

Vijai Kumar Sharma and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-15-1990

Reported in : I(1991)DMC244

Judge : K.P. Singh and ;G. Malaviya, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 364 and 498A

Appeal No. : Criminal Misc. Writ Petition No. 29821 of 1990

Appellant : Vijai Kumar Sharma and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.C. Tiwary and ;A.K. Awasthi, Advs.

Disposition : Petition dismissed

Judgement :

G. Malaviya, J.

1. By this petition Vijay Kumar Sharma and six others have challenged the jurisdiction of Mahila Prakoshtha, Police Station Colonelganj, Allahabad to investigate the offence in crime No. 638 of 1990 under Sections 498A, 364 and 506 Indian Penal Code and Section 3/4 Dowry Prohibition Act. It has also been

prayed that the said first information report be quashed and the petitioners be not arrested in the said crime.

2. It appears that Smt. Savita Mishra who had been married to Vijay Kumar Sharma resident of 100, New Ganesh Ganj, Lucknow lodged a first information report at police station George Town, Allahabad alleging that after her marriage she had gone to Lucknow Father of the informant had given sufficient gifts and items in marriage but the accused mentioned in the first information report, after a few days of the marriage, started teasing her for bringing insufficient dowry. It was also mentioned that they used to beat her and insisted that she get Rs. 1,00,000/-, golden kangans and a motor cycle from her father otherwise she was to be killed. It was further mentioned that as her husband had illegitimate relations with some girl he wanted to remove her from his way with the object of marrying another woman for a second time. It was further mentioned that on 7-3-1990 all the persons named in the First Information Report had beaten her and had thereafter conspired to kill her. As soon as she got the hint of the conspiracy she somehow managed to escape from Lucknow with her child and came back to Allahabad and was residing at Allahabad since then. However when she went to Lucknow on 22-3-1990 she was again beaten and was threatened to be killed if she did not go back. Although she lodged a report at the police station, no heed was paid to it. The first information report further mentioned that on 15-9-1990 her one year old son Mikku had crawled out of her house; she searched her son but could not trace him. It was reported that the petitioner Vijay Kumar Sharma and her in-laws were seen in Allahabad on 14-9-1990. She apprehended that her son had been kidnapped by the petitioner and his family members and that they may kill her son.

3. On the basis of the said first information report the case was registered and the matter was being investigated.

4. Learned counsel for the petitioners contended that barring the offence under Section 364 Indian Penal Code all other offences were, on the face of the first information report, committed at Lucknow. So far as the offence under Section 364 Indian Penal Code is concerned, learned counsel for the petitioners contended that since the petitioner Vijay Kumar Sharma is the natural guardian of his son

Mikku, which is also clear from perusal of Section 6 of the Hindu Minority and Guardianship Act, hence he cannot be held guilty for abduction as it cannot be said that the child had been removed from the custody of the natural guardian. We find force in this contention. The offence under Section 364 Indian Penal Code is constituted only when some person removes a minor boy from the lawful custody of his guardian, Therefore, it cannot be said that if the petitioner Vijay Kumar Sharma took away his son, he would be guilty of the offence under Section 364 Indian Penal Code. Admittedly other offences were committed at Lucknow.

5. However learned counsel for Smt. Savita Sharma contended that it had been categorically asserted by her in the counter affidavit that the petitioner had taken away the son from Allahabad. In view of the stand of learned counsel for the petitioner that he did not propose to file a rejoinder affidavit, it is asserted that the fact of taking away of the son is not seriously disputed. As a matter of fact Sri Vimal Chand Tewari appearing for the petitioners had argued his case on the question of offence under Section 364 Indian Penal Code by asserting that even if the son had been at some part of time taken away by his client, who was as per the statement of the counsel for the parties, at the stage of hearing of this matter, with Smt. Savita Sharma, the offence under Section 364 I.P.C. was not made out. This conduct of the accused persons in taking away the child, according to learned counsel for respondent No. 4 amounted to cruelty as defined under Section 498A Indian Penal Code. It will be relevant to quote Section 498A Indian Penal Code which reads as under:

'498-A. Husband or relative of husband of a woman subjecting her to cruelty- whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation--For the purpose of this section, 'cruelty' means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'

6. In view of the definition of cruelty we have to see whether the assertion of learned counsel for the opposite party No. 4 Smt. Savita Sharma that the act of the petitioner in taking away the child without her consent and knowledge amounted to cruelty is substantiated or not. Learned counsel for the opposite party No. 4 has also placed reliance on the judgment of a learned Single Judge of this Court in the case of Vijai Ratan Sharma v. State of U.P. and Ors., reported in 1988 Allahabad Weekly Cases page 749. It has been held in the said case that the offence under Section 498A Indian Penal Code is a continuous one and if on account of some conduct of her in-laws the victim suffered from cruelty at the place other than the place of her marriage the Court where the victim subsequently faced torture would have jurisdiction to try the offence. We find ourselves in agreement with the views expressed in the case of Vijai Ratan Sharma v. State of U.P. and Ors. (Supra).

7. On the parity of reasoning on-fine jurisdiction of the court to try an offence, we also find that in the instant case the police of Allahabad will have the jurisdiction to continue the investigation as we are of the view that taking away of the son of Smt. Savita Sharma by the petitioners in this case without information to Smt. Savita Sharma of the said fact amounts to cruelty inasmuch as by the said conduct of the petitioners it could be much possible that Smt. Savita Sharma could either be driven to commit suicide or it could cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. We also find that the said conduct of the petitioners, if proved, amounted to cruelty vide explanation (b) to Section 498A, as the intention to take away the child could be nothing else but to harass Smt. Savitri Sharma on account of her failure to meet the demand of dowry. However it is made clear that all the observations made in this judgment are based upon the averments made in the first information report of the case, and are not to be treated by the investigating agency or the trial court as indicating that facts mentioned in the first information report have been accepted by us to be true, and the investigating agency and the trial court shall proceed in the matter

independently, unaffected by the observations in the judgment.

8. Since we have found that on the facts mentioned in the first information report Smt. Savita Sharma suffered cruelty on account of the conduct of the petitioners in Allahabad also, the part of the cause of action in respect of the crime under Section 498A Indian Penal Code arose at Allahabad. The result is that the police of Allahabad has jurisdiction to investigate the crime registered at Allahabad.

9. In view of our discussions above, this petition fails and the same is dismissed summarily.

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