

**Gulshan Malik Vs. State of U.P.**

**Gulshan Malik Vs. State of U.P.**

**SooperKanoon Citation :** [sooperkanoon.com/487080](http://sooperkanoon.com/487080)

**Court :** Allahabad

**Decided On :** Oct-12-2001

**Reported in :** 2002CriLJ668; I(2002)DMC787

**Judge :** Bhanwar Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 407; [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; [Dowry Prohibition Act, 1961](#) - Sections 314

**Appeal No. :** Transfer Application Nos. 90 and 100 of 1995

**Appellant :** Gulshan Malik

**Respondent :** State of U.P.

**Advocate for Def. :** S.D.N. Singh and ;D.R. Chaudhary, Advs.

**Advocate for Pet/Ap. :** P.K. Srivastava and ;Raghuraj Kishore, Advs.

**Disposition :** Application allowed

**Judgement :**

ORDER

**Bhanwar Singh, J.**

1. Since both the transfer applications pertain to the connected cases, pending in the Court of Chief Judicial Magistrate, Bulandshahr and further since the grounds

are common, these are taken together for disposal.

2. By filing Transfer Application No. 90 of 1995, the applicants have prayed for transfer of Criminal Case No. 459 of 1995, State v. Vijaya Bhan Mallik and Ors., from the Courts of Chief Judicial Magistrate, Bulandshahr to some other district. In the other Transfer Application No. 100 of 1995, similar prayer has been pressed into service for transfer of Criminal Complaint No. 1515 of 1994.

3. It is noteworthy that Sri Gulshan Mallik was married to Smt. Indu Mallik, sister of the respondent No. 2, Sri Pavitra Kumar Rawat, a practising Advocate at Bulandshahr District Court. In the year 1994, some differences arose between Gulshan Mallik and his wife Indu Mallik, as a result of which, the latter started living with her brother, Pavitra Kumar Rawat. Her father, Sri Narendra Singh who was then posted as Additional District Judge, Etawah also practised in the District Courts, Bulandshahr for 20 years before joining judicial service and now after his retirement, he has resumed his legal profession in district Bulandshahr. Sri Pavitra Kumar Rawat lodged a First Information Report under Section 498A, I.P.C. and 3/4, Dowry Prohibition Act against Sri Gulshan Mallik, his three sisters and his parents as also his brother-in-law, namely Jitendra. Following the police report, Gulshan Mallik's father Sri Vrijaya Bhan Mallik was arrested from his village and he had to remain in jail for a considerable time as many lawyers who were contacted in connection with his bail being under the influence of Sri Pavitra Kumar Rawat refused to appear on his behalf. When one Advocate, Sri Charnjeet Lai agreed with great difficulty and persuasion to press for the bail application of Sri Vijai Bhan Singh, about hundreds of lawyers along with Sri Pavitra Kumar Rawat, Advocate appeared in the Court of Sessions Judge and abused and manhandled Mr. Charanjeet Lal, Advocate. Smt. Indu's father, Sri Narendra Singh, Additional District Judge, Etawah also appeared in the Court of Sessions Judge to oppose the bail application and exert his influence and pressure upon the Court of Sessions Judge. Under these compelling circumstances, the other accused of the case including Sri Gulshan Mallik filed a Criminal Misc. Writ Petition No. 27756 of 1994 in this Court praying for suitable orders regarding their surrender and bail and this Court, vide its order of August 24, 1994, appreciating the hardship the petitioners had come across, directed that the petitioners shall surrender in the

Court of Chief Judicial Magistrate, Ghaziabad who will consider their bail application and it was in pursuance of the said order of this Court that the applicant Gulshan Mallik and his other relatives could secure their bail from the Ghaziabad Court. Sri Vijay Bhan Singh Mallik was also, in the meantime, released on bail vide order dated 30.8.1994 of the Sessions Judge, Bulandshahr. The police after investigation into the allegations of the First Information Report submitted a charge-sheet against 5 out of 7 persons in the Court of Chief Judicial Magistrate which was registered as Case No. 459 of 1995, State v. Vijay Bhan Singh and Ors. In the meantime, Mr. Pavitra Kumar, Advocate filed a false and fictitious complaint under Sections 494 and 109, I.P.C. which was registered as Criminal Complaint No. 1515 of 1994 in the Court of Additional Chief Judicial Magistrate, Bulandshahr.

4. The applicants have moved the other Transfer Application No. 100 of 1995 for transfer of the said case too.

5. Sri Narendra Singh, father of the respondent No. 2, Mr. Pavitra Kumar Rawat, Advocate filed his counter-affidavit denying the applicants' allegation that he or his son, Mr. Pavitra Kumar, Advocate had, in any way, obstructed the judicial proceedings or exercised any undue influence upon the Presiding Officer of the Court. It was also asserted by him that no lawyer of Bulandshahr judgship refused to appear on behalf of Sri Vijay Bhan Singh. He has also refuted the applicants' allegation that hundreds of lawyers appeared in the Court of Sessions Judge for the complainant to oppose the bail application of Sri Vijay Bhan Singh. Further, as stated by him, the applications are misleading and contain distorted facts.

6. I have heard learned Counsel for both the parties and perused the record.

7. A perusal of the affidavit and counter-affidavit of the Pairokars of the parties would reveal that the relationship between applicant No. 1, Sri Gulshan Mallik and his family members on one side and his wife and her family members on the other is better and the litigation between them has further resulted in deterioration of the said relationship. The applicants' Pairokar, Dr. Rajeshwar Singh has stated in his affidavit that the influence of Sri Rawat and his father, Narendra Singh in the Bulandshahr Court premises was of paramount importance so much so that many

senior lawyers, when contacted, refused to argue the bail application of Sri Vijay Bhan Singh when he was arrested by the police in the dowry case. He has included in the list of such lawyers the names of Sri Krishna Chand Sharma, Chaudhari Devinder Singh, Sardar Ranvir Singh, Sri S.C. Bhardwaj, Chaudhari Kiran Pal Singh, Sri Arjun Singh, Shri Sant Ram Bhati, Chaudhari Harveer Singh and Satya Pal Singh Yadav. It is added further that when, with great difficulty, Sri Charanjeet Pal, Advocate agreed to argue the bail application of Sri Vijay Bhan Singh, he was abused and manhandled by the unruly mob of some 300 lawyers who came shouting the cause of Sri Pavitra Kumar Rawat and Sri Narendra Singh. Hundreds of lawyers thronged the Court of Sessions Judge, Bulandshahr when the bail application of Vijay Bhan Singh came up for hearing on 17.8.1994. The Sessions Judge finding it difficult to dispose of the bail application under the tense atmosphere adjourned the hearing to 24.3.1994. Sri Narendra Singh, the then Additional District Judge filed his affidavit opposing the bail application. It is relevant to note that Sri Narendra Singh who was posted as Additional District Judge, Etawah at that time, has now retired and, as stated by the applicants, he is also now a practising Advocate at Bulandshahr. It has been submitted by the applicants' Counsel for the idea of filing an affidavit by Sri Narendra Singh was to exert an influence and pressurise the Court of Sessions Judge, Bulandshahr, otherwise such an affidavit could conveniently be filed either by Mr. Pavitra Kumar, Advocate who was practising at Bulandshahr or by any other member of the family. The contention carries substance. It is further important to mention that the order dated 17.8.1994, passed by the learned Sessions Judge, Bulandshahr appears to corroborate the applicants' contention that hundreds of lawyers gathered in the Court of Sessions Judge with a view to mount a pressure upon the Court either to reject the application or to defer the hearing. A copy of the order dated 17.8.1994 has been filed by the applicants. Its perusal would reveal that the applicant was represented by a single lawyer but there were about 100 lawyers present in the Court. The learned Sessions Judge without disclosing any reason adjourned the hearing for a week. This order of adjournment, coupled with the asseverations of Dr. Rajeshwar Singh, would certainly go to show that the opposite parties with a view to muster strength indulged in collecting a large number of lawyers and it can well be inferred out of common experience that such

an act of the applicants was with a view to create a pressure on the Court. Otherwise there was no reason as to why 100 lawyers should throng in the Court of Sessions Judge at the time of hearing a particular bail application. Such an act of the opposite parties certainly deserves to be deprecated as it amounts to obstructing the cause of justice by way of unfair means. In these circumstances, the averment of Dr. Rajeshwar Singh that several senior lawyers turned down his request to argue the bail application on behalf of Dr. Vijay Bhan Singh appears to be correct. It is immaterial whether these lawyers declined to accept the brief either on their own so that they would not invite the wrath of Narendra Singh, Additional District Judge and his son, Pavitra Kumar Rawat, a practising Advocate; or they declined to be engaged under their influence. Whichever may be the cause, the fact remains that the applicants reeled under a difficult situation to plead their cause through lawyers of prominence. It is a human instinct that when involved in a case, every litigant would like to engage the best lawyer and with the same spirit, Dr. Rajeshwar Singh would have approached the senior lawyers of Bulandshahr judgship but on one reason or the Other, as enumerated above, they did not come forward. It was probably for the same reason that the case/application arising out of Crime No. 642 of 1994 was also transferred to district Ghaziabad. Sri Gulshan Mallik is working as an Administrative Officer in a French Company at New Delhi as stated by Dr. Rajeshwar Singh in para 22. He and his family members rightly apprehended harassment at the hands of opposite parties if they come to Bulandshahr where Narendra Singh and his son, Pavitra Kumar Rawat exercised greater influence in the Court campus.

8. Having regard to what has been discussed above, it appears to be appropriate that the Criminal Case No. 459 of 1995, State v. Vijaya Bhan Malik and Ors., and Criminal Complaint Case No. 1515 of 1994 and the proceedings of other connected cases being litigated between Sri Gulshan Mallik and his wife are transferred to the adjacent district of Ghaziabad.

9. Accordingly, both these applications are allowed and the aforesaid cases are transferred to the Court of Chief Judicial Magistrate, Ghaziabad for disposal in accordance with law

