
(2007) 03 AHC CK 0297

In the Allahabad High Court

Case No : Criminal M. Transfer Application No. 178 of 2007

Pankaj Sharma and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 406, 498A, 504, 506

Citation : (2007) 3 ACR 2524

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Advocate : Manish Tiwary and Ashwini Kumar Awasthi, for the Appellant; A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard Sri Manish Tiwary, learned Counsel for the applicants and learned A.G.A. for the State.

2. The instant transfer application is to transfer the proceedings of Case No. 11242 of 2006, arising out of Case Crime No. 436 of 2006, State v. Pankaj Sharma and others, under Sections 498A, 323, 504, 506 and 406, I.P.C. and Section 3/4, Dowry Prohibition Act, Police Station Sahibabad, district Ghaziabad to the Court of competent jurisdiction.

3. Learned Counsel for the applicants has placed the first information report where the entire family members including the applicants are arrayed as an accused. The applicant No. 1 is husband and applicant No. 2 is mother-in-law. The submission is that the allegation in the first information report shows that the place where the crime is alleged to have been committed by the present applicants, is Allahabad whereas the other accused, who are jeth, jethani, nanad and nandoi, have committed the alleged offence at Ghaziabad. An application u/s 482, Cr. P.C. numbered as Criminal Misc. Application No. 9656 of 2006 is pending in this Court in which the proceedings against the accused Nos. 3, 4, 5 and 6

have been stayed. The submission on behalf of the applicants is on the basis of decision of the Apex Court in the case of Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. 2004 SCC 2134: 2005 (1) ACR 577 (SC), and a Division Bench decision of this Court in the case of Sunil Kumar and Ors. v. State of U.P. and others, (XXX) 1993 ACC 344. The applicant No. 1 is working at Allahabad and after the marriage with the opposite party No. 2, both of them started living at Allahabad. The wife left the husband and started living in Delhi. A complaint was lodged with "Crime against women cell" (north east district Delhi) which was registered on 3.3.2003. Subsequently the matter was resolved. However, when the complaint was instituted, the applicants obtained an anticipatory bail from the Court of New Delhi in the year 2003. Learned Counsel has placed the part of the first information report where the allegations are against the husband subjecting her to cruelty and thereafter when she came at her parent's house, telephone calls were received from Allahabad. Subsequently on 5.6.2006, the accused Nos. 3, 4, 5 and 6 came at Ghaziabad and made demand of dowry and extended threat and also assaulted in her own house. The first information report was registered at Police Station Sahibabad.

4. On the basis of the aforesaid allegation, the submission is that since "cause of action" in so far it relates to the present applicants, is at Allahabad and, therefore, the proceeding at Ghaziabad is not maintainable.

5. Learned A.G.A. has objected to the arguments advanced on behalf of the applicants on the basis of Section 178, Cr. P.C. and has submitted that in the instant case offence is committed partly in one local area and partly in another and therefore the proceeding can continue at both the places Allahabad and Ghaziabad and both the places have jurisdiction.

6. After hearing the respective counsels for the parties, it is evident that the objection regarding territorial jurisdiction has not been raised before the court concerned. The question of jurisdiction has yet to be decided. Section 177, Cr. P.C. provides that ordinary place of enquiry or trial is the venue of the crime and the area of jurisdiction in which the facts alleged to have been occurred on the basis of the evidence. The Apex Court had arrived at a conclusion that the allegations made in the complaint had taken place at place "A" and therefore, the jurisdiction rests with the same place.

7. I am not inclined to pre-empt the decision of the trial court regarding territorial jurisdiction. I permit the applicants to raise an objection as preliminary objection, which shall be decided by the Court concerned in view of the decisions of this Court as well as Apex Court, before proceeding with the trial.

8. With the aforesaid observations, this transfer application is disposed of.