

(2012) 08 AHC CK 0257

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2340 of 2011

G.N. Mishra and Another

APPELLANT

Vs

Smt. Divya Awasthi and Another

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 177, 200, 202, 397
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 120B, 323, 498A, 504, 506

Citation : (2012) 9 ADJ 455 : (2013) 1 DMC 352 : (2013) 1 DMC 174

Hon'ble Judges : Vijay Prakash Pathak, J

Bench : Single Bench

Advocate : P.C. Mishra and B.C. Rai, for the Appellant; K.K. Tiwari, Om Prakash Mishra and G.A., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Vijay Prakash Pathak, J.—This application u/s 482 Cr.P.C. has been preferred by the petitioners with the prayer to quash the entire proceeding of complaint Case No. 8152 of 2010, Smt. Divya Awasthi v. Amit Kumar and others, under Sections 498A, 323, 504, 506 IPC and Section 3/ 4 Dowry Prohibition Act, Police Station-Modi Nagar, District-Ghaziabad, pending in the Court of Addl. Chief Judicial Magistrate, Court No. 5, Ghaziabad, as well as the summoning order dated 24.11.2010 passed by the learned Addl. Chief Judicial Magistrate, Court No. 5, Ghaziabad, in the aforesaid case. The brief facts of the case are that opposite party No. 2, Smt. Divya Awasthi, filed a complaint in the Court of Vth Addl. Chief Judicial Magistrate, Ghaziabad against Amit Kumar (husband), G.N. Mishra father-in-law (petitioner No. 1), Smt. Veena Mishra, mother-in-law (petitioner No. 2), Sweta Mishra (nanand) and her husband Awdhesh Mishra, alleging therein that her marriage was solemnized with Amit Kumar on 24.4.2008 at Lucknow and her father, on settlement with the petitioners gave Rs. 10 lakhs cash in lieu of the amount intended to be spent on the marriage and

also gave the necessity articles and ornaments but the petitioners and other in-laws were not satisfied with that and started abusing and torturing the complainant and treated her with cruelty, demanding Rs. 10 lakhs more and an Ascent Car. It is further alleged that due to pressure from the relatives, the petitioners took the complainant (opposite party No. 2) to Australia where her husband was working and there also they teased and tortured her for their said demand. Thereafter, on 17.12.2008, they brought her to India and dropped her at her father's place and refused to take her back unless her father fulfills their demand. It is further alleged that on 26.12.2008, the complainant went to Lucknow to attend the birthday celebration of her Nanand's son and there also the petitioners and other accused misbehaved with her and turned her out of the house. Thereafter, the complainant served a notice on them through her lawyer for handing over her ornaments etc. and to deposit the amount of Rs. 10 lakhs in her name as given by her father but the accused persons did not reply. It is further alleged that on 4.7.2010, the petitioners alongwith Sweta Mishra and Awdhesh Mishra came to the complainant's residence at Modi Nagar (Ghaziabad) where her parents treated them nicely and gave them due respect but there also they threatened the complainant that unless they get a further amount of Rs. 10 lakhs and an Ascent Car, they will not let her go to Australia. However, when her father expressed his inability to fulfill their demand, they started beating the complainant with fist and kicks and also tied her Neck with a Dupatta and tried to suffocate her and it was only with great difficulty that her parents could save her life. It is also alleged that her in-laws have not returned her stridhan as yet.

2. On receiving the said complaint, the learned Addl. Chief Judicial Magistrate, Court No. 5, Ghaziabad recorded statement of the complainant-opposite party No. 2, u/s 200 of Cr.P.C. and that of Nirmal Awasthi, her mother u/s 202 of Cr.P.C. and after considering the entire materials available on record came to the conclusion that a prima facie case against Amit Kumar (husband), under Sections 120B, 498A, 323, 506, 504 IPC and 3/ 4 Dowry Prohibition Act and against the petitioners under Sections 498A, 323, 506, 504 IPC and 3/ 4 Dowry Prohibition Act, appears to have been made out and accordingly summoned them by the impugned order dated 24.11.2010.

3. Aggrieved by the said summoning order, the present petition has been filed to quash the entire proceeding in the complaint case as well as the summoning order.

In the present petition filed by the petitioners, G.N. Mishra, father-in-law and Smt. Beena Mishra, mother-in-law, it is stated that from a careful analysis of the complaint and the statements recorded under Sections 200 and 202 of Cr.P.C, it is easily noticeable that there are no specific allegations against any of the accused persons including the petitioners and their son. All the allegations are general in nature, without any specific details about the date and manner of the alleged offences. It is further stated that most of the offences are alleged to have occurred at Lucknow, hence, only the Court at Lucknow has jurisdiction to try the

said offences in view of Section 177 of CrPC. It is also stated that in para. 14 of the complaint, Smt. Divya Awasthi (Opposite Party No. 2) has alleged that on 26.12.2008 when she came to Lucknow, the petitioners and their daughter and son-in-law mis-behaved with her. The said fact is an absolute lie as the petitioner No. 1 was in Surat on the said date to attend a religious gathering of Swami Asharam. He had some eye trouble so he was examined and treated in the Ashram Hospital, which is clear from the Medical Certificate issued by the hospital.

4. It is further averred in the petition that the incident of 4.7.2010 as alleged is also an absolute lie as on that date, the petitioners were not present in India. They reached Australia at Melbourne Airport on 15.6.2010 and returned back to India on 8.8.2010, which is proved by the stamps of the Immigration Authorities of both the countries on the passports of the petitioners. Apparently this fact was not known to the complainant as she was not living with the petitioners at Lucknow. It is further alleged that the only offence alleged to have been committed at Modi Nagar (Ghaziabad) on 4.7.2010 has been proved false. No other incident or any offence at Modi Nagar or within the jurisdiction of the Court at Ghaziabad has been mentioned in the complaint. All the alleged offences took place at Lucknow. Therefore, only the Court at Lucknow has jurisdiction to try the said offences. It is also alleged that on similar facts, the complainant lodged as many as four cases against the petitioners, their son, daughter and son-in-law which are u/s 9 of the Hindu Marriage Act, under Sections 12, 17, 19(8) of the Domestic Violence Act, u/s 125 of Cr.P.C. and the case No. 8152 of 2010 that is subject-matter of the present petition.

5. In counter-affidavit filed by the opposite party No. 2, Smt. Divya Awasthi, most of the contents of the petition have been denied and it has been stated that the complaint was filed on true facts. Regarding incident dated 26.12.2008, it is stated that when she came to Lucknow, the petitioners misbehaved with her. It has also been stated that the applicant No. 1 namely G.N. Mishra gave her a threat on the telephone and other accused also threatened her that how dare she came to Lucknow and entered in his house without permission of petitioner No. 1. Regarding incident dated 4.7.2010, which was alleged to have occurred at Modi Nagar, and it was stated by the petitioners in paragraph No. 15 of the petition that they were in Australia on the said date, it is stated that the said contents of the paragraph No. 15 of the petition are not admitted, hence denied.

6. In rejoinder-affidavit, the petitioners reiterated the averments made in the petition.

On behalf of the petitioners supplementary affidavit has also been filed at the time of argument, to which the learned counsel for the opposite party No. 2 did not propose to file supplementary counter-affidavit. In the said supplementary affidavit it is stated that the application for divorce moved by Amit Kumar (husband) in the Federal Magistrate's Court of Australia, has been allowed after considering the reply sent by opposite party No. 2, (wife) and hence marriage

between Amit Kumar and opposite party No. 2 has been dissolved w.e.f. 2nd January, 2012.

7. Heard Sri P.C. Mishra, learned counsel for the petitioners, Sri O.P. Mishra, learned counsel for the opposite party No. 2 as well as learned AGA for the State and perused the record.

Learned counsel for the petitioners has contended that the entire story of the complaint is concocted as there is no specific allegation of cruelty, torture or demand of dowry and except one incident that is alleged to have taken place on 4.7.2010 at Modi Nagar, Ghaziabad, all the incidents, as alleged (not admitted), have taken place at Lucknow, hence, the Court at Lucknow has jurisdiction to try the offences and not the Court at Ghaziabad. It is further contended that the alleged incident dated 4.7.2010 is absolutely false as on that date the petitioners were not present in India and were in Australia, which is clear from the stamps of the Immigration Authorities of both India and Australia affixed on the passports of the petitioners which show that they reached Australia on 15.6.2010 and returned back to India on 8.8.2010. The said fact has not been controverted by the opposite party No. 2. It is also contended that the present complaint has been filed by the opposite party No. 2 only with the intention to harass the petitioners and put them in difficulty for no fault of their.

8. Learned counsel for the petitioners has further contended that the learned Magistrate by his impugned order dated 24.11.10 has illegally summoned the petitioners alongwith Amit Kumar, husband of the opposite party No. 2, without considering the entire materials and allegations in the complaint and the statement of the complainant and witness. Whereas, the learned Magistrate did not summon Sweta Mishra and Awdhesh Mishra, (nanand and her husband) finding no specific allegation against them.

9. On the other hand, learned counsel for the opposite party No. 2 has submitted that the complaint was filed on true facts which is also supported by the statement of the complainant and the witness (her mother) and the learned Magistrate has rightly summoned the petitioners alongwith Amit Kumar to face trial for the aforesaid offences. He has also submitted that the plea of alibi cannot be taken into consideration at this stage. It is also submitted that at this stage only prima facie case is to be seen and considered.

10. Learned counsel for the opposite party No. 2 has also cited a verdict of Hon"ble Supreme Court given in State of Orissa v. Debendra Nath Padhi, 2004 LAWS (SC) 11-67. In the said verdict, the Hon"ble Apex Court has been pleased to hold that at the time of framing of charge or taking cognizance, accused has no right to produce any material to prove his innocence. It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. The accused cannot at that stage invoke Section 91 Cr.P.C. to seek production of any document to show his innocence.

The Hon"ble Apex Court in the said verdict has also observed in paragraph 21 as

follows :

(21.) It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing u/s 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction u/s 482 of the Code where alongwith the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.

11. In another verdict of the Hon''ble Apex Court in Anita Malhotra v. Apparel Export Promotion Council and Another, (2012) 1 SCC 520, it has been observed in para 20 that though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed on record by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction u/s 482 of Cr.P.C.

12. The Hon''ble Apex Court in its verdict Harshendra Kumar D. Vs. Rebatilata Koley Etc., , has observed that it is fairly settled now that while exercising inherent jurisdiction u/s 482 or revisional jurisdiction u/s 397 of Cr.P.C. in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents which are beyond suspicion or doubt-placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

13. The Hon''ble Apex Court in its verdict in Preeti Gupta and Another Vs. State of Jharkhand and Another, , has held that it is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the Courts in our country including the Supreme Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of society. It is a matter of common experience that most of these complaints u/s 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. It is seen that a large number of such complaints are not even bona fide and are filed with oblique motive.

14. Keeping in view the law laid down by the Hon''ble Apex Court in the aforesaid verdicts, now coming to the facts of the present matter, admittedly the marriage

of opposite party No. 2, Smt. Divya Awasthi was solemnized on 24.4.2008 at Lucknow with Amit Kumar, son of the petitioner No. 1. In the complaint filed by opposite party No. 2, it is stated that by the time their marriage was fixed, Amit Kumar got a job in Australia and he left for Australia. It is also alleged that after marriage the petitioners, her husband and other in-laws were not satisfied with the dowry and started demanding more dowry including Rs. 10 lakhs cash and an Ascent Car. It is also alleged in paragraph 6 of the complaint that the husband of opposite party No. 2 was also not satisfied with the marriage and he on 1.5.2008 left for Australia. A perusal of complaint shows that most of the allegations regarding demand of dowry, harassment and cruelty are general in nature and are alleged to have occurred at Lucknow, except two incidents which are alleged to have occurred at Modi Nagar (Ghaziabad). It is also alleged in the complaint that due to pressure from relatives, the petitioners took the complainant to Australia but there also they started teasing and torturing her. In para 13 of the complaint, it is alleged that on 17.12.2008 the petitioners brought the complainant with them back to India and dropped her at Modi Nagar and told her that she will come back only when her father gives Rs. 10 lakhs and Ascent Car. They also abused her badly and threatened to kill her if their said demand is not fulfilled. The said allegations do not appear to be probable as when the husband of opposite party No. 2 was in Australia, the petitioners being father-in-law and mother-in-law, normally would not make such a demand of Rs. 10 lakhs and Ascent Car. Moreover the said facts have not been supported by the complainant in her statement u/s 200 Cr.P.C. and statement of her mother as a witness u/s 202 Cr.P.C. Both, the complainant and her mother, have stated nothing about the said incident of demand of Rs. 10 lakhs and an Ascent car by the petitioners at Modi Nagar (Ghaziabad), as they have stated only this much that on the saying of father of the complainant, the complainant alongwith her father-in-law and mother-in-law (petitioners) went to Australia, where her husband, mother-in-law and father-in-law also demanded Rs. 10 lakhs and an Ascent Car. Thereafter, due to non-fulfillment of the said dowry demand, they came with her to India and left her at her parents' house. Subsequently, she went to Lucknow but she was not allowed to enter into the petitioner's house. Thus, the allegation of asking dowry of Rs. 10 lakhs and Ascent Car at Modi Nagar (Ghaziabad), as alleged in paragraph 13 of the complaint, is not supported by the complainant and her mother. Thus, it is apparent that no such demand of dowry was made at Modi Nagar by the petitioners and the said allegation appears to have been made only for the sake of making allegations.

15. The next incident as has been alleged to have occurred at Modi Nagar, is on the day of 4.7.2010 and in paragraph 16 of the complaint it is alleged that the petitioners alongwith their daughter and son-in-law came on 4.7.2010 to Modi Nagar at the complainant's residence and that the parents of the complainant treated them nicely and gave them due respect but there also they threatened the complainant that until and unless they get Rs. 10 lakhs and an Ascent Car, they will not let her go to Australia. It is also alleged that when the complainant

requested that she will not be able to fulfill the said demand due to the condition of her father, the petitioners and others became angry and beat her with fist and kicks and also tied her neck with Dupatta and tried to suffocate her and with great difficulty her parents could save her life.

16. The said incident also does not appear to be true as regarding the said incident the petitioners have categorically stated in paragraph 15 of their petition that the said allegation was an absolute lie as the petitioners were not even present in India on that date i.e. 4.7.2010 as they reached Australia on 15.6.2010 at Melbourne Airport and returned back to India on 8.8.2010, which is proved by the stamps of the Immigration Authorities of both the countries on the passports of the petitioners. Alongwith the petition, the Photostat copies of passports of petitioner No. 1 and 2 have been filed as Annexure Nos. 6 and 7 respectively in which there is stamp dated 14.6.2010 of Indira Gandhi International Airport, Delhi and stamp dated 15.6.2010 of arrival at Melbourne Airport and stamp dated 7.8.2010 of Immigration Authorities of Australia, which clearly shows that both the petitioners left India for Australia on 14.6.2010 and reached Melbourne Airport on 15.6.2010 and again left Australia on 7.8.2010. Thus, on the alleged date of incident i.e. on 4.7.2010, the petitioners were abroad in Australia and not in India. The said fact has been alleged by the petitioners in paragraph 15 of their petition but in counter-affidavit, the contents of their passports having stamps of Immigration Authorities of India and Australia has not been controverted. In counter-affidavit, in reply to said paragraph 15 of petition, it is simply stated that the contents of para 15 of the application is not admitted, hence denied. The stamps of Immigration Authorities of India and Australia as affixed on the passports of the petitioners, clearly show that on 4.7.2010 i.e. alleged date of incident, they were in Australia, which totally belies the said allegation of committing mar-peat and tying of her neck with Dupatta.

17. It is relevant to mention here that the said document of passports is a public document, which is admissible in evidence and moreover, the same has not been controverted by the opposite party No. 2. Hence, the incident of 4.7.2010 appears to be totally false.

18. In the complaint, in paragraph 14, one incident of 26.12.2008 is also alleged by the complainant that on the said date it was the birthday of son of her husband's sister (nanand) and she went to Lucknow, where the petitioners including her nanand and her husband misbehaved with her. About the said incident, when in the petition in paragraph 14, it was alleged that on 26.12.2008, the petitioner No. 1 was in Surat to attend a religious gathering of Swami Ashram and where he had also some eye trouble so he was medically examined and treated in the Ashram Hospital, which is clear from the Medical Certificate (annexure 5 of the petition) issued by the hospital dated 26.12.2008, then in counter-affidavit filed by opposite party No. 2 (complainant), it is stated that the petitioner No. 1 namely G.N. Mishra threatened her on telephone, hence, it is

also clear that on 26.12.2008, the petitioner No. 1 was not present in Lucknow. Moreover, the said incident is alleged to have occurred at Lucknow.

19. As already stated above, most of the incidents are alleged to have occurred at Lucknow except two i.e. first on 17.12.2008, when the petitioners returned to India alongwith the complainant and dropped her at Modi Nagar, where also they are alleged to have demanded Rs. 10 lakhs and Ascent Car but the said fact has not been supported in the statement of the complainant or the witness (her mother), hence as already stated above the said allegation appears to have been made only for the sake of making allegation, having no basis or prima fade evidence.

20. Regarding the second incident i.e. main incident, which is alleged to have occurred on 4.7.2010 at Modi Nagar (Ghaziabad) that the complainant was beaten by kicks and fist by the petitioners, her nanand and her husband and also her neck was tied with Dupatta, is also not true as on 4.7.2010, the petitioners were in Australia as already stated above. Hence been the said incidents which are alleged to have occurred at Modi Nagar (Ghaziabad) are apparently false and it appears that the said incidents were concocted with the intention to bring the case under jurisdiction of Court at Ghaziabad. All other incidents are alleged to have taken place at Lucknow over which, in view of Section 177 of Cr.P.C., Court at Ghaziabad has no jurisdiction to try the same.

21. During the course of argument, supplementary affidavit was also filed on behalf of the petitioners in which it has been stated that Amit Kumar, husband of opposite party No. 2 Smt. Divya Awasthi had filed an application for divorce in the Federal Magistrates Court of Australia at Melbourne and after receiving the reply of opposite party No. Kushi Nagar 2, the said application was allowed and the marriage between said Amit Kumar and Smt. Divya Awasthi was dissolved by order dated 1.12.2011, with effect from second day of January, 2012. It is also stated in the supplementary affidavit that the said Amit Kumar has renounced Indian citizenship sometime back and that he is no longer an Indian citizen and he also has no connection with the deponent i.e. G.N. Mishra (petitioner No. 1) from January, 2010.

22. Ag Kushinagarainst the said supplementary affidavit, the learned counsel for the opposite party No. 2 did not propose to file any reply or supplementary counter-affidavit, hence, the facts of the said supplementary affidavit remain uncontroverted. The said fact shows that now the husband of opposite party No. 2 has obtained a decree of divorce from the Federal Magistrates Court of Australia at Melbourne and now marriage between Amit Kumar (husband) and opposite party No. 2, Smt. Divya Awasthi (wife) has been dissolved. The said Amit Kumar has also renounced Indian citizenship.

From the aforesaid discussions and consideration of the materials, including the passports of the petitioners having stamps of Immigration Authorities of India and Australia, it is clearly revealed that regarding the incident dated 26.12.2008,

the complainant and her mother have stated nothing in their statement and regarding incident dated 4.7.2010, the petitioners were not present in India on the said date i.e. on the day of the alleged incident which is said to have taken place at Modi Nagar (Ghaziabad) and the said document belies the allegations in the complaint regarding the same. The said document is admissible in evidence being a public document and as the same is uncontroverted, hence, there is no reason to disbelieve the same. Since the said document appears to be beyond suspicion or doubt and is an unimpeachable piece of evidence which may be taken into consideration while deciding the present petition u/s 482 Cr.P.C., hence, for promotion of justice and to prevent injustice or abuse of process of the Court, this Court can interfere in the matter and looking into the said materials, the allegations made by the complainant appear to be unreliable. Considering the said documents, this fact is clearly borne out that at the time of the said incident, the petitioners were in Australia and not in India and hence the allegations made in the complaint regarding incident dated 4.7.2010 are not reliable and on the basis of said allegations, the summoning of the petitioners in the Court at Ghaziabad does not appear to be proper and justified and the same is liable to be quashed.

In view of the aforesaid considerations, the present petition is allowed and the entire proceeding of complaint case No. 8152 of 2010 Smt. Divya Awasthi and Amit Kumar under Sections 498A, 323, 504, 506 IPC and D.P. Act pending in the Court of Additional Chief Judicial Magistrate, Ghaziabad including summoning order dated 24.11.2010 passed by the said Court in the aforesaid case are hereby quashed. However, the complainant (opposite party No. 2) may file a fresh complaint, if she so chooses, before appropriate Court regarding her other grievances and incident alleged to have occurred at Lucknow.