

(2008) 08 P&H CK 0151
In the Punjab And Haryana At Chandigarh

Gaganpreet Kaur

APPELLANT

Vs

Senior Superintendent of Police and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 181

Citation : (2008) 152 PLR 522

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—The petitioner has sought an appropriate writ, order direction, directing respondent No. 1 to redress the complaint filed by the petitioner and claimed a writ of certiorari to quash the decision respondent Nos. 1 and 2 to transfer the complaint Annexure P-2 of the petitioner from the Chandigarh to New Delhi.

2. The petitioner as wife of Naveen Kumar, has lodged a complaint with the Senior Superintendent of Police, Chandigarh (Annexure P-2) alleging that her husband has raised demands of dowry and for transfer of property in his name. It has been further averred that the petitioner along with her minor son, is living at Chandigarh. Such complaint dated 13.9.2006 ended into compromise on 20.9.2006 but again a complaint was made on 18.1.2007 (Annexure P-4) to take action against the husband of the petitioner on account of non-payment of maintenance and raising the demands of dowry. Subsequently, two other complainants were lodged on 23.4.2007 to 3.5.2007.

3. The petitioner alleged that she was mercilessly beaten and thrown out of the matrimonial home by husband. She is residing in Chandigarh and all her efforts to reconcile the marriage have miserably failed. It is pointed out that the husband of the petitioner exercised influence over the official respondents and pressurized the petitioner to withdraw her complaint. Even the statement of the petitioner was not recorded, but subsequently, the petitioner was informed that the complaint has been transferred to respondent No. 5 on 19.4.2007. It has

been averred that the petitioner has submitted representations to the effect that all proceedings and statements as available at New Delhi, be transferred to Chandigarh.

4. In reply to the writ petition, it has been averred that no part of offence alleged by the petitioner has been committed within the territorial jurisdiction of Chandigarh and, therefore, cognizance of the offence could not be taken by the respondents in view of the provisions of Sections 177 and 178 of the Code of Criminal Procedure.

5. A short reply has been filed on behalf of the Joint Commissioner of Police, Crime (Women) Cell, New Delhi, pointed out that the petitioner has not joined the inquiry proceedings, though the respondent always joined the proceedings. The petitioner has expressed here inability to attend the proceedings in Delhi. Therefore, the inquiry proceedings were closed on 25.6.2007.

6. Shri Sanjiv Ghai, learned Counsel for the Chandigarh Administration has produced the investigation file. The finding recorded by the Inquiry Officer reads as under-

During the course of enquiry both parties summoned and recorded their statements. Counseling exercises were made. From the enquiry and statements of both parties, it came to light that the marriage of Gaganpreet Kaur and Naveen Kumar was solemnized at Tikana Sahib Gurudwara, Delhi and dowry articles were also entrusted at Delhi. After marriage maltreatment, torture for demand of dowry were taken place at Delhi. No one incident were happened in the jurisdiction of Chandigarh. Hence, the present complaint may please be sent to W/SSP.

7. Learned Counsel for the petitioner has vehemently argued that in terms of Section 181 of the Code of Criminal Procedure complaint was rightly lodged with the Senior Superintendent of Police, Chandigarh and the Chandigarh Police has transferred the proceedings to Delhi with a view to scuttle the criminal proceedings against her husband.

8. It is not disputed that the petitioner along with her minor child is residing at Chandigarh though the marriage was solemnized at Delhi and dowry articles were entrusted at Delhi and that the maltreatment or torture for demand of dowry were raised. Section 181(4) of the Code of Criminal Procedure confers jurisdiction on the Court where the goods entrusted are to be returned. In view of the said fact, the dowry articles entrusted to the husband and/or his family members are required to be returned to the complainant at the place of her residence. Therefore, Chandigarh, where the wife is residing would have the jurisdiction to entertain the complaint. The said issue has been examined in extenso by a Single Bench of this Court in Samarat Kaushik and Ors. v. State of Haryana and Anr. 2007 (1) R.C.R. 328 and Shiv Dayal Arora and Anr. v. Smt. Renu Arora 2007 (3) R.C.R. 10. In Samarat Kaushik's case (supra), it was held to the following effect:

In the present case, we are concerned with criminal breach of trust of Stridhan-property. When articles are given by way of gifts to a bride at the time of marriage, no one can contemplate that a situation would arise in future when a demand for return of stridhan property from the husband or his other relations would be made and in the event of articles not being returned, a criminal prosecution would be launched. In fact at the time of marriage, every one wishes and prays that the new couple would lead a long and happy married life. Therefore, the existence or coming into being of a prior agreement of even understanding that in the event of break up of marriage or for some unforeseen circumstances, the articles given by way of gifts would be required to be returned at a particular place is an almost impossible situation. The relations and friends who give gifts to the bride would shudder at the very idea that contingency may arise from the husband or his other relations. Therefore, so far as an offence of criminal breach of trust regarding stridhan property is concerned, there cannot be any prior agreement for return thereof at a particular place. If the last clause of sub-section is interpreted in the manner suggested by the learned Counsel it will become redundant in so far as the offence of criminal breach of trust of stridhan-property is concerned.

XXX XXX XXX XXX XXX XXX Therefore, in order to give full meaning and sense to the last part of Sub-section (4) of Section 181, it will be proper to hold that without there being any prior agreement to that effect the Court at the place where the property is required to be returned will also have the territorial jurisdiction to try the offence.

9. In view of the said judgments, the order sending the complaint for investigation to Delhi is not justified as the Chandigarh Police has the jurisdiction to entertain the complaint in terms of Section 181(4) of Cr. P.C.

10. Consequently, the reference to Delhi Police is set aside.

11. Respondent Nos. 1 and 2 are directed to proceed with the complaint of the petitioner and take appropriate action, in accordance with law expeditiously.