
(2012) 10 SC CK 0022

In the Supreme Court Of India

Case No : Criminal Appeal No. 1674 of 2012 (Arising out of SLP (Criminal) No. 10547 of 2010)

Geeta Mehrotra and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 468(1), 468(2), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 406, 498A, 504, 506

Citation : (2013) 2 ACR 1963 : (2012) 10 ADJ 464 : AIR 2013 SC 181 : (2012) AIRSCW 5692 : (2013) 1 ALJ 126 : (2013) 2 ALT(Cri) 21 : (2012) 3 CG.L.R.W. 242 : (2013) 1 JLJR 115 : (2013) 1 PLJR 10 : (2013) 2 RLW 1087 : (2012) 10 SCALE 299 : (2012) 10 SCC 741 : (2013) 1

Hon'ble Judges : T.S. Thakur, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : Anoop G. Chowdhary, K.B. Rohatgi, Aparna Rohatgi Jain and Sanjay Kumar Singhal, for the Appellant; Ajay Kumar Misra, Sobha Dixit, Anuradha D. Misra, Tulika Mukherjee, Bharat Dubey, Anuradha and Associates, Pradeep Misra, Malvika Trivedi and Manoj Kr. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

Gyan Sudha Misra, J.—This appeal by special leave in which we granted leave has been filed by the Appellants against the order dated 6.9.2010 passed by the High Court of Judicature at Allahabad in Crl. Miscellaneous Application No. 22714/2007 whereby the High Court had been pleased to dispose of the application moved by the Appellants u/s 482 Code of Criminal Procedure for quashing the order of the Magistrate taking cognizance against the Appellants under Sections 498A/323/504/506 Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act with an observation that the question of territorial jurisdiction cannot be properly decided by the High Court u/s 482 Code of Criminal Procedure for want of adequate facts. It was, therefore, left open to the Appellants to move the trial court for dropping the proceedings on the ground of

lack of territorial jurisdiction. The High Court however granted interim protection to the Appellants by directing the authorities not to issue coercive process against the Appellants until disposal of the application filed by the Appellants with a further direction to the trial court to dispose of the application if moved by the Appellants, within a period of two months from the date of moving the application. The application u/s 482 Code of Criminal Procedure was thus disposed of by the High Court.

2. The Appellants in spite of the liberty granted to them to move the trial court, have filed this appeal for quashing the proceedings which had been initiated on the basis of a case lodged by the Respondent No. 2 Smt. Shipra Mehrotra (earlier known as Shipra Seth) against her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law. This appeal has been preferred by the sister-in-law, who is Appellant No. 1 and brother-in-law of the complainant, who is Appellant No. 2.

3. The case emerges out of the first information report lodged by Respondent No. 2 Smt. Shipra Mehrotra under Sections 498A/323/504/506 Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act bearing F.I.R. No. 52/2004. The F.I.R. was registered at Mahila Thana Daraganj, Allahabad wherein the complainant alleged that she was married to Shyamji Mehrotra s/o Balbir Saran who was living at Eros Garden, Charmswood Village, Faridabad, Suraj Kund Road at Faridabad Haryana as per the Hindu marriage rites and customs. Prior to marriage the complainant and her family members were told by Shyamji Mehrotra and his elder brother Ramji Mehrotra who is Appellant No. 2 herein and their mother Smt. Kamla Mehrotra and her sister Geeta Mehrotra who is Appellant No. 1 herein that Shyamji is employed as a Team Leader in a top I.T. Company in Chennai and is getting salary of Rs. 45,000/- per month. After negotiation between the parents of the complainant and the accused parties, the marriage of the complainant Shipra Seth (later Shipra Mehrotra) and Shyamji Mehrotra was performed after which the Respondent-complainant left for the house of her in-laws.

4. It was stated that the atmosphere in the house was peaceful for sometime but soon after the wedding, when all the relatives left, the maid who cooked meals was first of all paid-off by the aforesaid four persons who then told the complainant that from now onwards, the complainant will have to prepare food for the family. In addition, the above mentioned people started taunting and scolding her on trivial issues. The complainant also came to know that Shyamji was not employed anywhere and always stayed in the house. Shyamji gradually took away all the money which the complainant had with her and then told her that her father had not given dowry properly, therefore, she should get Rupees five lakhs from her father in order to enable him to start business, because he was not getting any job. When the complainant clearly declined and stated that she will not ask her parents for money, Shyamji, on instigation of other accused-family members, started beating her occasionally. To escape every day torture

and financial status of the family, the complainant took up a job in a Call Centre at Convergys on 17.2.2003 where the complainant had to do night shifts due to which she used to come back home at around 3 a.m. in the morning. Just on her return from work, the household people started playing bhajan cassettes after which she had to get up at 7'o clock in the morning to prepare and serve food to all the members in the family. Often on falling asleep in the morning, Shyamji, Kamla Devi and Geeta Mehrotra tortured the complainant every day mentally and physically. Ramji Mehrotra often provoked the other three family members to torture and often used to make the complainant feel sad by making inappropriate statements about the complainant and her parents. Her husband Shyamji also took away the salary from the complainant.

5. After persistent efforts, Shyamji finally got a job in Chennai and he went to Chennai for the job in May, 2003. But, it is alleged that there was no change in his behaviour even after going to Chennai. The complainant often called him on phone to talk to him but he always did irrelevant conversation. He never spoke properly with the complainant whenever he visited home and often used to hurl filthy abuses. The complainant states that she often wept and tolerated the tortures of the accused persons for a long time but did not complain to her family members, as that would have made them feel sad. At last, when the complainant realized that even her life was in danger, she was compelled to tell everything to her father on phone who was very upset on hearing her woes. On 15.7.2003 complainant heard some conversation of her mother-in-law and sister-in-law from which it appeared to her that they want to kill the complainant in the night only. Thereupon the complainant apprised her father of the situation on phone to which her father replied that he will call back her father-in-law and she should go with him immediately and he will come in the morning. The father-in-law Satish Dhawan and his wife who were living in NOIDA thereafter came in the night and somehow took the complainant to their home who also came to know of everything. The complainant's father and brother later went to her matrimonial home on 16.7.2003. On seeing her father and brother, Kamla Mehrotra and Geeta Mehrotra started speaking loudly and started saying that Shyamji would be coming by the evening and so he should come in the evening for talking to them. Her father and brother then went away from there. That very day, her husband Shyamji and brother-in-law Ramji also reached home. On reaching there, Shyamji abused her on phone and told her to send her father.

6. When father and brother of the complainant went home in the evening, they were also insulted by all the four and video camera and tape were played and in the end they were told that they should leave from here. Insulted, they came back from there and then came back to Allahabad with the complainant. For many days the complainant and her family members hoped that the situation would improve if the matter was resolved. Many times other people tried to persuade the in - laws but to no avail. Her brother went to their house to talk to her in - laws but it came to his knowledge that the in - laws had changed their house. After much effort, they came to know that the father-in-law and mother-

in-law started living at B-39, Brahma cooperative group housing society, block 7, sector-7, Dwarka, Delhi. On 19.09.04 evening, her father talked to Kamla Mehrotra and Geeta Mehrotra regarding the complainant using bad words and it was said that if her daughter came there she will be kicked out. After some time Shyamji rang up at complainant's home but on hearing the complainant's voice, he told her abusively that now she should not come his way and she should tell her father not to phone him in future. At approximately 10:30 pm in the night Ramji's phone came to the complainant's home. He used bad words while talking to her father and in the end said that he had got papers prepared in his defence and he may do whatever he could but if he could afford to give Rs. 10 lakhs then it should be conveyed after which he will reconsider the matter. If the girl was sent to his place without money, then even her dead body will not be found.

7. On hearing these talks of the accused, the complainant believed that her in-laws will not let the complainant enter their home without taking ten lakhs and if the complainant went there on her own, she will not be safe. Hence, she lodged the report wherein she prayed that the SHO Daraganj should be ordered to do the needful after registering the case against the accused Shyam Mehrotra, Ramji Mehrotra, Kamla Mehrotra and Geeta Mehrotra. Thus, in substance, the complainant related the bickering at her matrimonial home which made her life miserable in several ways and compelled her to leave her in-law's place in order to live with her father where she lodged a police case as stated hereinbefore.

8. On the basis of the complaint, the investigating authorities at P.S. Daraganj, Allahabad started investigation of the case and thereafter the police submitted chargesheet against the Appellants and other family members of the complainant's husband. 9. Hence, the Appellants who are sister and brother of the complainant's husband filed petition u/s 482 Code of Criminal Procedure for quashing of the chargesheet and the entire proceedings pending in the court of learned Judicial Magistrate, Court No. IV, Allahabad, inter-alia, on the ground that FIR has been lodged with mala fide intentions to harass the Appellants and that no case was made out against the Appellants as well as other family members. But the principal ground of challenge to the FIR was that the incident although was alleged to have taken place at Faridabad and the investigation should have been done there only, the complainant with mala fide intention in connivance with the father of the complainant, got the investigating officer to record the statements by visiting Ghaziabad which was beyond his territorial jurisdiction and cannot be construed as legal and proper investigation. It was also alleged that the father of the complainant got the arrest warrant issued through George Town Police Station, Allahabad, in spite of the cause of action having arisen at Allahabad.

10. This appeal has been preferred by Kumari Geeta Mehrotra i.e. the sister of the complainant's husband and Ramji Mehrotra i.e. the elder brother of the complainant's husband assailing the order of the High Court and it was submitted that the Hon'ble High Court ought to have appreciated that the complainant who

had already obtained an ex-parte decree of divorce, is pursuing the present case through her father with the sole purpose to unnecessarily harass the Appellants to extract money from them as all efforts of mediation had failed.

11. However, the grounds of challenge before this Court to the order of the High Court, *inter alia* is that the High Court had failed to appreciate that the investigation had been done by the authority without following due process of law which also lacked territorial jurisdiction. The relevant documents/parcha diary for deciding the territorial jurisdiction had been overlooked as the FIR has been lodged at Allahabad although the cause of action of the entire incident is alleged to have taken place at Faridabad (Haryana). It was, therefore, submitted that the investigating authorities of the Allahabad have traversed beyond the territorial limits which is clearly an abuse of the process of law and the High Court has failed to exercise its inherent powers u/s 482 Code of Criminal Procedure in the facts and circumstances of this case and allowed the proceedings to go on before the trial court although it had no jurisdiction to adjudicate the same.

12. It was further averred that the High Court had failed to examine the facts of the FIR to see whether the facts stated in the FIR constitute any *prima facie* case making out an offence against the sister-in-law and brother-in-law of the complainant and whether there was at all any material to constitute an offence against the Appellants and their family members. Attention of this Court was further invited to the contradictions in the statement of the complainant and her father which indicate material contradictions indicating that the complainant and her father have concocted the story to implicate the Appellants as well as all their family members in a criminal case merely with a *mala fide* intention to settle her scores and extract money from the family of her ex-husband Shyamji Mehrotra and his family members.

13. On a perusal of the complaint and other materials on record as also analysis of the arguments advanced by the contesting parties in the light of the settled principles of law reflected in a catena of decisions, it is apparent that the High Court has not applied its mind on the question as to whether the case was fit to be quashed against the Appellants and has merely disposed of the petition granting liberty to the Appellants to move the trial court and raise contentions on the ground as to whether it has territorial jurisdiction to continue with the trial in the light of the averment that no part of the cause of action had arisen at Allahabad and the entire incident even as per the FIR had taken place at Faridabad.

14. The High Court further overlooked the fact that during the pendency of this case, the complainant-Respondent No. 2 has obtained an ex-parte decree of divorce against her husband Shyamji Mehrotra and the High Court failed to apply its mind whether any case could be held to have been made out against Kumari Geeta Mehrotra and Ramji Mehrotra, who are the unmarried sister and elder brother of the complainant's ex-husband. Facts of the FIR even as it stands

indicate that although a prima facie case against the husband Shyamji Mehrotra and some other accused persons may or may not be constituted, it surely appears to be a case where no ingredients making out a case against the unmarried sister of the accused Shyamji Mehrotra and his brother Ramji Mehrotra appear to be existing for even when the complainant came to her in-law's house after her wedding, she has alleged physical and mental torture by stating in general that she had been ordered to do household activities of cooking meals for the whole family. But there appears to be no specific allegation against the sister and brother of the complainant's husband as to how they could be implicated into the mutual bickering between the complainant and her husband Shyamji Mehrotra including his parents.

15. Under the facts and circumstance of similar nature in the case of Ramesh v. State of Tamil Nadu reported in (2005) SCC (Cri.) 735 at 738 allegations were made in a complaint against the husband, the in-laws, husband's brother and sister who were all the Petitioners before the High Court wherein after registration of the F.I.R. and investigation, the charge sheet was filed by the Inspector of Police in the court of Judicial Magistrate III, Trichy. Thereupon, the learned magistrate took cognizance of the offence and issued warrants against the Appellants on 13.2.2002. Four of the accused-Appellants were arrested and released on bail by the magistrate at Mumbai. The Appellants had filed petition u/s 482, Code of Criminal Procedure before the Madras High Court for quashing the proceedings in complaint case on the file of the Judicial Magistrate III, Trichy. The High Court by the impugned order dismissed the petition observing that the grounds raised by the Petitioners were all subject matters to be heard by the trial court for better appreciation after conducting full trial as the High Court was of the view that it was only desirable to dismiss the criminal original petition and the same was also dismissed. However, the High Court had directed the Magistrate to dispense with the personal attendance of the Appellants.

16. Aggrieved by the order of the Madras High Court dismissing the petition u/s 482 Code of Criminal Procedure, the SLP was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz., (i) that the allegations are frivolous and without any basis; (ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the court at Trichy and, therefore, the learned magistrate lacked territorial jurisdiction to take cognizance of the offence and (iii) taking cognizance of the alleged offence at that stage was barred u/s 468(1) Code of Criminal Procedure as it was beyond the period of limitation prescribed u/s 468(2) Code of Criminal Procedure Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

17. Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the

husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the Appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences u/s 498A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the Appellants were quashed and the appeal was allowed.

18. In so far as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the Appellants u/s 482 Code of Criminal Procedure wherein it was also alleged that no prima facie case was made out against the Appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of the Indian Penal Code. The High Court has failed to exercise its jurisdiction in so far as the consideration of the case of the Appellants are concerned, who are only brother and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of the process of the court.

19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao Vs. L.H.V. Prasad and Others, wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

there has been an outburst of matrimonial dispute in recent times. Marriage is a

sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes 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 rapprochement 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.

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in B.S. Joshi and Others Vs. State of Haryana and Another, in the matter of B.S. Joshi and Ors. v. State of Haryana and Anr. it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife u/s 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Code of Criminal Procedure would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

22. In the instant matter, when the complainant and her husband are divorced as the complainant-wife secured an ex-parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of the process of the court. The High Court, however, seems not to have examined these aspects carefully and have thus side-tracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the magistrate conducting the trial.

23. In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also

crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of *Ramesh v. State of Tamil Nadu* (supra) that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect was although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence u/s 498A and Section 3/4 Dowry Prohibition Act against the Appellants who are sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

25. In the case at hand, when the brother and unmarried sister of the principal accused Shyamji Mehrotra approached the High Court for quashing the proceedings against them, inter-alia, on the ground of lack of territorial jurisdiction as also on the ground that no case was made out against them under Sections 498A,/323/504/506 including Sections 3/4 of the Dowry Prohibition Act,

it was the legal duty of the High Court to examine whether there were prima facie material against the Appellants so that they could be directed to undergo the trial, besides the question of territorial jurisdiction. The High Court seems to have overlooked all the pleas that were raised and rejected the petition on the solitary ground of territorial jurisdiction giving liberty to the Appellants to approach the trial court.

26. The High Court in our considered opinion appear to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the Appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the Appellants to proceed against them. But as the contents of the FIR does not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498A/323/504/506, Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

27. We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the Appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two Appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-Respondent No. 2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these Appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed.