
(2016) 08 AHC CK 0122

In the Allahabad High Court

Case No : Criminal Misc. Application No. 14286 of 2013

Deep Narayan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 3, Section 4

Penal Code, 1860 (IPC) — Section 323, Section 498A, Section 504, Section 506

Citation : (2016) 10 ADJ 1

Hon'ble Judges : Mrs. Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Govt. Advocate and Shashank Tripathi, Advocate, for the Opposite Party; Rakesh Dubey and Rajiv Gupta, Advocates, for the Applicant

Final Decision : Disposed Off

Judgement

Mrs. Vijay Lakshmi, J. - The applicants, by means of this application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the entire proceedings in Complaint Case No. 141 of 2012, Ram Dulare Gaur v. Avadh Narayan and another, under Sections 498A, 323, 504, 506 I.P.C. and 3/4 D. P. Act, P.S. Mahila Thana, district Kanpur Nagar, pending in the court of M.M. Court No. IV, Kanpur Nagar.

2. Counter and rejoinder affidavits have already been exchanged between the parties.

3. Heard learned counsel for the applicants, learned A.G.A. for the State and learned counsel for O.P. No. 2. Perused the records.

4. Learned counsel for the applicants has contended that the applicant nos. 1 and 2 are the real brothers, who are the Jeth and husband of the daughter of O.P. No. 2, respectively; the applicant no. 1 has no concern with the matrimonial dispute between his brother (applicant no. 2) and his wife i.e. the daughter of

O.P. No. 2, Smt. Indira Gaur. Learned counsel has further submitted that the marriage between the applicant no. 2 and Smt. Indira Gaur was performed on 12.7.2008 at district Katni (M.P.) without any dowry. After the marriage, it transpired that Smt. Indira Gaur is a disabled lady. Despite that the applicant no. 2 was ready to cooperate with her. However, after sometime she lodged a first information report against the applicants and their family members making false and frivolous allegations. The matter was referred to Mediation Centre, Kanpur, and the dispute was settled between the parties. On the basis of the said compromise the I.O. submitted a final report in the court. On the said final report, the learned Magistrate issued notice to the complainant (O.P. No. 2) for filing his objection, if any. The O.P. No. 2 filed the objections/ protest petition, even though admitting the fact of compromise reached between the parties, alleging that the applicants, after the said compromise, started to ill-treat his daughter once again in connection with dowry demand.

5. The learned Magistrate treated the protest petition/ objection as a complaint and after recording the statements of the complainant and his daughter Smt. Indira Gaur under sections 200 and 202 Cr.P.C., summoned the applicants.

6. The aforesaid summoning order has been challenged before this court on three grounds:

(1) Lack of territorial jurisdiction to the Magistrate of Kanpur Nagar, as the offence alleged has taken place at Katni, M.P. Where the daughter of O.P. No. 2 was residing in her matrimonial home.

(2) The learned Magistrate, only on the basis of general and vague allegations made in the protest petition, with regard to dowry demand and even in absence of any injury report, has summoned the applicants without application of mind to the fact that the matter has already been settled between the parties by way of compromise. The learned counsel for the applicants has relied upon the judgments of the Hon'ble Apex Court reported in (2012) 10 SCC 741, Geeta Mehrotra and another v. State of U.P. and 2005 SCC (Cri) 719, Ruchi Agarwal v. Amit Kumar Agrawal and others in support of this contention.

(3) The third ground on the basis of which learned counsel for the applicant has challenged the legality and correctness of impugned summoning order, is that, without following the mandate of sub-section 2 of section 204 Cr.P.C., which makes it compulsory for the complainant to file the list of witnesses, the Magistrate has issued summons, therefore, the impugned summoning order cannot be sustained. Learned counsel has contended that no list of prosecution witnesses was filed by the complainant, which fact is evident from perusal of the impugned order itself, which clearly shows that the learned Magistrate has directed the complainant to file the list of witnesses. He has contended that in absence of the list of prosecution witnesses, the summoning of the applicants, being against the mandatory requirement of section 204(2) Cr.P.C. is bad in law and the same cannot be sustained.

7. Per contra, learned counsel for O.P. No. 2 has contested the aforesaid arguments on the ground that in the protest petition, it has been clearly alleged that after the compromise between the parties, the applicants again started harassment of the daughter of O.P. No. 2, therefore, he had to file protest petition against the final report, and as there was sufficient prima-facie material before the learned Magistrate, to summon the applicants, he, treating the protest petition as complaint case, rightly summoned the accused persons including the applicants. It does not make any difference that the dispute was earlier settled between the parties by way of compromise. Learned counsel for O.P. No. 2 has further submitted that the applicants have dishonestly grabbed the belongings of the daughter of O.P. No. 2 hence the offence under section 406 I.P.C. is fully made out against the applicants. Apart from that, the ingredients of sections 498A, 504, 506 I.P.C. being present in this case, the learned Magistrate did nothing wrong while summoning the applicants under these sections.

8. Considered the rival submissions of the parties.

9. In so far as the territorial jurisdiction of the Magistrate is concerned, there appears no force in the aforesaid submissions because the offence under section 498-A I.P.C. is a continuing offence, which may start at the matrimonial home of the bride and continue to her parental home where as a consequence of her maltreatment at the hands of her husband and in-laws, she is forced to live under a state of mental agony and depression, after being driven out from her matrimonial home.

10. The law relating to territorial jurisdiction of a criminal court, is provided under section 177 to section 179 of Cr.P.C. All these sections are reproduced below:

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

178. Place of enquiry 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 areas than one, or

(d) where it consists of several acts done in different local areas,

It may be enquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be enquired into or tried by a Court within whose

local jurisdiction such thing has been done or such consequence has ensued."

11. From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed. However, 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 partly in another or where an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local areas is competent to enquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be enquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

12. Now, returning to the case in hand, the facts of the instant case, as per the complaint, clearly show that after being treated with cruelty for dowry demand, the wife was left at her parental home by her husband and her in-laws only in the clothes, she was wearing at that time and her husband and her in-laws, while leaving her at Kanpur, threatened her that if without fulfilling their dowry demand, she dared to come back to Katni, she would not physically be in a position to return to Kanpur.

13. Thus it is clear that the occurrence started at Katni but continued to Kanpur Nagar where the aforesaid episode of threatening the wife by the husband and in-laws for dowry demand, took place. In view of the above, it cannot be said that the learned Metropolitan Magistrate, Kanpur, had no jurisdiction to try the case.

14. In the case of Sunita Kumari Kashyap v. State of Bihar and another, Criminal Appeal No. 917 of 2011 decided on 11.4.2011 the same question about territorial jurisdiction Magistrate under section 498A I.P.C. arose before the Hon"ble Supreme Court for consideration and the Apex Court held that the offence under section 498A I.P.C. being a continuing one, it is covered under sections 179 and also under section 178 Cr.P.C. The relevant extracts from the aforesaid landmark judgment is quoted below:-

"Perusal of the entire complaint, which was registered as an FIR, clearly shows that there was ill-treatment and cruelty at the hands of her husband and his family members at the matrimonial home at Ranchi and because of their actions and threat she was forcibly taken to her parental home at Gaya where she initiated the criminal proceedings against them for offences punishable under Sections 498A and 406/34 IPC and Sections 3 and 4 of the D.P. Act....."

"We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in

this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment of ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offence, on some occasion all had taken part and on other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.

In view of the above discussion and conclusion, the impugned order of the High Court holding that the proceedings at Gaya are not maintainable due to lack of jurisdiction cannot be sustained. The impugned order of the High Court dated 19.03.2010 in Criminal Misc. No. 42478 of 2009 and another order dated 29.04.2010 in Criminal Misc. Case No. 45153 of 2009 are set aside. In view of the same, the SDJM, Gaya is permitted to proceed with the criminal proceedings in trial Nos. 1551 of 2008 and 1224 of 2009 and decide the same in accordance with law.

15. Similar issue was considered by the Apex Court in *Sujata Mukherjee (Smt) v. Prashant Kumar Mukherjee*, (1997) 5 SCC 30, and the Hon''ble Apex Court found that Clause (c) of Section 178 Cr.P.C. is attracted and the Magistrate at wife''s parents'' place has also jurisdiction to entertain the complaint. Accepting the stand of complainant, the Apex Court held as under:-

"We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted."

16. In *State of M.P. v. Suresh Kaushal and another*, (2003) 11 SCC 126, again in a similar circumstance, considering the provisions of Section 179 with reference to the complaint relating to the offences under Section 498A read with Section 34 IPC, Hon''ble Apex Court held as under:

"6. The above Section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore."

17. In wake of the law laid down by Hon''ble Apex Court in the cases cited above, none of which have been over-ruled by any larger Bench of the Apex Court, this court is of the considered view that the Magistrate at Kanpur Nagar has jurisdiction to try the case.

18. The second ground taken by the appellants for challenging the impugned order, related to an earlier compromise between the parties, also appears to be without any basis. It is a matter of common knowledge that fresh dispute between husband and wife may take place at any time, even after their reunion in pursuance of a compromise entered between them, giving rise to a fresh cause of action. However, the situation may be otherwise in the cases where the husband and wife get separated after the compromise. Hence it cannot be held that the wife cannot file fresh complaint against the husband even if a fresh cause of action, due to fresh dowry demand and her harassment in connection with such demand, has taken place.

19. The judgment rendered in the case of Ruchi Agarwal (supra) is of no help to the applicants due to the reason that the facts of Ruchi Agarwal's case are entirely different from the facts of the present case. In Ruchi Agarwal's case both the husband and the wife had separated themselves after the compromise. The wife had given her consent for divorce after taking a handsome amount as alimony. To the contrary, in the present case the husband and the wife, after the compromise were reunited and were living together when fresh cause of action in the shape of fresh harassment of the wife arose, compelling her to file the protest petition.

20. The third ground, taken by learned counsel for the applicants is that without following the mandate as provided under section 204(2) Cr.P.C., which provides that no summon or warrant shall be issued against the applicants under sub-section 1 of section 204 Cr.P.C. until list of prosecution witnesses has been filed, the learned Magistrate in the instant case, has straightway summoned the applicants to face trial.

21. The aforesaid ground too, appears to be without any force. The learned Magistrate in the impugned summoning order itself, has directed the complainant to file the list of witnesses and the copy of the complaint. The complainant has been further directed to take steps within seven days. Summons were to be issued by the office of the Magistrate only after taking steps by the complaint in compliance of the aforesaid directions of the court, which is the normal procedure followed by the office. The applicant has nowhere stated that summons were served on him without list of witnesses being attached to it. Therefore, it cannot be said that summons were actually issued by the office of Magistrate, without such list of witnesses.

22. A coordinate Bench of this court, in the case of Sardar Awtar Singh and others v. State of U.P. and others, 2006 Cr.L.J. 715 has held that the complainant under section 204(2) Cr.P.C. is required to file list of witnesses before issuance of

the summons to the accused. He is not required to file list of witnesses along with the complaint.

23. In *Krishna Kant Pathak v. State of U.P.* 1995 ACC 14 also, this Court has held that it is not necessary that list of witnesses should accompany the petition of complaint. It can be filed at the time of issuing process.

24. Delhi High Court in *Ved Prakash v. Sri Om* decided on 31 October 2011 relying on its earlier judgment rendered in *Abdul Hafiz v. Ghulam Mohi-ud-din*, 1997 Cri. L.J. 518, has held that omission to file list of witnesses does not vitiate the proceedings if the purpose is otherwise served. The omission is regularly curable under section 465 Cr.P.C. The purpose being that the accused should be apprised at the earliest point of time of the persons, who are likely to give evidence against him.

25. In view of the above, there does not appear any substance in any of the grounds taken by learned counsel for the applicants.

26. On the basis of the above discussion, I do not find any justification to quash the entire proceedings of the aforesaid complaint case and also because this case does not fall in any of the category recognised by the Hon''ble Apex Court in a catena of judgments the latest one being *A.R.C.J. v. Nimra Carglass Technics (P) Ltd.* (2016) 1 SCC 348, which may justify its quashing. Hence, the prayer for quashing the proceedings of the complaint case is refused.

27. However, it is directed that if the applicants appear before the court below and apply for bail within six weeks from today, the court below shall endeavour to decide their bail application, keeping in view the observations made by this Court in the Full Bench decision of *Amrawati and another v. State of U.P.* 2004 (57) ALR 290 and affirmed by Hon''ble Supreme Court in the case of *Lal Kamlendra Pratap Singh v. State of U.P.* 2009 (3) ADJ 322 (SC).

28. For the aforesaid period of six weeks no coercive action shall be taken against the applicants.

29. With the aforesaid directions this application is finally disposed off.