
(2013) 01 AHC CK 0426

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No"s. 290 and 990 of 2012

Neeraj Goswami and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 177, 178, 178(c), 179
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 19(ii), 9
Penal Code, 1860 (IPC) — Section 179, 313, 323, 34, 406
Protection of Women From Domestic Violence Act, 2005 — Section 10(2), 12, 12(1), 12(1), 27

Citation : (2013) 2 ACR 1345 : (2013) 2 ACR 1335 : (2013) 3 ALJ 281 : (2013) CriLJ 1767 : (2014) 1 Crimes 469 : (2013) 3 DMC 178

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Advocate : Girish Chandra, for the Appellant; Suresh Chandra Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—Heard Mr. Girish Chandra, learned counsel for the petitioner as well as Mr. Suresh Chandra Shukla, learned counsel for the respondents in both the cases. Since both the cases are based on common facts, they are decided by the following common order.

Criminal Misc. Case No. 290 of 2012

2. Through the instant application the applicants have prayed to quash the entire proceedings of case No. 11032 of 2010 : State of U.P. v. Neeraj Goswami and others, pending before the court of Additional Chief Judicial Magistrate, Court No. 27, Lucknow, under Sections 498-A, 313, 323, 406, 506 IPC and 3/4 Dowry Prohibition Act, Police Station Manila Thana, Lucknow as also to set aside the judgment and order dated 16th of January, 2012, passed by the learned Additional Chief Judicial Magistrate, Lucknow.

3. By means of order dated 16th of January, 2012, the applicant's objection against the jurisdiction of the learned Additional Chief Judicial Magistrate, Lucknow has been rejected. The applicants have stated that the First Information Report lodged against them indicates that the entire allegation is vague and no specific date has been indicated clearly about the date of occurrence of offence. The applicants are living at Gurgaon, State of Haryana, except applicant Nos. 4 and 5, as since before the marriage of applicant No. 1, the applicant No. 4 is living in U.S.A. and since last more than three years the applicant No. 5 is living in Patna, State of Bihar. She has also no concern with the family affairs of the applicant Nos. 1 to 3. So far as the applicant No. 6 is concerned, he never resided with applicant Nos. 1 to 3 at Gurgaon as he was studying in Delhi living separately nor has he any concern with their family affairs.

4. They have also raised finger over the fairness of investigation that being biased and under the influence of father of the opposite party No. 2, who is posted in 35th Bn.P.A.C., Mahanagar, Lucknow. It is stated by them that the grievance of opposite party No. 2 is forceless being based on concocted story with a bundle of lies. They have also denied from making any attempt to burn to the opposite party No. 2 as well as beating her. It is stated that all the alleged incidents took place within the territory of Gurgaon, State of Haryana and no incident occurred in district Lucknow, State of U.P. so as to give authority to the police of district Lucknow to inspect. It is further stated that at the time of lodging of First Information Report, the opposite party No. 2 was an employee of Hewitt Noida, U. P. working as Auditor Associate and was getting salary of Rs. 25,000/- per month. Thus, it is established that since the date of her marriage she was living at Gurgaon. It is further stated that after marriage, she started living separately from her husband and other family members in a rented House No. U-9/44, DLF, Phase-III, Gurgaon, Haryana, therefore, it is baseless and wrong and malafide to say that she is residing in House No. 5, 35th Bn.P.A.C., Mahanagar, Lucknow. The marriage of the applicant No. 1 and opposite party No. 2 was solemnized on 20.2.2009 at Lucknow. The father of the opposite party No. 2 who is a Sub-Inspector in police department has behaved in a very rude manner right from the date of marriage and used to threat the family members of applicant No. 1. It is further stated that after the marriage, the applicant No. 1 and opposite party No. 2 were living at 3rd floor of residential house of applicant No. 3, living separately from applicant Nos. 2 and 3 having a separate kitchen for them, so that a peace may be maintained in the family. Now the applicant No. 1 is living in House No. 7/16, DLF, Phase-III, Gurgaon, Haryana. It is further stated by them that on 23rd of May, 2010 opposite party No. 2 came down shouting after having fierce firing with applicant No. 1 and causing injuries to him. She also quarrelled with applicant No. 2 and tore her clothes and snatched her gold chain and caused injuries to applicant No. 3. They informed about the incident to the local police and thereafter went to Sanjivani Hospital for their treatment. Thereafter both of them, husband and wife, started separate living. The father of opposite party No. 2 came to the house of the applicant Nos. 1 to 3 alongwith

other persons and threatened the applicant No. 1 to leave the rented house. Under threat the applicant No. 1 vacated the house. Thus it is stated that all incidents took place at Gurgaon. Therefore, there was no occasion to register the first information report for the incident took place at Gurgaon, at Lucknow. But it appears that the same has been registered at the behest and influence of the father of the opposite party No. 2, who himself is the police Sub-Inspector, only just to harass the applicants. He also interfered in the investigation by misusing his official position, therefore, the investigation has not been done in fair and proper manner. Further there is no allegation of demand of dowry, therefore, it is established that no offence is made out as alleged, against the applicants. It is further stated by the applicants that the offence as alleged in the First Information Report and the materials collected through the investigation, make it abundantly clear that the offences are not continuing offences, hence the court of Additional Chief Judicial Magistrate, Lucknow has no territorial jurisdiction to deal with the case.

5. Per contra the opposite party No. 2 submitted that all the applicants are residing jointly and have committed offence as stated in the First Information Report. They tortured her mentally as well as physically and also got aborted her forcibly. They also demanded dowry. On account of non-fulfillment of their demand, they thrown out her, therefore, she started to live at Lucknow with her parents and lodged the First Information Report. Since they have continuously been torturing her even after thrown out her from their residence, therefore, she lodged the First Information Report at Lucknow. She also expressed her willingness to live with her husband, but the applicant No. 1 is not ready to keep her with him. It is further stated that even after filing of the charge sheet the applicant No. 1 has neither appeared before the court nor has been granted bail, therefore, for this reason alone the instant application moved through the counsel is liable to be rejected as not maintainable.

Criminal Misc. Case No. 990 of 2012

6. Through this application, the applicants have prayed to quash the entire proceedings of Case No. 509 of 2010 : Preeti Goswami v. Neeraj Goswami and others, pending u/s 12 of the Protection of Women from Domestic Violence Act (in short Domestic Violence Act), pending in the court of VIII Additional Chief Judicial Magistrate, Lucknow as also to quash the order dated 16th of February, 2012, passed by the learned Additional Chief Judicial Magistrate, Court No. 32 in the said case.

7. By means of order dated 16th of February, 2012, the learned Additional Chief Judicial Magistrate, Lucknow has rejected the applicants' objection raised against the jurisdiction of the court concerned and has entertained the application moved by the opposite party No. 3 u/s 12 of the Domestic Violence Act.

8. The applicants' submitted that the learned Additional Chief Judicial Magistrate, Lucknow under misconception of law on the basis of report dated 19.7.2011

submitted by the District Protection Officer, Lucknow issued notices to the applicants to proceed with the case, whereas it suffers from jurisdiction. It is stated that whole incident as alleged have taken place at Gurgaon in the State of Haryana, as the application moved by the opposite party No. 3 itself does not indicate any incident as alleged to have taken place at Lucknow. It is further stated that on the date of filing of the application she was employed in a private company situated at Gurgaon, Haryana. It is further stated that from bare perusal of averments made in paragraph 14 of the application, it appears that opposite party No. 3 used to make casual visits to Lucknow for check up during her employment at Gurgaon while residing at Gurgaon. It is further stated that the learned Additional Chief Judicial Magistrate, Lucknow did not call domestic violence report from the District Protection Officer, Gurgaon, Haryana, who is the competent authority being appointed under the Act for the area where incident is alleged to have taken place. The learned Magistrate called a report from the District Protection Officer, Lucknow where no incident took place. The applicants submitted that the allegations made in the instant case that the applicants have demanded dowry over phone from her father is contrary to the stand taken in prosecution case i.e. case crime No. 72 of 2010 (Case No. 10132 of 2010), in which no such allegations have been made against the applicants. It is also stated by them that the opposite party No. 3 has also filed a petition u/s 9 of the Hindu Marriage Act as well as Maintenance Case u/s 125 Cr.P.C. in the court of Principal Judge, Family Court, Lucknow, which are frivolous in nature. Since she was neither residing nor employed at Lucknow on the date of filing of application i.e. 8th of October, 2010, therefore, the application moved by her is not maintainable as it lacks territorial jurisdiction.

9. On the basis of the aforesaid averments the learned counsel for the applicants submitted that the learned court below has committed manifest error of law in rejecting the petitioner's objection on the point of jurisdiction. He drew attention of this court towards the contents of the application moved by the respondent No. 3 before the learned Magistrate, in paragraph 11 of which she has stated that on 23rd of May, 2010 the applicants and other members of his family assaulted her and thrown out from home. She got treatment in Nilkanth Hospital and since thereafter she is residing at her parents' home.

10. In light of the aforesaid facts it is stated that it is admitted by her that on 23rd of May, 2010 when she was at Gurgaon the incident took place thereat and only thereafter she started residing with her parents, therefore, her application was not maintainable before the court at Lucknow.

11. The learned counsel for the applicants further submitted that on the date of application, she had shown her willingness to leave the job, but it is admitted that on that date she had been working in the private company at Gurgaon and the resignation submitted by her was not accepted by that date. He further stated that in paragraph 20 of the application, she stated that now she would live in her parental house as nobody is there except her parents to look after her.

Thus, it is established that on the date of application, she was not residing at Lucknow, rather she expressed her will to live at Lucknow in her parents' home in future.

12. In support of their submissions the applicants have also brought on record the certificate of status of her job dated 20th of October, 2010, 23rd of November, 2010 and 11th of April, 2011 and submitted that it certifies her status in service in the Company and discloses that she is in active employment of the Company, namely, Hewitt Associates (India) Private Limited, Gurgaon.

13. Besides above they have also brought on record one copy of e-mail sent on 29th of September, 2010 to Head of Department and Managing Director of the applicant No. 1 (husband) not to entertain the applicant No. 1 in the employment of their organization, in which she has admitted that she is working as Team Developer Quality Audit in Hewitt Associates.

14. Per contra the opposite party No. 3 submitted that she has repeatedly submitted that she is residing in the house of her parents since the time when she was thrown away from the house of her in-laws i.e. on 23rd of May, 2010 and she had submitted resignation from service to her appointing authority at Gurgaon, Haryana. She further stated that she was employed in Hewitt Associates, Noida U.P., but on becoming pregnant, she submitted resignation on 15th of September, 2010 expressing her willingness to discontinue the job due to complications developed during pregnancy as the doctor advised to take off from service to avoid any risk. It is further stated that she got admitted herself in Verma Clinic, Indira Nagar, Lucknow and delivered a female child on 14th of January, 2011.

15. Besides the aforesaid facts there are claims and counter claims of abusing and torturing to each other as well as their family members.

16. In support of the submissions of the applicants, the learned counsel for the applicants Mr. Girish Chandra, cited some decisions, which are discussed hereunder:-

(1) State of Haryana and others Vs. Ch. Bhajan Lal and others, . Relevant portion of paragraph 102 of the same is reproduced hereunder:-

102..... Sub-para (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(2) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, , Relevant paragraph 7 of the same is reproduced hereunder:-

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also

for the court to take into consideration and special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

Code of Criminal Procedure, 1973

178. Place of inquiry or trial.-(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.-When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

The Protection of Women from Domestic Violence Act, 2005

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

17. Cases cited by the learned counsel for the petitioners:-

(1) Bhura Ram and Others Vs. State of Rajasthan and Another, . In this case the Hon"ble Supreme Court considered the question of jurisdiction of the court of Additional Chief Judicial Magistrate to try the offences as a cause of action accrued within the jurisdiction of the other court. The court found that all the allegations regarding the offences charged with have been committed at the

previous residence of complainant. In this case the complainant left the place, where she was residing with her husband and in-laws and came to the city of Shri Ganganagar, State of Rajasthan and that "all the alleged acts as per the complaint had taken place in the State of Punjab. Therefore the Court at Rajasthan does not have the jurisdiction to deal with the matter". The Hon"ble Supreme Court held that on the basis of factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter. As a consequence thereof, the proceeding before the Additional Chief Judicial Magistrate, Shri Ganganagar are quashed. The complaint be returned to the complainant and if she so wishes she may file the same in the appropriate Court to be dealt with in accordance with law.

(2) Y. Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, .

In this case the Hon"ble Supreme Court considered the question as to when the offence would be the continuing offence and also considered the term "cause of action" as to what it meant. Relevant paragraphs 8, 9, 12, 13, 14, 15 and 16 are reproduced hereunder:-

8. As observed by this Court in State of Bihar Vs. Deokaran Nenshi and Another, , continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

9. A similar plea relating to continuance of the offence was examined by this Court in Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, . There the allegations related to commission of alleged offences punishable under Sections 498-A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This court held in that factual background that Clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

12. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a Court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause

of action would possibly accrue or would arise.

13. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action."

14. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

15. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in Court from another person. In (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

16. In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

(3) Manish Ratan and Others Vs. State of M.P. and Another, . In this case the Hon'ble Supreme Court considered the scope of Sections 177 and 178 Cr.P.C. and also considered the term continuing offence and held that the offence cannot be held to be a continuing one only because the complainant has forced to leave her matrimonial home.

18. The Hon'ble Supreme Court concurred its opinion on the point as given in

the cases of State of Bihar v. Deokaran Nenshi and another (supra) and Sujata Mukherjee (supra) as referred in the case of Y. Abraham Ajith (supra).

19. In order to deal with the case under the Domestic Violence Act, the petitioner has referred a case i.e. Sharad Kumar Pandey Vs. Mamta Pandey, . In this case the Hon"ble Supreme Court of Delhi dealt with the term temporary residence, which empowers the complainant to lodge complaint at the place where she temporarily resides u/s 27 of the Domestic Violence Act. Relevant paragraphs 9 and 10 are reproduced hereunder:-

(9) All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation of jurisdiction of the Court. Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. The expression residence, means to make abode. -- a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words dwelling place, or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

(10) I, therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application u/s 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.

20. In the case of Bhagwan Dass and Another Vs. Kamal Abrol and Others, , Bhagwan Dass and Another Vs. Kamal Abrol and Others, , the Hon"ble Supreme Court considered the term residence and held that the question of residence is a mixed question of law and fact, hence this being the mixed question of law and fact, has to be decided, keeping in mind the facts and circumstances of each case. The Hon"ble Supreme Court referred its another decision of Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, in which considering the Section 19(ii) of the Hindu Marriage Act, 1955, the Supreme Court stated that: (Para 12)

In ordinary sense "residence" is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode, Where there is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides.

21. Ultimately the Hon"ble Supreme Court expressed the following opinion:-

(12) From the aforesaid analysis it is apparent that the word "residence" is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of "residence". There are two classifications of the meaning of the word "residence". First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word "residence" as given in the Black Law Dictionary, 8th Edition. It is given that the word residence means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage.

22. Geeta Mehrotra and Another Vs. State of U.P. and Another, . In this case the Hon"ble Supreme Court discussed the question of territorial jurisdiction as well as the enormity of allegations levelled against the relatives of the accused. In this case the court did not find any specific allegation against the sister and brother of the complainant's husband as to how they could be implicated into the matrimonial bickering between the complainant and her husband Shyamji Mehrotra including the parents, therefore, the court held that 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.

23. The cases cited by the learned counsel for the respondents are:-

(1) Sunita Kumari Kashyap Vs. State of Bihar and Another, , In this case the petitioner/appellant was forcibly taken out of her matrimonial home at Ranchi and brought to her parental home at Gaya, where she gave birth to a girl child. After some time her husband came out with a new demand that unless her

father gives his house at Gaya to him, she will not be taken back to her matrimonial home at Ranchi. The petitioner initiated the criminal proceeding for offences punishable under Sections 498-A/406/34 IPC and 3/4 Dowry Prohibition Act. In this case the Hon"ble Supreme Court held that "keeping in view the fact that she was taken out at her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of the Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein."

(2) *Rajiv Modi Vs. Sanjay Jain and Others*, : (A *Rajiv Modi Vs. Sanjay Jain and Others*, . In this case the Hon"ble Supreme Court discussed the scope of Sections 177, 178 and 482 of the Code of Criminal Procedure. It also discussed the several judgments on the expression "cause of action" and in conclusion held that "to constitute the territorial (sic) the whole or a part of cause of action must have arisen within the territorial jurisdiction of the Court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts."

(3) *Manish Shukla and Others Vs. State of U.P. and Others*, . In this case this court held that "the question of jurisdiction of the Magistrate does not take upon the domestic violence report of the Protection Officer. The said question has been decided according to the provisions of Section 27 of the Act. According to which the court of Magistrate within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed, has jurisdiction in the matter. It further held that the question of jurisdiction was not to be decided on the basis of the office of Protection Officer or his report, rather it was to be decided only in the terms of the provisions of Section 27 of the Act.

(4) The Division Bench of this court, in which I (Justice Shri Narayan Shukla) has been one of the members in the case of *Dr. G.N. Saigal and another v. Judicial Magistrate I Class Court No. 4 Amrawati and two others Writ Petition No. 8410 of 2007 (MB)* and other connected writ petition No. 9409 of 2010 (MB) considered the issue of jurisdiction. The Division Bench of this court took cognizance of the term "jurisdiction" as defined u/s 27 of the Domestic Violence Act and held as under:-

Keeping in mind the said objects of the Act, it has to be considered that the legislature has provided the aggrieved women, covered under the Act, with such wide options to institute a case against the unscrupulous persons who harass or abuse her at the places covered u/s 27 of the Act with an intent that women may opt for the place which best suited their convenience, comfort and accessibility. Thus place of "Domestic Violence" and the place of aggrieved woman are two places which are the places of actions under the Act where the Magistrate can give directions under the Act. The Legislature provided that jurisdiction can be

invoked by an aggrieved person on the basis of temporary residence. It appears that this provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed or her matrimonial home was not there.

Section 27 provides that such a woman can invoke jurisdiction of the court where she is compelled to reside in view of commission of domestic violence. The temporary residence must be one which an aggrieved person takes under the circumstances of domestic violence. Thus a peculiar provision was enacted in Section 27 of the Act which does not find place in any other law. The Domestic Violence Act is a welfare legislation to a specified class of women who are financially, economically or physically abused and, therefore, the provisions of this Act have to be interpreted in the manner which advances the object of the Act.

The word "temporary residence" is different from "short stay". The word "reside" involves some permanency in itself. If an aggrieved person travels by a train and passes through several stations then it can not be said that she is at liberty to file an application at any of such places or if a woman for as short term, stays in a guest house or in a hotel, even then it can not be said to be her temporary residence. The Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been recognized as place for invoking the jurisdiction of the court. The expression "residence" means "to make abode" - a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words "dwelling place" or "abode" are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this can not be a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

(5) Deepak Joshi and others v. State of U.P. and another, reported in 2009 (1) JIC 600 (All) : (2009 (2) All LJ 252). In this case this court held that "Section 498A IPC (sic) is a continuing cruelty includes the mental as well as physical torture. It would be immaterial whether the opposite party is living at her matrimonial house or at her parental house, it would be continuing offence.

24. So far as the role assigned to the members of the family of her in-laws in commission of offence is concerned, upon perusal of the First Information Report, I find that they have been assigned the active roles for commission of offence, as it is alleged that the complainant's grand mother-in law, grand father-in-law, husband, brother-in-law (dewar) and aunt-in-law (chachaiya sas) and brother-in-law (chachaiya devar) locked the complainant in the room, brother-in-

law (devar), husband and father-in-law caught and chachaiya sas poured the can which was full of kerosene oil and when her mother-in-law, was set to fire after burning a match stick, incidentally her sister, namely, Sangeeta Giri, reached there and saved her. Thus, the allegations levelled through the First Information Report show the commission of offence by them. Therefore, at this stage there is no occasion to interfere in the trial in exercise of power provided u/s 482 of the Code of Criminal Procedure, as it does not come in the category of the exceptional case as described by the Hon''ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

25. The learned Magistrate has rejected the applicant's application raising the question of jurisdiction on the ground that indisputedly the offence took place at the place of in-laws house, but due to the said offence, in compelling circumstances, the complainant has left her in-laws' house and is residing in the parental house at Lucknow. Her stay at her parental house is the continuous victimization by her in-laws, therefore, the offence comes in the category of continuing offence and thus it is triable within the territorial jurisdiction of the place, where she is residing, may be temporarily.

26. A bare perusal of the contents of the First Information Report show that the complainant was tortured and assaulted by her in laws in their house, situate at Gurgaon. They also started demanding Rs. 10 lakh as dowry. When her sister intervened in the matter, her in-laws told her that till the complainant turns back with Rs. 10 lakh, she would not be permitted to enter in the house and they will arrange another marriage of her husband.

27. There is also allegation that her in-laws have thrown her out of their house and have refused to keep her therein, therefore, the complainant is residing in the house of her parents.

28. Thus, in the light of the aforesaid facts, it cannot be said that she is living in her parental house happily with her own wish, rather it is established that she is living therein in compelling circumstances and definitely in the state of harassment, which comes under the category of offence and is termed as continuing offence. Once the offence is continuing at Lucknow, it may be tried by the court having jurisdiction over the local area of Lucknow. The learned Magistrate at Lucknow has jurisdiction to try the offence u/s 179 of the Act also as her living at Lucknow in parental house is the consequence of the offence committed at Gurgaon and it has resulted to ensue the applicants. Thus, the facts of the case are the prevalent factors to determine the place of trial as has been held in the several judgments quoted, as above.

29. The facts of the instant case, as has been observed, herein-above, establish the continuation of offence committed by the applicants against the complainant at Gurgaon in Lucknow also, therefore, I am of the view that the learned Magistrate at Lucknow has jurisdiction to try the case No. 11032 of 2010, arising out of case crime No. 72 of 2010, under Sections 498-A, 313, 323, 406, 506 IPC

and Section 3/4 of the Dowry Prohibition Act, Police Station Manila Thana, Lucknow.

30. The place of trial of offence under the Domestic Violence Act (in short Act) is regulated by Section 27 of the Act. Sub-section 1(a) of Section 27 of the Act speaks that the court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed shall be competent court to try the offences under the Act. The complainant claims her residence at Lucknow on the date of institution of the complaint, which has been refuted by the applicants on the basis of some documents provided by the Company, where she is alleged to be employed. In the said documents her status of service has been certified as active on the date of institution of the complaint, which is relevant date for determination of place of trial. In the complaint she has stated that on 23rd of May, 2010 the applicants assaulted her, she got treatment in Nilkanth Hospital and since thereafter she is residing in her parental house. No doubt she has admitted her employment in a private company, but she has shown her unwillingness to continue the employment due to abnormality developed in her during pregnancy period. She also stated that she was leaving the job and submitted the resignation. In paragraph 19 of the complaint, she has specifically stated that now she is unemployed and has no source of income as she has submitted her resignation to the Company. In paragraph 10 she has stated that now she will live in her parental house as except her parents there is nobody to help her.

31. The aforesaid facts reveal that on the date of application, she had left her job by submitting the resignation. It appears that her status in employment is shown in the Company as active because of non-acceptance of resignation, but it is not certified by the Company that she was regularly attending the office. Her version that now she would live at Lucknow in her parental house, cannot be interpreted in the manner that on that date she was not living thereat, as even by living in the parental house on that date too she could state that now she would live in her parental house. Thus, her residence may be temporary at Lucknow on the date of institution of the complaint u/s 12 of the Domestic Violence Act is well established, therefore, I am of the view that the learned Magistrate at Lucknow is vested with the jurisdiction to try the offence committed u/s 12(1) of the Domestic Violence Act.

32. Section 12 (1) of the Domestic Violence Act is reproduced hereunder:-

12. Application to Magistrate.- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

33. In the light of the aforesaid provisions the learned counsel for the applicants contended that to proceed with the case under the aforesaid Section there must be a report of the Protection Officer for his consideration, whereas I am of the view that it is not compulsory. Since the provisions of Section 12 permits to entertain an application either moved by the aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person, it means that before passing any order on such application the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

34. Section 9(1)(b) of the Act defines the duties and functions of the Protection Officer. It provides that (1). It shall be the duty of the Protection Officer-(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area.

35. Section 10(2) of the Act discusses the power of a service provider and provides that a service provider registered under sub-section (1) shall have the power to record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place.

36. A bare perusal of the aforesaid provisions shows that the Protection Officer as well as the service provider are the instrument to set the law in motion for the justice to aggrieved person. Therefore, Section 12 permits the application to be moved either by the aggrieved person herself or by the Protection Officer or any other person on behalf of the aggrieved person and on presentation of such an application the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider before passing any order on the application. Thus, the protection officer as well as the service provider both have been empowered to assist the aggrieved person, but they cannot be termed as investigating agency in the matter.

37. Therefore, I am of the view that the report of the Protection Officer having jurisdiction within the local limits of Lucknow is equally important as that of the Protection Officer of Gurgaon. Thus, the learned Magistrate at Lucknow is competent enough to take care of the report of Protection Officer of Lucknow, where the complainant is residing temporarily in her parental house.

38. Under the circumstances I do not find error either in the order dated 16.1.2012, passed in Case No. 11032 of 2010 or in the order dated 16.2.2012, passed in Misc. Case No. 509 of 2010 by the Additional Chief Judicial Magistrate, Lucknow. In the result both the Criminal Cases i.e. Criminal Misc. Case No. 290 of 2012 and Criminal Misc. Case No. 990 of 2012 are hereby dismissed. It is

observed that the learned Magistrate shall try the offences without being prejudiced with the observations made or opinion expressed as above.