

(2011) 11 UK CK 0012

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 950 of 2006 (U/s 482 Cr.P.C.)

Ashutosh Pandey and Others

APPELLANT

Vs

Smt. Anupama Pandey and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178, 179, 181(4), 482
Dowry Prohibition Act, 1961 — Section 4
Hindu Marriage Act, 1955 — Section 25, 27
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2012) 1 NCC 164

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Shobhit Saharia, for the Appellant; S.K. Mandal, Advocate, For the Respondent Nos. 1 and 2 Mr. M.A. Khan, Brief Holder For the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Servesh Kumar Gupta, J.—By way of this petition moved u/s 482 Cr.P.C., the prayer has been advanced to quash the entire proceedings of the criminal complaint case no. 331 of 2006, titled as Smt. Anupama Pandey Vs. Ashutosh Pandey, pending before the court of Judicial Magistrate, Rudrapur, District Udham Singh Nagar. It has also been prayed to quash the order of cognizance dated 31.3.2006, asking all the petitioners to stand for trial for the offence of Section 406 IPC. Having heard the learned counsel of either parties, the factual matrix, in the pivot of this petition, pertains to a matrimonial dispute. Smt. Anupama Pandey espoused with Ashoutosh Pandey on 9.7.2000 at Kanpur (Uttar Pradesh). It is pertinent to mention that Bhairav Prasad Pandey and Smt. Meena Pandey are the parents of Ashutosh Pandey. Having passed almost 31/2 years of blissful matrimonial life, the differences between the couple erupted and those took a serious and severe turn on 5.3.2004, when Smt. Anupama Pandey was forced to leave her matrimonial house at Kanpur along with her twin sons, Madhav and

Kartikeya. It has been alleged by petitioner that on the relevant date 5.3.2004, her father O.S. Mishra, accompanied with 7-8 persons, with the assistance of a Sub Inspector of Police, came to fetch Smt. Anupama Pandey from her matrimonial house at Kanpur, on which she left the house with all her belongings in the absence of Ashutosh Pandey, because at that sensitive moment, he was busy in a local nursing home at Kanpur, where one of his two sons was admitted in a serious condition of ailment. No sooner did Sri Ashutosh Pandey receive the information that Sri O.S. Mishra has reached at his residence to fetch his daughter (Smt. Anupama Pandey) and she is leaving from there, he rushed to his house, but by that time, she had left her matrimonial home, as stated above, and reached at the nursing home where the son was admitted. There, she got her son discharged from that nursing home in absence of petitioner and thus, left for all the times to reside at Pant Nagar with her parents and since then, she is settled at Pant Nagar. Later on, she was employed as a Lecturer and now is working as an Associate Professor in Pant Nagar University. It is pertinent to mention here that her father O.S. Mishra was the Registrar of the University at that time (now retired).

2. Learned counsel for the petitioners has argued that ever since the solemnization of the marriage, the role of complainant's father O.S. Mishra had always been of intervention in the personal affairs of Ashutosh Pandey and his wife Smt. Anupama Pandey, inasmuch as, he used to encourage Anupama Pandey in such a fashion, as to disturb the peaceful and amicable matrimonial life of the couple. On one occasion, on being objected, O.S. Mishra furnished an undertaking (annexure 4 to the petition) that henceforth, he would not interrupt in the personal affairs of the couple and that Anupama Pandey will visit his house only and solely with the prior consent of her husband.

3. Learned counsel for the petitioners has strived to advert that a consistent and persistent endeavour was made on the part of Ashutosh Pandey to lead to happy and amicable life with his wife Anupama Pandey and in this regard, letter dated 28.3.2005 (Annexure 11 to the petition) is worthy to be seen. Despite to receiving this letter, written on 28.3.2005, Smt. Anupama Pandey did not resume her family life with her husband, probably for the reason that she had been well settled after securing a handsome salaried job of an Assistant Professor in the University. So helplessly, Ashutosh Pandey filed a petition for divorce u/s 13 of Hindu Marriage Act on 8.4.2005 at Kanpur. The same, at the instance of Anupama Pandey, was transferred to the Family Court, U.S. Nagar by the order of the Hon'ble Apex Court, where it was decreed on 10.4.2009. In that judgment, the Principal Judge, Family Court has commented that there was no evidence to show any cooperation on the part of wife to lead a happy matrimonial life and that she has deserted her husband for no reason. As such, the Judge, Family Court decreed the petition of divorce in favour of Ashutosh Pandey, which has been upheld in the appeal too.

4. It is relevant to mention here that Smt. Anupama Pandey also filed a separate

petition no. 244 of 2007 under Sections 25 and 27 of the Hindu Marriage Act for receiving the permanent alimony, besides the property presented at the time of marriage. The said petition was dismissed with costs on dated 13.5.2010 by the Family Court. However, when the said judgment was appealed, this High Court vide judgment dated 22.4.2011, has awarded Rs. 8.00 lacs towards "Stridhan" and Rs. 10.00 lacs towards the permanent alimony. This Court has been apprised that the said judgment has been challenged by Ashutosh Pandey before the Hon"ble Apex Court, wherein the final adjudication is awaited, subject to the payment of Rs 4.00 lacs to Smt. Anupama Pandey.

5. Learned counsel for the respondent no. 3- Anupama Pandey has argued that even awarding of "Stridhan" to the tune of Rs. 8.00 lacs and permanent alimony of Rs. 10.00 lacs will not answer the impugned order of cognizance passed by the learned Magistrate on the complaint of Smt. Anupama Pandey u/s 406 IPC because "Stridhan", which has been narrated in the list annexed with the complaint, is something different than that of the property presented at the time of, marriage, as has been envisaged u/s 27 of the Hindu Marriage Act. This argument on behalf of Smt. Anupama Pandey, even if accepted for a moment, is of no avail, in view of the last, paragraph of the notice sent by her own advocate to Ashutosh Pandey on dated 3.12.2005, wherein she has evaluated the cost of her entire "Stridhan" having the monetary value of Rs. 8.00 lacs.

6. The second point, raised on behalf of the petitioners, is that the complaint in question lacks territorial jurisdiction in view of the fact that "Stridhan", if any, had already been taken away by Smt. Anupama Pandey on 5.3.2004 when she left her matrimonial house along with her father, supported by 7-8 persons in presence of Police Sub Inspector. Even otherwise, the same was given at the time of marriage on 9.7.2000 at Kanpur, where the wedding was solemnized and it was kept and retained at Kanpur, so the Court at U.S. Nagar lacks territorial jurisdiction. In his support, he placed reliance upon a judgment of the Hon"ble Apex Court in the case of "Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another" reported in (2004) 8 SCC 100. The said precedent pertains to Section 498A and 406 IPC r/w Section 4 of Dowry Prohibition Act, wherein the complaint was filed by the wife whereshe had come to stay after leaving her husband"s house. She had come to stay at place "C" while the place of her residence was "N". The Hon"ble Apex Court held that the said offences were not continuing ones, hence no part of cause of action arose at place "C". Hence, the Magistrate at place "C" had no jurisdiction to deal with the matter.

7. Learned counsel of Smt. Anupama Pandey has rebutted this argument by placing reliance upon an of late precedent of the Hon"ble Apex Court in the case of "Sunita Kumari Kashyap Vs. State of Bihar "and another reported in AIR 2011 S.C. 1674". In the said case, the wife left her husband"s house located at Ranchi (Jharkhand) and came to live with her parents at Gaya (Bihar). She filed a complaint at Gaya for the offence of Section 498A IPC, then the Hon"ble Apex Court was of the view that in light of Sections 178 and 179 Cr.P.C., this offence is

a continuing one and the Court at Gaya will have the territorial jurisdiction to hear the same. The precedent relied upon by learned counsel of Smt. Anupama Pandey, is no answer to the offence of Section 406 IPC, in as much as, the said precedent only deals with the eventuality of Section 498A IPC and that has been held to be a continuing offence, but the facts of entrustment or the misappropriation of the property, presented in the matrimony, has not been dealt with in the said precedent.

8. Learned counsel of Smt. Anupama Pandey has also drawn the attention of the Court towards Section 181(4) Cr.P.C. which reads as under:-

"281 (4).-Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

9. While placing reliance upon the said sub-section, learned counsel tried to interpret the words "was required to be returned or accounted for". In view of this Court, the construction of this phrase should be made to read it as a whole, along with the phrases, which have been used by the Legislature hitherto. The territorial jurisdiction by the complainant cannot be stretched to any place across the country/continent where he/she is settled. Under the garb of this phrase, which has been used and relied upon by the learned counsel for Smt. Anupama Pandey, the sub-section, as a whole, has to be read and its meaning and interpretation cannot be discerned in a Utopian fashion, as to give liberty to the complainant to file the complaint at any place across the globe, asking her property to be returned where she is settled. As such, this sub-section is also of no help to Smt. Anupama Pandey.

10. In view of the above discussion, this Court is of the view that the impugned complaint aims just to sheer harassment of Sri Ashutosh Pandey and his parents and thus, the same deserves to be quashed. For the reasons as aforesaid, the C482 petition is allowed. Proceedings of complaint case no. 331 of 2006 as well as the order of cognizance dated 31.3.2006, aforementioned, is hereby quashed.