

(2014) 07 AHC CK 0102

In the Allahabad High Court

Case No : Criminal Misc. Transfer Application No. 166 of 2012

Ravi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 177, 178, 178, 179
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498-A, 504, 506

Citation : (2014) 3 ACR 2514 : (2014) 86 ALLCC 529

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : Rajiv Lochan Shukla, Advocate for the Appellant; Sujeet Kumar Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—List revised. Sri Sujeet Kumar Singh, learned Counsel for the opposite party is absent. No counter affidavit has been filed, till date. Heard Sri Rajiv Lochan Shukla, learned Counsel for the applicant and learned AGA for the State.

2. The applicant is seeking transfer of the proceedings of Case No. 2857 of 2011 arising out of Case Crime No. 18 of 2010, under sections 498-A, 323, 504 and 506 I.P.C. and 3/4 of Dowry Prohibition Act, Police Station-Mahila Thana, District-Kanpur Nagar, pending in the Court of Metropolitan-III, Kanpur Nagar to the Court at Etawah.

3. A First Information Report was lodged on 26.5.2010 by the opposite party No. 2 at Police Station-Mahila Thana, which was registered as Case Crime No. 18 of 2010. After investigation, the police submitted a charge-sheet.

4. During the course of investigation, the police had prepared a site plan of the alleged place of incident in which the place of incident was shown in the District-

Etawah.

5. During the investigation, the police also recorded the statement of the First Information Report on 5.6.2010. The statement of the applicant is that no cause of action, which may confer jurisdiction on the Courts at Kanpur Nagar is made out. The entire incident had occurred in Etawah only the Courts at Etawah, have jurisdiction to take cognizance of the case.

6. Learned Counsel for the applicant stated that Chapter XIII of Code of Criminal Procedure deals with the jurisdiction of Criminal Court in inquiries and trials. Section 177 provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 provides that when it is uncertain in which of several local areas, an offence was committed. It may be inquired into or tried by a Court having jurisdiction over any of such local areas. The Court may look into as to whether the offence is committed partly in one local area and partly in another. Where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas.

7. Thus, section 178 envisages a position in which an offence is committed partly in one area and party in another areas or it is continuing one.

8. Placing reliance of judgment of Apex Court *Manish Ratan and Others Vs. State of M.P. and Another*, learned Counsel for the applicant submits that the Apex Court has held that Clause (c) of section 178 is not attracted in the said case. In a case of such nature, the offence cannot be said to be a continuing one. The question before the Apex Court was of application of sections 177 and 178 of Code of Criminal Procedure in the case before it. The First Information Report was lodged at Police Station Datiya. In the said complaint, the incident was said to have taken place in the house at Jabalpur. On the question of jurisdiction of the Court of Chief Judicial Magistrate, Datiya, the criminal revision was filed. The criminal revision was dismissed opining that the offence was continuing one and Datiya Court had jurisdiction to take cognizance of the matter. The Apex Court has held that in view of the circumstances and on the allegations, the offence cannot be said to be continuing offence. And hence, the cognizance of same could not have been taken by the Court at Datiya.

9. Considering the submission of learned Counsel for the applicant, it is apparent that the applicant is seeking transfer of the case from the Court of Metropolitan-III, Kanpur Nagar on the ground of territorial jurisdiction. There is no dispute about the fact that to constitute the territorial jurisdiction, the whole or part of the cause of action must have arisen within the territorial jurisdiction of the Court and the same must be decided on the basis of averment made in the complaint without embarking upon an inquiry as to correctness or otherwise of the said facts.

10. The transfer is being sought in exercise of power, u/s 407 Cr.P.C. Section 407(i) says that the High Court may order that any offence being inquired into or

tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence. Thus, the exercise of power of transfer by the High Court of a case from one Court to another Court depends upon the facts and circumstances of the particular case and in case, good ground for transfer is made out.

11. Transfer of a case even to a Court within whose local jurisdiction, it would not ordinarily be tried, can be made.

12. In view thereof, so far as the question of jurisdiction is concerned, in the opinion of the Court, the application for transfer u/s 407 is not an appropriate remedy. The applicant is at liberty to raise the dispute regarding jurisdiction before the Trial Court or invoke the Revisional Court jurisdiction u/s 401 Cr.P.C.

13. Apart from the above, even on merits, the proceeding was pending before the Metropolitan Magistrate-III, Kanpur Nagar since the year 2011. The applicant Nos. 2 and 3 got bail from the Court concerned on 6.4.2012. Soon after the release on bail, they moved this transfer application on 18.4.2012. The contention in the transfer application is that the applicants have serious threat to their lives and liberty for the incident occurred on 10.4.2012 when an attempt was made to assault the applicant No. 1 (Ravi) in the District Court premises. An application was given to the Superintendent of Police, Kanpur Nagar.

14. However, there is nothing on record to indicate that 10.4.2012 was the date fixed before the Court below. Thus, in the circumstances, in absence of the documentary evidence on record, the bald averments of the applicants, on the basis of which transfer has been sought, cannot be accepted. The transfer application is devoid of merits and hence, rejected.