

(2014) 12 AHC CK 0178
In the Allahabad High Court

Case No : Criminal Misc. Application Nos. 3909 of 2007 and 1148 of 2008

Jitendra Kumar Srivastava and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178(c), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304-B, 306, 323, 498A, 498-A

Citation : (2015) 88 ALLCC 562

Hon'ble Judges : Vishnu Chandra Gupta, J

Bench : Single Bench

Advocate : Satyendra Kr. Singh and Abhishek Misra, Advocates for the Appellant; Ashish Srivastava and D.K. Singh, Advocates for the Respondent

Judgement

Vishnu Chandra Gupta, J.—By means of Criminal Misc. Case No. 3909 of 2007 under section 482 Code of Criminal Procedure (for short Cr.P.C.) petitioners Jitendra Kumar Srivastava (Maternal uncle Mama), Manju Srivastava (Maternal aunt Mami), Vijay Kumar Srivastava (father in law), Usha Srivastava (Mother in law), Manish Kumar Srivastava (Dever) and Vivek Kumar Srivastava (Devar) and in Criminal Misc. Case No. 1148 of 2008, under section 482 Cr.P.C., petitioner Neeraj Kumar Srivastava (Husband) have prayed for quashing of charge-sheet No. 157/2007 dated 24.8.2007 filed in case crime No. 225 of 2007 under sections 498A, 323, 504, and 506 IPC and section 3/4 of Dowry Prohibition Act, P.S. Kotwali Akbarpur District Ambedkar Nagar and also summoning order dated 26.10.2007 passed by the Chief Judicial Magistrate, Ambedkar Nagar in Criminal Case No. 3321 of 2007 State v. Vijay Kumar Srivastava and others. Since in both these petitions common question of facts and law are involved so, they are being disposed of by a common order.

2. Brief facts for deciding these cases are that Hemant Krishan Srivastava opposite party No. 2, lodged a First Information Report (for short F.I.R.) alleging therein that marriage of his sister Kalpana Srivastava had taken place at

Allahabad on 15.10.2002 with Neeraj Kumar Srivastava, (petitioner in Criminal Misc. No. 1148 of 2008). At the time of marriage petitioners Vijay Kumar Srivastava (father in law), Usha Srivastava (Mother in law), Manish Kumar Srivastava (Dever) and Vivek Kumar Srivastava (Devar) demanded a sum of Rs. 1 lac cash and one Santro car. However, Vidai took place but aforesaid demand by petitioners persisted. After marriage husband Neeraj Kumar Srivastava went to Nagpur alongwith her wife Smt. Kalpana Srivastava where Neeraj Kumar Srivastava was doing business related to computer. Opposite party No. 2 alleged that whenever Smt. Kalpana Srivastava used to visit Allahabad, she complained against the petitioners for causing physical and mental cruelty by her in-laws. At Nagpur in April, 2005 a female child born out of wedlock of Neeraj Kumar Srivastava and Kalpana Srivastava. Parents and brother of Kalpana Srivastava visited Nagpur and gave gifts and ornament etc. on the occasion of birth of child, but in-laws were not satisfied and continued to press their demand of car. In June, 2005, she came to her Maika-village Shahjadpur, Akabarpur, District Ambedkar Nagar where function of birth of Kalpana's daughter was arranged by opposite party No. 2, in which in-laws were invited. This function was attended by Vijay Kumar Srivastava (father-in-law) Usha Srivastava (mother-in-law) Vivek Kumar Srivastava (Dever) and Sarika Srivastava (sister in law). Thereafter the parents of Kalpana Srivastava requested to in laws for Vidai of her daughter Kalpana Srivastava, but they refused to take Kalpana Srivastava back to matrimonial home and said that unless the demand of car is fulfilled, they shall not allow Kalpana Srivastava in their house. Kalpana Srivastava continued to remain in her parents' house. The in laws even refused to talk her parents on phone. The family members of Kalpana Srivastava went to matrimonial home at Allahabad for several time and requested for Vidai of Kalpana Srivastava. Once they went to Allahabad along with Kalpana Srivastava, but in laws did not permit them to enter into house. Thereafter, opposite party No. 2 went to Nagpur. He found that the house of Neeraj Kumar Srivastava was locked. He asked the whereabouts of Neeraj Kumar Srivastava from his parents, but they did not inform about Neeraj Kumar Srivastava. Consequently he returned back from Nagpur.

3. On 4.3.2007 again opposite party No. 2 along with Kalpana Srivastava went to Nagpur. He found that the house where Neeraj Kumar Srivastava was residing as tenant, was closed . He contacted to landlord of Neeraj Srivastava who informed that Neeraj Kumar Srivastava is not living in the house for last one and half years and the key of the house is with Jitendra Kumar Srivastava his Mama and Manju Srivastava Mami who are also living in Nagpur. Thereafter they contacted Jitendra Kumar Srivastava and Manju Srivastava. They replied that they do not know the whereabouts of Neeraj Kumar Srivastava. They also told that Neeraj Kumar Srivastava do not want to keep Kalpana Srivastava and he will remarried soon wherein he will get a car also. Thereafter, they came back to Ambedkar Nagar and lodged F.I.R.

4. Investigation was carried out. Charge-sheet was filed on 24.8.2007 by the

police. The learned Magistrate took cognizance thereon on 26.10.2007 and proceeded against all the petitioners.

5. Heard the learned Counsel for the petitioners and learned AGA and also perused the record.

6. The learned Counsel for the petitioners would submit that;

1. Petitioner Nos. 1 and 2 of Criminal Misc. Case No. 3909 of 2007 are residing separately with Neeraj Kumar Srivastava at Nagpur. The petitioners No. 1 and 2 Jitendra Kumar Srivastava and Manju Srivastava are not relative of husband of Kalpana Srivastava within the meaning of section 498A I.P.C. Therefore the prosecution is bad in law. In this regard they relied upon a judgment of Apex Court reported in State of Punjab v. Gurmeet Singh 2014 (86) ACC 952 (SC).

2. Entire incident took place at Allahabad or at Nagpur, therefore, the Court of district Ambedkar Nagar has no jurisdiction to entertain, try and decide the case. It has been contended by learned Counsel for the petitioner that no part of cause of action arose at Ambedkarnagar as is evident from the allegations made in FIR and the material collected during investigation and available in case diary. The offence under section 498A IPC is not a continuing offence hence, the courts at Ambedkar Nagar has no territorial jurisdiction to entertain and try the case. Consequently, the proceedings pending at Ambedkar Nagar are liable to be quashed as held by Hon"ble Supreme Court in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, , and Dr. (Mrs.) Sarojini Arawattigi and another v. State of U.P. 2007 (59) ACC 548 (SC).

3. Petitioner Nos. 3 to 6 are also residing separately at Allahabad from Neeraj Kumar Srivastava and Kalpana Srivastava. Therefore, they have been wrongly summoned and falsely implicated in this case on the basis of false allegation. Vijay Kumar Srivastava petitioner No. 3 pleaded that by publication in news paper on 15.12.2005, he declared that he is totally separate from Neeraj Kumar Srivastava and all the relations had come to end in between Neeraj Kumar Srivastava and petitioners No. 3 to 6.

7. On the contrary, replying the first question learned A.G.A. supported the stand of prosecution and stated that accused petitioners have rightly been summoned. Petitioners came at Ambedkar Nagar in the month of June, 2005 in connection with function of child of Kalpana Srivastava where they also demanded dowry and refused to take back her to matrimonial home, therefore part of cause of action arises at Ambedkar Nagar also. In view of the above, the court at Ambedkar Nagar has territorial jurisdiction to try and decide the case.

8. Learned Counsel appearing on behalf of the O.P. No. 2 vehemently argued that offence under section 498A IPC is a continuing offence as held by Hon"ble Supreme Court in its latest judgment in Sunita Kumari Kashyap Vs. State of Bihar and Another, .

Question No. 1

9. The learned AGA contended that it is true that petitioner Nos. 1 and 2 are Mama and Mami of husband of Kalpana and not the relative but they also instigate others to demand car.

10. This question is not res integra. In Gurmeet Singh's case (supra) the Hon'ble Supreme Court has held that term "any relative of her husband" means such persons, who are related by blood, marriage or adoption and held that brother of husband's aunt by marriage (chachi-wife of brother of husband's father) cannot said to be relative of deceased's husband. While delivering the judgment their Lordships also clarified that though a person who is not relative of husband, may not be prosecuted for offence under sections 498A and 304-B I.P.C., but it does not mean that such person cannot be prosecuted for any other offence like offence under section 306 I.P.C. in case offence is made out as per allegation.

11. In view of the above it is crystal clear that Jitendra Kumar Srivastava and his wife Manju Srivastava, being maternal uncle and maternal aunt of Neeraj Kumar Srivastava will not come within the ambit of term "relative of her husband" used in section 498A I.P.C.?

12. In view of above fact and circumstances of this case and also keeping in view the ratio propounded in the case cited herein above, I am of the firm view that the present proceedings against the petitioners No. 1 and 2, who are Mama and Mami and resident of Nagpur Maharashtra living separately with husband of Smt. Kalpana, not related by blood or marriage or adoption with husband of Smt. Kalpana, and against whom no prima facie case is made out for want of ingredients under section 498A, 323, 506 IPC and section 3/4 DP Act, are abuse of the process of the Court and the criminal proceeding is manifestly attended with mala fide and maliciously instituted with an oblique motive to harass and pressurize the petitioners. More over, continuance of the proceedings against the petitioner would not serve the ends of Justice. They have not been summoned for abatement of any offence hence, the proceedings against them in pursuance of impugned summoning order is nothing but an abuse of process of law.

13. Therefore, it is a fit case in which this Court must exercise its jurisdiction under section 482 Cr.P.C. by quashing all proceedings against the petitioners No. 1 and 2 Jitendra Kumar Srivastava and his wife Manju Srivastava in Criminal Case No. 3321 of 2007 arising out of charge sheet related to Crime No. 225 of 2007, under sections 498-A, 323, 506, 504 IPC and 3/4 DP Act, Police station Kotwali Akbarpur, District Ambedkar Nagar pending in the court of Chief Judicial Magistrate Ambedkar Nagar.

Question No. 2

14. So far as question of jurisdiction is concerned, from the perusal of contents of complaint, it is crystal clear that sequence of cause of action extended till Ambedkar Nagar as is evident from the contents of complaint. The complainant himself categorically mentioned that in June, 2005 the in-law visited Ambedkar

Nagar to attend function arranged by the parents of Kalpana Srivastava of birth of her child at his house in Shajadpur, Akbarpur District Ambedkar Nagar, where petitioners 3 to 6 came and demanded car. They refused to take back Kalpana unless the demand of car is fulfilled.

15. After going through the judgment cited at bar, the case of Y. Abraham Ajith case (supra) was considered in Sunita Kumari's case (supra) and in view of the factual matrix of the case in Sunita Kumari Kashyap's case (supra) the Court held that the offence was also committed at Gaya where the husband came and maltreated the victim.

16. There is no conflict in between the ratio of two decisions of the Apex Court propounded in Y. Abraham Ajith's case (supra) and in Sunita Kumari Kashyap's case (supra). The law which has been propounded by the Apex Court should be tested on touch-stone of facts of the each case. In Y. Abraham Ajith's case (supra) it has not been held that offence under section 498A is not a continuing offence but it was observed that in view of the fact of case no part of cause of action was arose at Chennai, therefore, the logic of section 178(c) of Cr.P.C. relating to continuing offence cannot be applied.

17. In view of the fact of this case it cannot be said that the Court at Ambedkarnagar would have no jurisdiction to entertain the complaint.

Question No. 3

18. The plea of separate living with husband of Kalpana raised by other petitioners No. 3 to 6 based on disputed question of facts and specific allegations have been made for demand of dowry and causing cruelty upon Kalpana so at this stage proceedings against petitioners No. 3, 4, 5 and 6, who are the parents and brothers of husband cannot be quashed.

Conclusion

19. In View of discussions made herein above the petition No. 3909 of 2007 is partly allowed.

20. The impugned summoning order and all consequential proceedings against the petitioners No. 1 and 2 Jitendra Kumar Srivastava and his wife Manju Srivastava in Criminal Case No. 3321 of 2007 arising out of charge sheet related to Crime No. 225 of 2007, under sections 498-A, 323, 506, 504 IPC and 3/4 DP Act, Police station Kotwali Akbarpur, District Ambedkar Nagar pending in the Court of Chief Judicial Magistrate Ambedkar Nagar are quashed. However petition No. 3909 of 2007 of rest of the petitioners No. 3, 4, 5 and 6 is dismissed.

21. The petition No. 1148 of 2008 is also dismissed. Interim orders stand vacated.