

(2010) 11 AHC CK 0122
In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 16012 of 2010

Smt. Tahira

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 177, 178, 179, 190

Citation : (2011) 2 ACR 1256 : (2011) 1 ADJ 195 : (2011) 2 DMC 588

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—Heard the learned Counsel for the Petitioner (Smt. Tahira) and the learned AGA for the Respondents and perused the record.

2. This is a writ petition under Article 226 of the Constitution of India for quashing the order dated 9.11.2009 (Annexure No. 4) passed by the Chief Judicial Magistrate, Sidharth Nagar and order dated 21.5.2010 (Annexure No. 5) passed by the Additional Sessions Judge, Court No. 1, Sidharth Nagar in criminal revision No. 185/2009.

3. The facts of the case are that the Petitioner moved an application u/s 156(3) Code of Criminal Procedure in the Court of Chief Judicial Magistrate, Sidharth Nagar, which was registered as Misc. Criminal Case No. 1203/2009. Learned Chief Judicial Magistrate dismissed the application on the ground that the occurrence took place in Bombay, therefore, he had no jurisdiction to entertain the petition u/s 156(3) Code of Criminal Procedure. Learned Additional Sessions Judge was also of the same view and he accordingly dismissed the revision. The Additional Sessions Judge placed reliance on *Manish Ratan and Ors. v. State of Madhya Pradesh* and *Anr. 2007 (1) SCC 267* and held that the offence of cruelty for the dowry is not a continuous offence. In my opinion, the learned Additional Sessions Judge failed to appreciate the facts of the aforesaid case. In that case

the victim had been given maltreatment for dowry in the house of her husband. She left the house of her husband and started to live in the house of her parents within the territorial jurisdiction of the Magistrate at Datiya, Madhya Pradesh. In that case there was no allegation that any torture, harassment or demand of dowry was made during the period the victim had been living with her parents, and the entire cause of action had arisen in the house of her husband within the local limits of the Courts at Jabalpur. In this view of the matter, the Supreme Court held that the Court at Datiya had no jurisdiction. In my opinion, in the present case, the allegations are that the deceased had been subjected to cruelty and harassment in the house of her husband for dowry. Her husband's house situates within the territorial jurisdiction of the Chief Judicial Magistrate, Sidharth Nagar. It was also stated in the application that the accused persons, with the intention of killing the deceased, took her to Bombay and killed her there and buried the dead body, therefore, according to the allegations made in the petition filed u/s 156(3) Code of Criminal Procedure the torture and harassment to the deceased was given within the territorial jurisdiction of the Courts at Sidharth Nagar and continued that torture even in Bombay, therefore, it cannot be contended that the entire cause of action arose only in Bombay. According to the allegations made in the complaint, a part cause of action arose well within the jurisdiction of Chief Judicial Magistrate, Sidharth Nagar. The question of jurisdiction should be decided on the basis of allegations made in the complaint and not on any other basis. If the complaint allegations are taken at their face value, it cannot be inferred that no cause of action arose within the territorial jurisdiction of the C.J.M. Sidharth Nagar.

4. According to Section 177 Code of Criminal Procedure, every offence shall ordinarily be inquired into or tried by a Court within whose local jurisdiction it was committed. According to Section 178 Code of Criminal Procedure, when it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a 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, the offence may be inquired into or tried by a Court having jurisdiction over any of such local areas. According to Section 179 Code of Criminal Procedure, when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

5. In the case of Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, the Apex Court applied the provisions of Section 178(b) and (c) of the Code of Criminal Procedure in regard to the offence of demand of dowry and harassment, which was found as a continuing offence, committed partly in one area and partly in another, and held that the Court having jurisdiction over any of such areas has power to inquire into and try the matter.

6. It is no doubt true that power u/s 156(3) Code of Criminal Procedure is to be exercised by the Magistrate who has the power to take cognizance of the offence u/s 190 Code of Criminal Procedure, therefore, he can direct for police investigation u/s 156(3) Code of Criminal Procedure. When a part cause of action arose within the territorial jurisdiction of Chief Judicial Magistrate, Sidharth Nagar, he had power to take cognizance of the offence u/s 190 Code of Criminal Procedure, therefore, he had also jurisdiction to entertain the application u/s 156(3) Code of Criminal Procedure and to pass appropriate order on merit. The views of the Courts below that the learned Chief Judicial Magistrate, Sidharth Nagar had no jurisdiction, were not correct and as such cannot be upheld.

7. For the reasons discussed above, the instant writ petition is allowed. The impugned orders dated 9.11.2009 (Annexure No. 4) and dated 21.5.2010 (Annexure No. 5) are quashed and the learned Chief Judicial Magistrate, Sidharth Nagar is directed to reconsider the matter and pass a fresh order in accordance with law.