
(2005) 09 AHC CK 0048
In the Allahabad High Court
Case No : Criminal Revision No. 2135 of 2005

Sunil Kumar Bansal and Others

APPELLANT

Vs

State of U.P. and Hari Prasad Agrawal

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 177
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2006) 1 DMC 222

Hon'ble Judges : G.P. Srivastava, J

Bench : Single Bench

Advocate : P.K. Singh, for the Appellant; W.H. Khan and J.H. Khan and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

G.P. Srivastava, J.—This criminal revision is directed against the judgment and order dated 29.4.05 passed by Addl. Chief Metropolitan Magistrate IX, Kanpur Nagar in Criminal case No. 291 of 2001 (New No. 5378 of 2003) State v. Sunil Kumar Bansal and Ors. under Sections 498A/323/504 I.P.C. and 3/4 Dowry Prohibition Act police station Pheel Khana district Kanpur Nagar

2. The brief facts giving rise to this revision is that the opposite party lodged a F.I.R. on 22.10.2000 at about 14.30 P.M. at police station Pheel Khana district Kanpur Nagar against the revisionists which was registered as crime No. 131/2000 under Sections 498A/323/506 I.P.C. and 3/4 Dowry prohibition Act. After usual investigation a charge sheet was submitted on which the learned court below took cognizance and framed charges The accused revisionists moved an application u/s 177 Cr.P.C. alleging that the proceedings be dropped as the court at Kanpur Nagar had no territorial jurisdiction in the matter as no cause of action has taken place at Kanpur Nagar After hearing the parties learned Magistrate vide impugned order dated 29.4.05 rejected the application of the

revisionists. Feeling aggrieved with the order passed by the court below the accused persons have preferred this revision,

3. I have heard learned counsel for the parties and gone through the record of the case.

4. The recital of the F.I.R. in the aforesaid crime shows that Smt. Aashi Agarwal daughter of the complainant/opposite party was married with the revisionist No. 1 Sunil Kumar Bansal on 28.6.1999 at Allahabad. In the marriage Rs 2 lacs in cash and Rs 25,000/- by bank draft was sent to the revisionists. The revisionists were torturing the daughter of the complainant for dowry This fact was informed to the complainant by his daughter when she came at Kanpur The statement of the complainant was recorded u/s 161 Cr.P.C. by the Investigating Officer in which he has stated that the girl was shown to the revisionist at Allahabad where the marriage was settled it was agreed that the complainant will come to Allahabad as he was unable to make arrangement for reception etc. at Kanpur and in this connection agreed to pay Rs. 2, 25,000/- as marriage expenses. Out of which Rs. 25,000/- was sent by bank draft. The marriage was solemnized at Allahabad. The demand of dowry was made at Allahabad with the daughter of the complainant and the complainant himself So it appears that the entire cause of action took place at Allahabad and not at Kanpur. No demand of dowry was ever made by the Revisionists at Kanpur. The sum of Rs. 25,000/- by bank draft and Rs. 2 lacs by cash was voluntarily sent by the complainant for marriage expenses on his behalf. It cannot be said that this amount was dowry and if it was so it was demanded at Kanpur. The marriage expenses which was to be born voluntarily cannot be termed as dowry. Therefore, even if any demand of dowry or torture thereon was done by the revisionists the same took place at Allahabad and no part of cause of action ever taken place nor even the marriage was solemnized nor the party ever resided at Kanpur.

5. In this connection reliance has been placed on Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. 2004 Supreme Court Cases (Crl.) 2134 wherein it was held that

"while in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 Cr.P.C. reference is to the local jurisdiction where the offence is committed these variations in etymological expression do not really make the position different.

6. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. Thus, it consists of a bundle of facts, which give cause to enforce the legal, inquiry for redress in a court of law. It must include some act done by the later since in the absence of such an act no cause of action would possibly accrue or would arise. In the restricted sense cause of action means the

circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceedings including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

7. The principle of law laid down by the Apex court is fully applicable in the present case because no part of cause of action ever arose within the jurisdiction of Kanpur court.

8. In the result the revision is allowed. The impugned order passed by the court below is set aside. The matter is sent back to IX Addl. Chief Metropolitan Magistrate, Kanpur Nagar who shall dispose of the application of the revisionists u/s 177 Cr P C afresh in the light of observations made in the body of the judgment within thirty days from the date a certified copy of this order" is produced before him.