

Ajara Khatoon and Others Vs. State of U.P. and Another

Ajara Khatoon and Others Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/951747

Court : Allahabad

Decided On : Apr-13-2012

Judge : Surendra Kumar

Appeal No. : Criminal Misc Writ Petition No. 953 of 2012

Appellant : Ajara Khatoon and Others

Respondent : State of U.P. and Another

Advocate for Pet/Ap. : Sri. Ramesh Rai

Judgement :

1. Heard Sri Ramesh Rai, learned counsel for the petitioners and learned A.G.A.
2. The accused petitioners have preferred this Criminal Misc. Writ Petition under Article 226 of the Constitution of India to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 1.12.2011 passed by the Special Judge (Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), Court No. 3, Deoria in Criminal Revision No. 263 of 2010-Smt. Ajara Khatoon and others Vs. State of U.P. and others, and order dated 3.10.2007 passed by the Additional Chief Judicial Magistrate, Court No. 19, Deoria in Criminal Case No. 2063 of 2007-State Vs. Suhail Ahmad and also to issue a writ, order or direction in the nature of mandamus commanding the court below to pass a fresh order on the application of the petitioners under Section 179 Cr.P.C. and quash the entire proceedings pending against the petitioners arising out of case crime No. C-1 of

2006, under Sections 498A, 323, 504, 506, 354 and 495 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Salempur, District Deoria.

3. The four petitioners namely Smt. Ajara Khatoon, allegedly first wife of the petitioner Suhail Ahmad, Smt. Rizwana, Abdul Kayum and Suhail Ahmad who is husband of the respondent no. 2 Shahnaz, have filed this writ petition for quashing the aforesaid impugned orders dated 1.12.2011 and 3.10.2007 on the ground that from the allegations made in the application under Section 156(3) Cr.P.C. by the complainant, the alleged offences are said to have taken place within local limits of district Mau and only the concerned court situated within the local limits of District Mau has territorial jurisdiction to try the said offences alleged against the petitioners and since the place of occurrence as mentioned in the said application is Sasural of the complainant namely within the local limits of District Mau, has jurisdiction to try the offence and the impugned orders stated above are wholly illegal, erroneous and not sustainable in the eye of law because no cause of action has ever taken place within the local limits of District Deoria. On this ground, it has further been contended since the charge sheet has been filed by an authority which has no jurisdiction to submit the same within the concerned court situated within local limits of District Deoria, the court situated in District Deoria has no jurisdiction to take cognizance or to proceed with the case on the basis of charge sheet submitted against the petitioners and others.

4. It appears that Smt. Shahnaz Khatoon, who is the respondent no. 2 herein, preferred an application against the accused persons Suhail Ahmad, Smt. Ajara Khatoon, Shahnaz, Kayum, Smt. Rizwana, Riyaz and Smt. Jaibunnisa in the court of learned Additional Chief Judicial Magistrate, Court No. 19, Deoria (hereinafter referred to as the trial court), under Section 156(3) Cr.P.C. with the allegations that the complainant Shahnaz Khatoon was married to Suhail Ahmad in the month of September, 2003, after the marriage, she came to the house of her husband and after gap of fifteen days, the accused persons, some of them are the petitioners herein, used to demand coloured Television, Hero Honda motorcycle, Refrigerator and Rs. 25,000/- in cash in dowry. The complainant referring poor condition of her father, refused to fulfill the aforesaid demand. Thereafter the accused persons used to abuse and thrash her and finally maltreated and starved her. On the

information given by the complainant to her parents, her brother along with witness came to her Sasural and then she narrated the whole story of her torturing, cruelty and dowry demand. Her family members tried to pacify the accused persons but they became displeased. The accused persons Riyaz, who is Jija of her husband Suhail Ahmad and Smt. Jaibunnisa wife of Riyaz used to visit and stay at night at the matrimonial house of the complainant. It is further alleged that she subsequently came to know that her husband Suhail Ahmad was previously married to Smt. Ajara Khatoon and without getting any divorce, Suhail Ahmad concealing his first marriage remarried with the complainant Shahnaz Khatoon. It is further alleged that the accused persons used to thrash, abuse and maltreat compelling her to bring the aforesaid items in the dowry. It was on 24.3.2004 that Jija of of husband of the complainant stayed at the matrimonial house of the complainant and around mid night the accused Riyaz came inside the room of the complainant and bolted the door of the house of the room from inside intending to outrage modesty of the complainant. The complainant tried to run away from her room but Riyaz caught hold the complainant and on cries and shouts of the complainant, the other accused persons came there. The complainant narrated the aforesaid incident to them, then the accused persons abused the complainant and thrashed her with a stick. Thereafter the accused persons are alleged to have dragged the complainant by catching her hair and again abused her in filthy language. In the following morning, the accused persons are alleged to have forcibly snatched or taken her clothes, ornaments etc. and then her husband brought the complainant only in worn clothes to the railway station Salempur situate in District Deoria and left her warning to bring the aforesaid demanded items and then only she would be allowed to live at matrimonial home. The complainant anyhow reached her parent's house from the railway station Salempur, District Deoria and narrated the whole story to her parents. Thereafter she was medically examined by the doctor.

5. It appears that the application under Section 156(3) Cr.P.C. dated 12.4.2005 was disposed of as not maintainable by the learned Magistrate vide order dated 5.8.2005 categorically holding that the court of Magistrate at Deoria had no jurisdiction to entertain the application filed by the complainant because the place of occurrence, as per the application, is Sasural of the complainant and her

Sasural is in Kasimpura, Mau, Police Station Kotwali Mau, District Mau, Uttar Pradesh. The learned Magistrate vide order dated 5.8.2005 has observed that the complainant can obtain order after filing such application in the competent court. The order dated 5.8.2005 was challenged by the complainant before the Sessions Judge, Deoria through Criminal Revision No. 210 of 2005-Shahnaj Khatoon Vs. State and the same was allowed vide judgment and order dated 24.10.2005 directing the learned Magistrate to redecide the application in the light of observations made by the revisional court. The learned revisional court clearly gave a finding that as per the allegations made in the application under Section 156(3) Cr.P.C., the occurrence took place within the local limits of District Mau and at the same time some part of the said offences was also committed at Salempur, which is within the local limits of District Deoria. The revisional court/Sessions Judge further observed that the learned Magistrate lost sight of the said facts and did not consider the provisions of Sections 178 and 179 Cr.P.C.

6. In compliance of the direction given by the revisional court/Sessions Judge in the aforesaid criminal revisional, the learned Magistrate vide order dated 8.12.2005 directed the concerned police station to register and investigate the matter and then Crime No. C-1 of 2006, under Sections 498A, 323, 504, 506, 354, 495 I.P.C. and 3/4 Dowry Prohibition Act, Police Station Mau, District Deoria was registered against the accused persons.

7. The Investigating Officer after completing investigation, submitted charge sheet vide charge sheet No. A-54 dated 16.4.2006, under Sections 498A, 323, 504, 506, 354, 495 I.P.C. and 3/4 Dowry Prohibition Act against the accused persons after collecting evidence including injury report of the complainant, which has been annexed as Annexure-5 to the writ petition. It was thereafter that one accused Riyaz, who is Nandoi of the complainant and Jija of the husband of the complainant, moved an application dated 3.7.2007 (Annexure-6 to the writ petition) before the trial court challenging jurisdiction of the Magistrate, saying that in the application under Section 156(3) Cr.P.C., the place of occurrence is Sasural of the complainant.

8. The application dated 3.7.2007 of one accused Riyaz, who is not the petitioner before this Court, and another connected application dated 5.9.2007 were dismissed vide impugned order dated 3.10.2007, holding that the court of Magistrate at Deoria has jurisdiction and is competent to decide the case. The learned trial court in the order dated 3.10.2007 also observed that if the accused Riyaz has not committed any offence and is innocent, then he can raise that point at the time of hearing of charge and if he is found innocent, he can be discharged. It was also observed by the learned Magistrate in the impugned order that the complainant/victim can file a case regarding cruelty etc. at the place of her parents where she resides after the said occurrence.

9. The impugned order dated 3.10.2007 was challenged through Criminal Revision No. 263 of 2010-Azara Khatoon and others Vs. State of U.P. by the accused persons in the court of learned Sessions Judge, Deoria which was ultimately dismissed on merits by the Special Judge (S.C./S.T., Act) vide impugned judgment and order dated 1.12.2011.

10. It may be mentioned here that the proceedings of this case were stayed till 8.7.2008 in compliance of the order dated 22.1.2008 passed by this Court in Criminal Misc. Application No. 1095 of 2008 whereby the dispute between the parties was referred to the Mediation Centre of this Court. However, the proceedings resumed afresh after Criminal Misc. Application No.1095 of 2008 was disposed of by this Court vide order dated 3.12.2008 directing the trial court that the bail application of the one accused Smt. Ajara Khatoon be disposed of expeditiously.

11. Chapter XIII of the Code of Criminal Procedure, 1973 (in short "Code") deals with jurisdiction of the criminal courts in inquiries and trials. Sections 177-179 are relevant which are 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 local areas than one, 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.

179. Offence triable where act is done or consequence ensues.- 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.”

12. From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, 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 than one local area and takes place in different local areas as per Section 178, the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. Section 179 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

13. Keeping the above provisions in mind, let us consider the allegations made in the application under Section 156(3) Cr.P.C. by the complainant, respondent no. 2 herein, the complainant Shahnaz Khatoon was married to Suhail Ahmad in September, 2003 and after the marriage she was ill treated, tortured by her husband and his family members demanding cash and items in dowry and finally the complainant was abused, thrashed and made to starve by the accused persons including her husband. Suhail Ahmad, husband of the complainant did not disclose his previous marriage and succeeded in remarrying the complainant and when she

asked about the previous marriage she was again thrashed, abused and maltreated and compelled to bring the aforesaid items in dowry. Not only this, the complainant was deprived of her clothes, ornaments etc. and she was forcibly taken by her husband only in worn clothes to the Railway Station Salempur where also she was abused and threatened to return only with the aforesaid demanded items. The Railway Station Salempur is situated within the local limits of District Deoria from where the complainant reached her parents house in village Mominabad, Police Station Salempur and narrated her woes to her parents. She was treated for the injuries caused to her by her husband and his family members. The application under Section 156(3) Cr.P.C. clearly shows that there was ill treatment and cruelty at the hands of her husband and his family members at her matrimonial home in District Mau and because of their actions and threat she was forcibly taken by her husband to the Railway Station Salempur where she was again abused, maltreated and warned to bring the demanded items and then she had to go to her parents' house situated in District Deoria. She resorted to the aforesaid criminal proceedings in District Deoria by moving an application under Section 156(3) Cr.P.C. where the police submitted charge sheet under the aforesaid sections against the petitioners and others. Among the charge sheeted offences, the offence under Section 498A is the main offence relating to cruelty by husband and his relatives. It is useful to extract the same which is as under:

“498A. 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.”

14. The Hon'ble Apex Court in *Sujata Mukherjee (Smt) Vs. Prashant Kumar Mukherjee*, AIR 1997 SC 2465 : (1997) 5 SCC 30, while considering the similar allegations as found in the case in hand, observed that Clause of Section 178 of the Code is attracted and the Magistrate at wife's parents' place has also jurisdiction to entertain the complaint or matter. In this judgment, cause of action took place only at Raigarh, the house of in-laws where the lady had been maltreated and humiliated. The Hon'ble Apex Court in this judgment held that the lady had been maltreated and humiliated not only in the house of in-laws at Raigarh but as a consequence of such events, the husband of the lady had also come to the house of her parents at Raipur and assaulted her. On this analogy, the Hon'ble Supreme Court laid down that by virtue of Clause (c) of Section 178 of the Code the Magistrate at wife's parents' place has also jurisdiction to entertain such complaint because the victim/lady had been subjected to cruelty persistently at Raigarh and also at Raipur and the incident taking place at Raipur is not also isolated event but consequently to the series of incidents taking place at Raigarh. The Hon'ble Apex Court basing reliance on Section 178 of the Code, in particular clauses (b) and (c), found that in view of the allegations in the complaint that the offence was a continuing one having been committed in more local areas and one of the local areas being Raipur, the learned Magistrate at Raipur had jurisdiction to proceed with the criminal case instituted in such court. Ultimately, accepting the stand of the appellant (victim/lady), the Hon'ble Apex Court in *Sujata Mukherjee (supra)* held as under:-

“We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted.”

15. In *State of M.P. Vs. Suresh Kaushal and Another*, (2003) 11 SCC 126: (2001 AIR SCW 4587) again in a similar circumstance, considering the provisions of

Section 179 Cr. P.C. with reference to the complaint relating to the offences under Section 498A read with Section 34 IPC, the Hon'ble Apex Court held as under:

“6. The above Section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore.”

16. The Hon'ble Apex Court in *Sunita Kumari Kashyap Vs. State of Bihar and another*, AIR 2011 Supreme Court 1674 distinguished the facts narrated in *Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another*, AIR 2004 SC 4286: (2004) 8 SCC 100 and *Bhura Ram and others Vs. State of Rajasthan and another*, AIR 2008 SC 2666 : (2008) 11 SCC 103 and held that from the facts in those judgments no part of cause of action arose or consequence ensued within the jurisdiction of different courts and observed that in view of Sections 178 and 179 of the Code and in the light of the specific averments made in the complaint of the appellant/wife, the said decisions are not applicable to the facts of the case in hand.

17. The Hon'ble Apex Court in *Sunita Kumari Kashyap (supra)* in paragraph 11 has observed as follows:

“11. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant-wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, the offence was a continuing one and the episode at Gaya was only a consequence of

continuing offence of harassment or ill- treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill- treatment and humiliation meted out to the appellant in the hands of all the accused persons and in such continuing offence, on some occasion all had taken part and on other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted.”

18. In *Manish Ratan and others Vs. State of M.P. and another*, (2007) 1 Supreme Court Cases 262, held that the true test of deciding jurisdiction in the cases of ill treatment, cruelty, demand of dowry initiated by the wife against her husband and his family members or relatives is whether the allegations made in the complaint would constitute a continuing offence is the core question. In a case of this nature, an offence cannot be held to be a continuing one, only because the complainant is forced to leave her matrimonial home. In *Y. Abraham Ajith's* case the factual position is different as the complainant herself left the house of the husband on account of alleged dowry demands by the husband and his relations. There was thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. On this basis, the Hon'ble Apex Court in *Y. Abraham Ajith's* case observed that the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

19. From the above discussions, it is concluded that on the basis of allegations made in the complaint of the victim/lady, the Court at a place where cause of action has arisen, is competent to proceed with the case. The Court at a place where consequence has ensued, is also competent and has full jurisdiction to proceed with the case. But if from the allegations no cause of action arises or consequence ensues then such a Court will have no jurisdiction to proceed with the case.

20. In the case in hand, the allegations were made by the complainant-respondent no. 2 through the application under Section 156(3) Cr.P.C. that she was thrashed, abused, maltreated and compelled to bring the items demanded in

dowry by her husband and his family members or relatives within the jurisdiction of the Court situate at District Mau. The victim lady was deprived of her clothes, ornaments etc. and was forcibly taken by her husband to the Railway Station Salempur, District Deoria where also she was abused and threatened to bring the aforesaid demanded items. The Railway Station Salempur is situated within the local limits of District Deoria from where the complainant-respondent no. 2 reached to her parents's house in village Mominabad, Police Station Salempur, District Deoria and narrated her woes to her parents. She was treated for the injuries caused to her by her husband and his family members. It was because of actions and threat of her husband and his family members that the complainant was forcibly taken by her husband to the Railway Station Salempur where she was again abused, maltreated and warned to bring the demanded items and then she had to go to her parents' house situate in District Deoria. Thus, the offence in hand has been committed partly in one local area and partly in another local area and the offence is continued one and continues to be committed in more local areas than one. The Court situated within the local limits of District Deoria has jurisdiction and is competent to decide the case in hand. The impugned judgment and orders dated 1.12.2011 and 3.10.2007 are perfectly just, legal and correct one, requiring no interference by this Court. There is no perversity and illegality in the aforesaid orders. The writ petition lacks merits and is accordingly dismissed.

21. Since the case is very old, the Additional Chief Judicial Magistrate, Court No. 19, Deoria, where the criminal case on the basis of charge sheet is pending at District Deoria, is directed to proceed with the criminal proceedings in Criminal Case No. 2063 of 2007-State Vs. Suhail Ahmad and others, arising out of Case Crime No. C-1 of 2006, under Sections 498A, 323, 504, 506, 354 and 495 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Salempur, District Deoria vide charge sheet No. A-54 dated 16.4.2006 and decide the same expeditiously, preferably within a period of four months from the date of production of certified copy of this order before him. It is made clear that this Court has not expressed anything on merits and claims of both parties and this conclusion is confined to the territorial jurisdiction of the Court at District Deoria.