
(2007) 01 AHC CK 0116
In the Allahabad High Court
Case No : Writ petition No.1165 of 2006

Sanjay Gupta

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 01 AHC CK 0116

Hon'ble Judges : Bhanwar Singh, J and D.V.Sharma, J

Final Decision : Allowed

Judgement

Bhanwar Singh, J.

1. This petition has been filed by Shri Sanjay Gupta for quashing of the First Information Report (Annexure2), lodged by his wife Smt. Punam Gupta. In the said First Information Report, allegation of dowry demand has been levelled by Smt. Punam Gupta against her husband Sanjay Gupta and the latter's family members.

2. It is noteworthy that during the pendency of this petition, a chargesheet was filed against the petitioner and the other accused persons. The petitioner sought amendment of the petition and prayed for a writ in the nature of certiorari quashing the chargesheet No.38 of 2006 also.

3. Shortly stated, the facts of the case are that Smt. Punam Gupta's marriage with Sanjay Gupta was solemnized on 24.1.2005 at Munnu Lal Dharamshala, Chowk, Lucknow, in accordance with the Hindu customary rites. On 26.1.2005, the complainant along with the petitioner and other members of the family left by train for Jammu and went to "Vaishno Devi" for paying tribute to the deity. The First Information Report (Annexure2) reveals that the accused persons harassed the complainant there at the township of Vaishno Devi by saying that the dowry had not been offered according to the status of their family. On 18.1.2005, the complainant and her husband left for Kolkata and stayed in the

matrimonial House No.3/16, Tal Tarla Jai Nagra Razar, Hot Road, Kolkata⁵⁹. No sooner than they rehabilitated at the aforesaid house, all the accused persons started demanding a sum of Rs.2 lacs as cash dowry besides 20 tolas gold, T.V., Freeze and V.C.D. etc. Meanwhile, Sanjay Gupta's sister Neena Gupta and the latter's husband came to Kolkata and they also teased her on the issue of dowry and pressurized her to bring cash dowry from her brother besides other items as disclosed above. She was then subjected to cruelty. Punam Gupta informed all about this demand and her harassment to her family members. On 17.3.2005, she left Kolkata and came back to her parent's house at Lucknow. On 11.5.2005, she again went to Kolkata and came across the same mental agony as her inlaws meted out her with maltreatment for her inability to have brought dowry, as demanded. She was threatened of dire consequences including dissolution of her marriage with the petitioner. In this atmosphere of cruelty and misbehaviour, she developed a sense of her life being in jeopardy. She then informed her parents and asked them to take her out of her matrimonial home at Kolkata. On receipt of this information, her brother Dr. Sandeep Gupta went to Kolkata and after informing the Station House Officer of police station Razar Hot, Kolkata brought her back on 30.7.2005. In this way, the informant Punam Gupta was subjected to dowry demand and when she failed to comply with it, she was teased and harassed.

4. The petitioner has stated that the aforesaid First Information Report does not disclose commission of any offence within the territorial jurisdiction of Lucknow Court and therefore, he has impeached the said First Information Report on the ground of jurisdiction and sought it to be quashed. The chargesheet is also prayed to be quashed on the same ground of lack of territorial jurisdiction.

5. The petitioner's further contention is that the attitude of the complainant soon after her marriage was acrimonious and bitter towards the petitioner and all other members of his family. After her stay at Kolkata for about a month, Punam Gupta left the petitioner's house and first came to Varanasi and then to Lucknow. She, however, went again to Kolkata in May and could not adjust with the petitioner and the other members of the family on account of her temperament. Her brother brought her back to Lucknow without permission of the petitioner. When the petitioner tried to establish contact with her, she did not respond. The petitioner then lodged a report on 29.8.2005 regarding his wife being taken away by his brother without his permission.

6. As a matter of fact, as supplemented further, no offence has taken place at Lucknow for the First Information Report being lodged but even then the father of the petitioner who surrendered in Lucknow Court was sent to jail. In this way, the petitioner and his other members of the family have been acrimoniously harassed despite the fact that no cause of action has arisen within the jurisdiction of Lucknow Court.

6A. Punam Gupta resisted this petition by filing her counter affidavit and stating therein that the petition has become infructuous as the chargesheet has already

been filed against the petitioner and other accused persons. She reiterated her First Information Report's version and asserted that she was subjected to dowry demand and meted out with cruelty, when she failed to fulfil the said demand. In para 15 of her counter affidavit, she stated that Lucknow Court and Chowk Police Station have jurisdiction to entertain this case as dowry demand was made by the accused persons on telephone at the time when she was at Lucknow. She has also filed an application No.244 of 2006 in the Court of Principal Judge, Family Court under section 125 CrPC in which a sum of Rs.1000/ per month as interim maintenance has been granted. She has prayed for dismissal of the writ petition as it has no merit.

7. S.I. Abdul Salim Siddiqui of Police Station Chowk has endorsed the First Information Report version and stated further that the informant has every right to lodge the First Information Report according to her convenience.

8. It is noteworthy that the petitioner, prior to filing the present petition, filed another writ petition No.7769 (M/B) of 2005, which was finally disposed of vide order dated 19.12.2005. However, this petition has been filed on new ground of jurisdiction which was not taken in the earlier petition. This writ petition, therefore, cannot be said to be barred by the principle of res judicata as the ground of jurisdiction had not been taken earlier. He, however, did not deposit Rs.1 lac as directed by the Court on 19.12.2005 as Smt. Punam Gupta was allowed to withdraw the said amount. A perusal of the said order would indicate that a condition of depositing Rs.1 lac was slapped upon the petitioner who, under compulsion as it appears from the order, agreed to deposit but he was aggrieved of the free hand given to Smt. Punam Gupta of withdrawing the said money. The obligation of the petitioner to deposit the sum and Punam's right to withdraw were not elaborated with reasonings. We find it difficult to appreciate as to for what the money had been directed to be deposited and how Smt. Punam Gupta was held entitled to case it even without furnishing security. However, without commenting or going further into the merit of the said condition, we may observe that the petitioner deposited the said amount of Rs.1 lac which is still in deposit with the said Court. The sum of Rs.1 lac was neither a lump sum grant of maintenance allowance nor the compensation for the break in the marriage relationship. Be that as it may, the amount is still in deposit and therefore, the petitioner cannot be charged for disobedience of the Court's order. His objection to Punam Gupta's entitlement to withdraw the said amount seems to be justified as such a lump sum payment without any reason being disclosed does not seem to be sustainable at all.

9. As regards the cause of action, indeed, the petitioner's contention appears to be full of substance. A perusal of the entire First Information Report would reveal that even if all its contents are believed to be true, no offence can be said to have been committed by the petitioner and his family members within the territorial jurisdiction of the Lucknow Courts. Not a single demand about cash dowry and the items like T.V. etc was made by the petitioner or his family

members at Lucknow or in the State of U.P. the first demand was made at Vaishno Devi, Jammyu & Kashmir and the other demands were made subsequently at Kolkata. The complainant developed a theory of conversation on telephone between her and her husband in which demand of dowry figured but this is an afterthought idea. Had there been some substance in such averment, it should have been categorically mentioned in the First Information Report which is absolutely silent on this point. We are, therefore, of the considered view that even if the First Information Report's version is accepted in toto, no offence has taken place at Lucknow or within the territorial jurisdiction of Lucknow Courts. As a consequence, the Chowk police had no authority to investigate into the allegations of the First Information Report nor the Investigating Officer was competent to have filed a chargesheet in the matter. The investigating officer must have transferred the investigation to Razar Police Station, Kolkata after following the provisions of requisite law. The Court to whom the chargesheet in question has been submitted has no jurisdiction to proceed with the trial of the petitioner and his family members.

10. Mr. Sushil Kumar Mishra, learned counsel for the informant Punam Gupta cited a judgment of the Apex Court in, ?Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee (1997) 5 SCC 30? and contended with reference to the principle of law laid down therein that in case of dowry demand, maltreatment and humillation, the complaint can be filed by the victim at the place of her convenience. We are afraid that the contention has any merit. A perusal of the said citation would reveal that it was alleged by the wife that she was subjected to dowry demand by her husband, her sistersinlaw and parentsinlaw and also maltreated at the house of her inlaws. Further, it was alleged in that case that the husband came to the complainant at the house of her parents and assaulted her. In view of that specific plea of assault, it was held that Clause (C) of Section 178 was attracted and the Magistrate at the place of her parents had jurisdiction to entertain the complaint. However, similar are not the facts and circumstances before this Court. Not an iota of the offence of dowry demand or maltreatment had taken place at the house of Punam Gupta's parents at Lucknow and therefore, the said citation is not attracted.

11. On the other hand, Mr. Jyotindra Mishra, learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in, ?Y. Abraham Ajith and Others v. Inspector of Police, Chennai and another, 2004 SCC (Cri) 2134? and contended that the place of enquiry and trial will ordinarily be the one where the occurrence has occurred. A perusal of this citation reveals that the place of jurisdiction, vis?vis the offences, alleged by the "wife" to have been committed by her husband at Nagercoil and not at the Chennai Court. In that case, the wife filed a complaint in the Magisterial Court at Chennai. The Magistrate directed the police to investigate the case and after investigation, the police filed a chargesheet. The appellants, i.e. the husband and his family members questioned the propriety of the proceedings under Section 482 CrPC before the High Court but their application was rejected by the High Court. Feeling

aggrieved of the said order, the husband and other family members filed a criminal appeal before the Hon"ble Supreme Court. On having scrutinized the details of the phrase, "cause of action", the Apex Court held that the inevitable conclusion was that no part of cause of action arose in the city of Chennai; rather it accrued at Nagercoil and therefore, the Magistrate at Chennai had no authority or jurisdiction to deal with the matter. Exactly, similar are the facts and circumstances of the case. As held above, whatever the offence was allegedly committed by the petitioner and his family members, it was either at Vaishno Devi in Jammu & Kashmir or at Kolkata. Therefore, the police of Lucknow had no jurisdiction to entertain the First Information Report and similarly, the magisterial Court at Lucknow is not competent to accept the chargesheet and proceed further with trial.

12. Since the chargesheet in the case was filed during the pendency of this writ petition, the Court may exercise its powers not only under Article 226 but also under Article 227 of the Constitution of India. The following observation of the Hon"ble Supreme Court in a decision, titled as "Pepsi Foods Limited and another v. Special Judicial Magistrate and Others, (1998) 5 SCC 749" is relevant and the same may be quoted as follows:

"Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

13. From the above quotation, it is crystal clear that if a petition has been filed under Article 226 of the Constitution, it can be treated to be as under Article 227 of the Constitution and Section 482 CrPC for providing immediate relief available under the said Section of the Code. Section 482 CrPC deals with abuse of the process of law and the Hon"ble Supreme Court held that the High Court should not shy away in exercising its jurisdiction. In the last but one para of the above referred decision, the Hon"ble Supreme Court provided as follows:

"It is no comfortable thought for the appellants to be told that they could appear before the Court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the Courts and the High Court should not have shied away in exercising their

jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it.?

14. It is thus apparent that if it is required in the interest of justice to invoke the jurisdiction of the Court, the Court will do so under its plenary power irrespective of the fact as to whether the provisions of Article 226 or 227 or of Section 482 CrPC are invoked. The power of the Court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision is not a bar to invoke the jurisdiction of the High Court under Article 227 of the Constitution or under Section 482 CrPC. In the case in hand, the petitioner's father, who honestly surrendered in the Lucknow Court, was sent to jail and despite his ill health he was imprisoned in jail for quite some time. All the provisions, referred to above, are meant to provide a strength to the interest of justice. An ailing father of the petitioner or any other member of his family should not have been put to any such hardship, particularly when none of them including the petitioner committed any offence at Lucknow. It would be extremely difficult for the petitioner and other large number of accused persons to come to Lucknow on numerous dates to attend the Court with a view to defend them. Compelling them to travel thousands of kilometers and come here on every date of hearing would mean lot to their purse, convenience, comfort and business. Why such a hardship should be allowed to fall on them particularly when they have committed no mistake or offence at Lucknow.

15. The long and short of the above discussion is that even if the First Information Report lodged by Smt. Punam Gupta is accepted to be true in toto, no offence has taken place at Lucknow or in the State of U.P. therefore, neither the police had a right to entertain the First Information Report and investigate nor the magisterial Court is legally entitled to admit the chargesheet and proceed further for the prosecution of the petitioner and his family members.

16. In the result, this petition succeeds and it is allowed. The First Information Report of Case Crime No.280 of 2005 (Annexure2), registered at police station Chowk, Lucknow and the chargesheet No.38 of 2006 filed in the Court of 1st Additional Chief Judicial Magistrate, Lucknow are hereby quashed.

17. The complainant may, however, take recourse to the legal remedy available to her in accordance with law at Kolkata or in the township of Vaishno Devi in Jammu & Kashmir.

18. The petitioner will be entitled to withdraw the amount of Rs.1 lac deposited by him in pursuance to this Court's order. In all fairness, he will, however, comply with the Family Court's order whereby monthly maintenance has been awarded.

(Petition allowed)