

(2007) 08 AHC CK 0279
In the Allahabad High Court
Case No : Criminal M.A. No. 12358 of 2005

Dr. (Mrs.) Sarojini Arawatiigi and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 200, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Guardians and Wards Act, 1890 — Section 25
Penal Code, 1860 (IPC) — Section 323, 406, 420, 498A, 506

Citation : (2008) 1 ACR 135

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Advocate : Amit Mishra and Iqbal Ahmad, for the Appellant; Anoop Trivedi and A.G.A., for the Respondent

Judgement

M.K. Mittal, J.—Application u/s 482, Cr. P.C. has been filed by Dr. (Mrs.) Sarojini Arawatiigi and Dr. Vinay Arawatiigi for quashing of the proceedings in Criminal Case No. 7849 of 2004, Rashmi Harry v. Dr. Vinay and Ors., u/s 498A, I.P.C., P. S. Cantt. District Kanpur Nagar pending in the Court of Chief Metropolitan Magistrate, Kanpur Nagar.

2. I have heard Sri Iqbal Ahmad, learned Counsel for the applicants, Sri Anoop Trivedi, learned Counsel for the opposite party No. 2 and learned A.G.A. and have perused the material available on record. Counter and rejoinder-affidavits have been exchanged.

3. Brief facts of the case are that opposite party No. 2 who is wife of applicant No. 2 filed a complaint against the applicants. According to opposite party No. 2 she was married with applicant No. 2 according to Christian rites and applicant No. 1 is her mother-in-law. At the time of marriage, correct facts about the qualification of applicant No. 2 were not disclosed. However marriage took place and dowry was also given but the applicants were not satisfied and they started

harassing her and hurling abuses on her. She was humiliated now and then. However she continued to tolerate. Opposite party No. 2 and her father could know only after the marriage that applicant No. 2 had not even completed the medical course and was doing computer job. After about 1-1/2 years of the marriage she was left by the applicant No. 2 at Kanpur and he went back to complete his internship and also asked the complainant and her father to give sufficient dowry so that he could settle as self employed professional. The complainant and her father tried to persuade the applicant No. 2 not to leave her at Kanpur and not to demand any further dowry but to no effect. The complainant opposite party No. 2 gave birth to a daughter on 23.11.2001 at Kanpur but applicant No. 1 did not come to see her and never rejoiced that occasion. In March, 2003, the complainant went to Vellore, Tamilnadu to live with her husband but again he started demanding of Rs. 10 lacs as cash. On account of non-fulfilment of this demand she was inhumanly treated. Her daughter was sent to Miraj and the complainant was sent to Kanpur and was asked not to come till dowry demand was fulfilled. In para 11 of the complaint it has been alleged that the accused applicant No. 2 had left the complainant at Kanpur in August, 2003 and the child Simran was snatched and sent to Miraj without even considering the pain and grief of complainant in making forcible separation. When the complainant resisted she was ill treated and beaten by the accused persons. This all amount to mental as well as physical cruelty. In November, 2003 applicant No. 2 took the complainant to Miraj on the occasion of second birth anniversary of her daughter but she was not allowed to go to the place of her in-laws and was kept at the house of a friend of her husband. She was allowed to meet her daughter for 2-3 hours only. On 2.12.2003 the complainant alongwith her father went to Pune and requested the accused persons to leave obstinacy and dowry demand and to allow the complainant to stay with her daughter but to no effect. Since then tireless efforts have been made by the complainant and her father to save matrimonial life but in vein. In the circumstances, complainant filed the complaint for taking action against the accused under Sections 498A, 323, 506, 420, I.P.C. read with Section 3/4, D. P. Act.

4. Learned Magistrate examined the complainant u/s 200, Cr. P.C. Learned Magistrate also examined Stephen M. Harry P.W. 2 father of the complainant u/s 202, Cr. P.C. Finding prima facie case he directed to summon the accused persons u/s 498A, I.P.C.

5. This application has been filed on the ground that the Court at Kanpur has no jurisdiction to proceed in the matter because the cause of action did not arise within the local limits of the Court at Kanpur.

6. Opposite party No. 2 has filed counter-affidavit and has contended in paras 11 and 22 that the accused No. 2 had forcibly left the complainant at Kanpur whereas her child was snatched away from Kanpur and was taken to Miraj and when she resisted she was mercilessly beaten by the accused persons. It has

also been alleged that a complaint was also filed u/s 406, I.P.C. and is pending in the Court at Kanpur. A case u/s 25 of Guardian and Wards Act, for custody of the child was also filed in the Court of Family Judge, Kanpur. It has also been contended that the opposite party No. 2 has been forcibly expelled from her matrimonial house and has been compelled to live at Kanpur.

7. Applicants filed rejoinder-affidavit and contended that there is no dispute regarding the fact that marriage took place in Miraj, district Sangali, Maharashtra. Applicants gave full love and affection to the opposite party in dignified manner and there was no mental torture to the opposite party for anything. It is false to say that any dowry was ever demanded by them. Opposite party was always allowed to come and see her parents whenever she desired and was never left at Kanpur in the manner as alleged by her. It has been denied that the applicant No. 2 took the opposite party and left her at Kanpur and that the child was snatched from her. According to the applicants after the birth of the child the applicant No. 2 and the opposite party No. 2 and the child went back to Miraj on 26.12.2001 and lived together. Applicant No. 2 was in C.M.C. Hospital, Vellore for his studies and the opposite party was also with him at that time. After completing his house surgeon course in October, 2003, he decided to carry on his practice in his native town Miraj but the opposite party refused to go to Miraj and the applicant No. 2 came to Pune in search of job of doctor. But he could not find the job and instead he was offered a job in Missionary Hospital, Miraj. But opposite party No. 2, refused to settle at Miraj with him and insisted that applicant No. 2, should settle down in Kanpur with her. It was not possible for the applicant No. 2 to leave Miraj and the dispute arose while the opposite party No. 2 and the applicant No. 2 were in Pune on the occasion of the second birth anniversary of their child. They both came to Miraj on 23.11.2003 and at that time again opposite party No. 2 insisted to come and stay at Kanpur. However they went back to Pune. The parents of opposite party No. 2, were also called upon to persuade her but to no avail. The opposite party No. 2 left Pune with her parents leaving the child with applicant No. 2 and never returned to Miraj. Case u/s 406, I.P.C. has been filed with wrong allegations. In the case u/s 25 of Guardian and Wards Act, Family Court Kanpur passed an order that it had jurisdiction to decide the case but that order was challenged in Writ Petition No. 7473 of 2005 and the same has been allowed and this Court has directed the Family Court Judge, Kanpur not to proceed as it has no jurisdiction in the matter. Applicants further reiterated that opposite party was neither forcibly left and beaten as stated at Kanpur nor the child was snatched and that the Court at Kanpur has no jurisdiction to proceed with this criminal case.

8. Section 177, Cr. P.C. lays down the place where the criminal case can be prosecuted. According to it, every offence shall be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178(c), Cr. P.C. further provides that where the offence is continuing one and continues to be committed in more local areas than one it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

9. In the instant case, learned Counsel for the applicants has contended that no cause of action arose within the local jurisdiction of Kanpur Court and therefore, it has no jurisdiction to try this case. Against it learned Counsel for the opposite party No. 2 has contended that the applicant No. 2 came to Kanpur and demanded dowry and also left her forcibly at Kanpur and also snatched away the child at Kanpur.

10. In this connection, it will be useful to refer the statement of the opposite party No. 2 as given u/s 200, Cr. P.C. There she has stated that after marriage when she reached her matrimonial house her husband and mother-in-law complained about insufficient dowry and also humiliated her. She also came to know after marriage that her husband was not qualified doctor and was still studying and internship was also to be completed by him. After one and half years of marriage her husband and mother-in-law left her at Kanpur and her husband went to complete his internship. It may be mentioned that in this statement she has not stated that at this stage the husband or her mother-in-law made any dowry demand or ill treated her. Next she has stated that on 23.11.2001 her daughter was born and all the expenses were incurred by her father. In March, 2003, when her husband was doing house job she herself went to live with him but her husband and mother-in-law complained about insufficient dowry and demanded Rs. 10 lacs. Since the demand could not be fulfilled in August, 2003, she was harassed and was sent to Kanpur and her daughter was sent to Miraj and she was asked that her daughter would not be returned unless the demand of Rs. Ten Lacs was fulfilled. She does not say that her husband came with her in August, 2003 and left her at Kanpur and snatched her daughter from her custody in Kanpur. Therefore, the statement as given u/s 200, Cr. P.C. is not in consonance with the allegation as made in the complaint in Paragraph Nos. 8-11 of the complaint and this is very material. Perusal of the statement of opposite party No. 2 shows that at no stage the applicants demanded any dowry or harassed her at Kanpur for non-fulfilment of the dowry. Contention as made in the complaint and also in the counter-affidavit in Paras 11 and 22 that her daughter was snatched at Kanpur is contradictory to her own statement given in the Court. In the circumstances, I come to the conclusion that no harassment of the opposite party No. 2 was made by the applicants within the local limits of the Courts at Kanpur and therefore, the Court at Kanpur has no jurisdiction to proceed in the matter.

11. Contention was also raised that the applicants had been harassed by the opposite party and dowry was demanded while she was at Pune and Miraj but the offence u/s 498A, I.P.C. is not a continuing offence and if for arguments sake it is found that any dowry demand was made or any harassment was perpetrated on the opposite party at that place still the Court at Kanpur has no jurisdiction to proceed in the matter as it cannot be treated to be a continuing offence.

12. In the case of Y. Abraham Ajeeth and Ors. v. Inspector of Police Chennai and Anr. (2004) 8 SCC 100: 2005 (1) ACR 577, it has been held by the Hon"ble Apex

Court that the offence u/s 498A, I.P.C. is not continuing offence. This legal position has been reiterated in a recent case of Manish Ratan and Others Vs. State of M.P. and Another, by the Hon'ble Apex Court. Therefore, I come to the conclusion that in any case Court at Kanpur has no jurisdiction in the matter and the learned trial court has passed the summoning order without any jurisdiction and the same is liable to be set aside.

13. Application u/s 482, Cr. P.C. is allowed. Impugned order is set aside and the proceedings in Criminal Case No. 7849 of 2004, Rashmi Harry v. Dr. Vinay and Ors., u/s 498A, I.P.C., P. S. Cantt, pending in the Court of C.M.M., District Kanpur Nagar are hereby quashed. However, it shall be open to the complainant to take necessary legal action against the applicant in appropriate forum.