
(2011) 07 UK CK 0078

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 681 of 2007

Sharif Ahmad and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 177, 178, 179, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A, 504, 506

Citation : (2011) 2 NCC 727 : (2012) 2 UC 1218 : (2011) 2 UD 263

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—The applicants have moved this criminal miscellaneous application, u/s 482 Code of Criminal Procedure, seeking to quash the entire proceedings of Criminal Case No. 590/2007, State v. Javed Anwar @ Javed Ahmad and Ors., u/s 498A, 504 & 506 IPC and Section 3/4 Dowry Prohibition Act, pending in the Court of Chief Judicial Magistrate, Almora.

2. Brief facts of the case are that Smt. Nasreen Bano tied her nuptial knot on 17.9.2006 with Javed Anwar as per Muslim ceremonies and customs. Her father gave a lot of dowry in the marriage. But after coming to her matrimonial home, she felt the continuous comments, taunts and torturing attitude on the question of dowry extended by the applicants to her. So, she wrote a letter to her father on 12.1.2007 apprising him as to what were happening in her in-laws house. Subsequently, on 20.1.2007, she wrote another letter to her father stating the affairs, which were taking place on the question of insufficient dowry in her matrimonial home. Her father rushed to her assistance and moved an application on 1.2.2007 to the Police Station Kotdwar, where the matrimonial home of Smt. Nasreen Bano was situated. But police did not register any case. Rather on 6.2.2007, her father Janab Ikramudding fetched her daughter from her

matrimonial home at Kotdwar and brought her to parental house at Almora.

3. On 8.2.2007, father of Smt. Nasreen Bano made an application to Anjuman Sewa Samiti, seeking some assistance, but that Samiti expressed its inability to do anything in the matter.

4. Thereafter Smt. Nasreen Bano moved an application u/s 156(3) Code of Criminal Procedure before the CJM, Almora for registering the case against the applicants on 12.3.2007, whereupon the order was made by the learned Magistrate and the case was registered on 14.3.2007 against the accused applicants. The applicants rushed to this Court for staying their arrest. Except that of Javed Anwar (husband), arrest of all other applicants was stayed by this Court. After completion of the investigation, a chargesheet was filed against the applicants for the offences punishable u/s 498A, 504, 506 IPC and one punishable u/s 3/4 Dowry Prohibition Act. Hence, the applicants have approached this Court through this petition seeking quashing of that chargesheet.

5. The contention of the learned Counsel for the applicants is that the offence is alleged to have taken place within the local jurisdiction of Kotdwar courts, and as such, Almora Police could not have conducted the investigation nor cognizance upon the chargesheet could have been taken by the Magistrate at Almora. Learned Counsel for the applicants has relied upon the precedent of this Court dated 21.8.2007, passed in Criminal Misc. Application No. 401 of 2007, Beena Prakash and Ors. v. State of Uttarakhand and Anr., wherein certain other judgments of the Hon''ble Apex Court have been discussed by the learned Single Judge of this Court and thereupon it was held that since the offence was committed at Bombay, therefore, the Court at Khatima (District Udham Singh Nagar), where the parental house of the girl was situated, was devoid of any jurisdiction to take the cognizance in the matter.

6. On the other hand, learned Counsel for the private Respondent has relied upon a judgment of Hon''ble Apex Court in Sunita Kumari Kashyap v. State of Bihar and Anr., reported in 2011 (1) Utta Deci 412, wherein the Hon''ble Apex Court found that the nature of offence, alleged to be committed in the relevant case, was a continuing one. It was deemed to be continued at the local jurisdiction of the parental house of the girl also. So, the Hon''ble Apex Court was of the view that the courts, where the parental house of the girl was situated, had jurisdiction in the case.

7. I have gone through both the precedents (supra). In both the precedents, a number of other rulings have been discussed. The facts of each and every one are slightly different from others. The learned Single Judge of this Court in Bina Prakash case, ousted the jurisdiction of Khatima courts for the reason that the husband of the victim used to make the ring calls from abroad to Bombay asking her to sign on the divorce papers, and no allegation pertained to the jurisdiction of Khatima court. While in the Apex Court judgment, cited by learned Counsel for the private Respondent, scope of Section 177, 178 and 179 Code of Criminal

Procedure has been elaborately discussed, and it was held that where the threat concerning the demand of dowry, even if extended by the telephonic calls at the place of her parental house, then it is enough to attract the provisions of Section 178(c) Code of Criminal Procedure. The Hon'ble Apex Court has discussed all the relevant law upon the matter in controversy and has found that dowry demand, if raised through the telephonic calls, then the offence will be deemed to be continuing one and the courts/police stations having the jurisdiction of the parental house of the bride shall have every power to take cognizance in the matter. Besides, as divulged from the FIR itself, when father of Smt. Nasreen Bano fetched her from her matrimonial home, then it has been averred in the FIR that time and again, Javed Anwar (husband) and his father extended the threats either to take the divorce in order to enable her husband for remarriage, or if she wants to live in the matrimonial house, then she will have to bring the dowry to the tune of rupees four lakhs. Otherwise, she will be killed.

8. It has been stated in the FIR that due to the aforesaid attitude of the accused persons, she is consistently and persistently under great anguish. It has also been stated in the FIR that on 11.3.2007, at about 9 pm, the accused Javed Anwar came to the parental house of Smt. Nasreen Bano at Almora and began abusing her. She also asked Smt. Nasreen Bano to sign upon a paper along with her father to enable him for extension of divorce from her. He again threatened to kill in case she returned to the matrimonial home without fetching rupees four lakhs from her father. When resisted by Smt. Nasreen Bano and her father, the accused applicant Javed Anwar assaulted her. On this, father of Smt. Nasreen Bano expelled him from the house. The accused left the place with all the threats. The FIR was lodged with the aforestated averments, and thereafter chargesheet has been submitted after the detailed investigation.

9. So, this Court is of the view that in this case also, for the jurisdiction purpose, Clause (c) of Section 178 Code of Criminal Procedure is attracted, inasmuch as the offence is continuing one. As such, the present criminal miscellaneous application u/s 482 Code of Criminal Procedure is bereft of any merit and is hereby dismissed. Interim order dated 18.9.2007 stands vacated. However, it is observed that if the applicants, except Javed Anwar (husband), surrender before the court below or arrested by the police, their bail applications shall be heard and decided expeditiously and without unreasonable delay.