
(2011) 08 AHC CK 0085

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 16456 of 2007

Smt. Rupali Devi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 177, 178
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 313, 494, 498A, 504

Citation : (2011) 3 ACR 3334 : (2011) 8 ADJ 49

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble S.C. Agarwal, J.—Heard Sri Siddharth Srivastava, learned counsel for the petitioner, learned A.G.A. for the State and Sri Alok Kumar Srivastava, learned counsel for the respondent Nos. 2 to 5.

2. This writ petition under Article 226 of the Constitution of India has been filed with a prayer to issue a writ, order or direction in the nature of certiorari quashing the order dated 28.5.2007 passed by Addl. Sessions Judge, Court No. 16, Deoria in criminal revision No. 22 of 2007 (Durga Prasad Baranwal v. State and others) as well as order dated 27.8.2007 passed by Chief Judicial Magistrate, Court No. 17, Deoria in criminal case No. 2994 of 2006 State v. Durga Prasad and others under Sections 498-A, 494, 313, 504 IPC and 3/4 Dowry Prohibition Act, P.S. Kotwali, Deoria.

3. The petitioner is the complainant in the aforesaid criminal case. Earlier, respondent Nos. 2 to 6 were summoned to face trial under Sections 498-A, 494, 313, 506 IPC and 3/4 Dowry Prohibition Act. An application was moved on behalf of the accused u/s 177 Cr.P.C. challenging the territorial jurisdiction of Chief Judicial Magistrate, Deoria, which was rejected. The respondents filed criminal

revision, which has been allowed vide judgment and order dated 28.5.2007 passed by the revisional Court holding that the cause of action arose in District Mau and the Courts at Deoria had no jurisdiction to try the case. Consequently, the Chief Judicial Magistrate passed an order on 27.8.2007 for writing a letter to District Judge for transferring the case to Mau. Both the aforesaid orders are under challenge in this writ petition.

4. Affidavits have been exchanged between the parties.

Learned counsel for the petitioner submits that part of the cause of action arose in District Deoria where the petitioner resides and the Court at Deoria has the jurisdiction to entertain the complaint and to try the respondent Nos. 2 to 5.

5. Per contra, learned counsel for the respondent Nos. 2 to 5 submits that from the perusal of the F.I.R. itself, it appears that the whole story of harassment and mental cruelty etc. on account of demand of dowry is alleged to have taken place at Mau where the family members of the husband of the petitioner reside and no part of cause of action took place at Deoria and, therefore, Chief Judicial Magistrate, Deoria had no jurisdiction to try the case.

6. In rebuttal, learned counsel for the petitioner submits that mental cruelty is a continuing offence and the petitioner is residing at Deoria and, therefore, the cause of action arises at Deoria also.

Sections 177 and 178 Cr.P.C. provides as follows :-

177. Ordinary place of inquiry and trial.-Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

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 than one local area, 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.

7. A perusal of the F.I.R. shows that it was lodged at Police Station Kotwali, Deoria on 17.9.2005. The contents of the F.I.R. reveal that the petitioner was married to respondent No. 2 in December, 2006. Sufficient cash and dowry articles were given at the time of marriage, but the accused persons were not satisfied and started maltreating and harassing the petitioner in her sasural on account of demand of Rs. 2 lacs in cash and a Car. She informed her father about the same. Her father came to Mau and tried to pacify the accused persons, who remained adamant on their demand. On 12.5.1998, the petitioner gave birth to a son, who is presently 7 years of age. Even after birth of a son, the harassment of

the petitioner continued. When she again became pregnant, the accused persons admitted her at Ladies Clinic of Dr. Saxena at Mau and forcibly got her aborted. In July, 2002, the petitioner was turned out of her matrimonial home and the accused persons kept the male child with them. Her father took her to Deoria and continuously tried to pacify the accused persons. On 14.4.2005, at about 4:00 p.m., the accused persons accompanied by some responsible persons of Mau came to the house of the petitioner at Deoria for compromise and expressed their willingness to take the petitioner with them. After initial reluctance, the petitioner again went to her sasural, but after reaching there, she found that one stranger women was also living with the family of the accused and on inquiry, it was revealed that she was the second wife of petitioner's husband. When the petitioner protested, the accused persons beat her and confined her in a room and made her to sign some blank papers and thereafter she was turned out of their house on 27.5.2005. The petitioner came to Deoria and disclosed all the facts to her father.

8. A perusal of the aforesaid facts clearly indicates that all the harassment and mental cruelty took place with the petitioner in the house of the respondent Nos. 2 to 5 at Mau. No part of cruelty or harassment was done at Deoria. Even if it is assumed that the offence punishable u/s 498-A IPC is a continuing offence, even then, it must be proved that the offence continues to be committed in more local areas than one, as provided in Section 178 (c) Cr.P.C. or the offence was committed partly in one local area and partly in another local area, as provided in Section 178 (b) Cr.P.C. In the instant case, there is nothing on record to show that the respondents ever caused any harassment or maltreatment of the petitioner at Deoria where she is residing with her parents. Merely residing with her parents at Deoria does not create territorial jurisdiction of the Courts at Deoria.

9.1 entirely agree with the findings recorded by the learned Additional Sessions Judge that Courts at Deoria had no jurisdiction to try this case.

The writ petition has no force and is accordingly dismissed.

The order dated 28.5.2007 passed by learned Additional Sessions Judge is affirmed.

10. However, the order dated 27.8.2007 passed by Chief Judicial Magistrate, Deoria for writing a letter to the District Judge for transferring the case to Mau is absolutely illegal. C.J.M., Deoria or the Sessions Judge, Deoria has no power to transfer the case from one district to another district. After the revision was allowed and the application u/s 177 Cr.P.C. filed by the accused persons stood allowed, the Magistrate had no option, but to dismiss the complaint. Therefore, the complaint stands dismissed on the ground of lack of territorial jurisdiction. However, the petitioner shall be at liberty to move a fresh complaint in the competent Court at Mau, if so desires.