose order the case has been transferred to District Varanasi. Moreover, the investigation of the case could not have been transferred by the Incharge, P.S. Jaipur to Varanasi when admittedly he had jurisdiction to proceed with the investigation of the case at Jaipur instead of undertaking the investigation as mandated by law. He chooses to refer the same to the Varanasi Police Station thereby abdicating duty of a police officer to proceed with the investigation. Even if, it is assumed that some part of the cause of action had accrued at Varanasi no FIR was filed at Varanasi by the non-applicant No. 2. FIR was filed at Jaipur which had the jurisdiction to investigate the matter. Investigation had to be initiated only at Jaipur. Admittedly, no FIR was lodged at Varanasi by the non-applicant.

In view of aforesaid, the application is allowed. The proceedings arising out of Case Crime No. 306 of 2006, under Sections 498-A, 406, 504 and 506 IPC and Section 3/4 D.P. Act, P.S. Cantt, District Varanasi alongwith its consequential proceedings including the cognizance order dated 9.11.2006 and summoning order dated 17.3.2007 passed by the CJM, Varanasi are hereby quashed.