
Sunil Kumar and Others Vs State of U.P. and Others

Civil Miso. Writ Petition No. 34048 of 1992

Court: Allahabad High Court

Date of Decision: Nov. 7, 1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156, 177#Penal Code, 1860 (IPC) â€”
Section 406, 406J, 498A

Citation: (1993) 1 AWC 571

Hon'ble Judges: Palok Basu, J; J.P. Semwal, J

Bench: Division Bench

Advocate: A.K. Awasthi and V.C. Tiwari, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Palok Basu, J.

This writ petition has been filed by Sunil Kumar, Satya Narain Khandelwal and Smt. Gyatri Devi with the prayer that the

police of Police Station Kotwali Mathura be restrained from investigating the Case Crime No. 711 of 1992, State v. Sunil Kumar and Ors. u/s

498-A IPC registered on the basis of the first information report lodged by Smt. Rekha Khandelwal and alternatively it has been prayed that the

investigation of the said case be transferred to the police of Police Station Kotwali, Bareilly and until that is done the Petitioners should not be

arrested.

2. This writ petition was filed on 17-9-92 when a counter-affidavit was called. The informant has been impleaded as the opposite party No. 3,

who is now represented by Sri. Rajul Bhargava, Advocate. The opposite parties No. 1 and 2 (State of U.P. and Station Officer of Police Station

Kotwali, Mathura) are represented by Sri. R.S. Sengar, learned standing Counsel.

3. Sri. V.C. Tiwari assisted by Sri. A.K. Awasthi, learned Counsel for the Petitioners, has argued that if the entire allegations made in the first

information report is taken to be correct, the police of police station Kotwali Mathura has no territorial jurisdiction to investigate the case.

4. It may be stated here that statement was made at the Bar that no counter affidavit is to be filed because the arguments on the question as to

whether territorial jurisdiction for investigating the case crime, if any, lies within the district of Mathura or not would have to be decided only on the

basis of the allegations made in the FIR.

5. Sri. V.C. Tewari has relied upon the provisions of Section 156 Code of Criminal Procedure in order to substantiate his argument that if the

offence does not fall within the local limits, the police of police station Kotwali, Mathura shall have no jurisdiction to investigate the case

6. Section 177 Code of Criminal Procedure says that every offence shall ordinarily be inquired into and tried by a Court within whose local

jurisdiction it was committed. Section 156 Code of Criminal Procedure says that for determination of the local jurisdiction of a police-station, the

provisions of Section 177 Code of Criminal Procedure shall have to be borrowed. This takes us to consider as to what the allegations in the first

information report in the present case are ?

7. The gist of the first information report (translation by the Court) is as follows:

The applicant's marriage with Sunil Kumar, son of Satya Narain Khandelwal of Bareilly was solemnized about one and a half years back in

Mathura, in which presentations worth Rs. 75,000/- were offered vide a list. This did not satisfy my husband and father-in-law, who felt annoyed

and used to beat me. My husband needed Rs. 50,000/- for his business and started pressurising me for getting for him Rs. 50,000/- from my

father which I refused, For this they refused to let me have the normal diet and stopped my sundry expenses. They prevented me from meeting my

parent and brothers, with the result that for about 13 months after my marriage I could not come to my father's house. The aforesaid three persons

had attempted to set fire to me. Whenever I tried to come to my father's house. They tried to obtain my signatures on blank papers for which the

applicant opposed. On the pretext of coming to Mathura regarding some business work my husband and father and mother-in-law took me to

Mathura Bus-Station. They left me there by saying that they would be back by rickshaw soon but when enough time elapsed and they did not turn-

up, I somehow managed to come to my father's house and narrated to him the entire incident. My Istri-Dhan, which is detailed below, has not

been given to me....

8. Without commenting anything on the allegations contained in the first information report, regarding which enough arguments have been advanced

by Sri. Tiwari, it may be said that whatever happened with the applicant had obviously taken place in Bareilly.

9. Sri. Rajul Bhargava further attempted to argue that the simple fact of having taking the applicant-wife upto Mathura Bus Stand and there after

diserting her there should be held within the meaning of the offence "cruelty" as in the explanation added to Section 498-A IPC. A close scrutiny of

the provision contained in Section 498-A IPC alongwith the explanation (b) aforesaid, it cannot be interpreted to mean that mere coming to

Mathura and not attending to her there after would amount to "cruelty". In this connection the conduct should be such as to drive the woman to

commit suicide or to cause grave injury or danger to life, limb or health. If harassment is alleged, then it should be with a view to coercing her to

meet any unlawful demand for any property or valuable security. None of these ingredients can be said to be made from the allegations contained

in the first information report as having happened in district Mathura.

10. Consequently, there is force in the arguments of Sri. V.C. Tiwari that the offence, if any, in the instant case happened in Bareilly.

11. The attention of the Court was also drawn to the fact that when the case was registered at police station Kotwali, Mathura, the said case was

registered with the specific note that (translation by Court) ""Registered for investigation. Delay has been occasioned by the informant Investigation

shall be done by P.S Kotwali, Bareilly"" This first information report entry in the general diary and the chik-report is obvious from Annexure No. 1

to the writ petition, which is a photostat copy of the original. Consequently, this case was registered only u/s 498-A IPC and at the top it was

indicated that the case crime related to police station Kotwali, Bareilly.

12. The other argument advanced on behalf of the informant was that from the allegations in the first information report "an offence u/s 406 IPC

stands disclosed. Suffice it to say that the entrustment should be the pre-condition of a charge of embezzlement. Admittedly, the allegation of the

informant is that her Istri-Dhan was not give to her. It now here indicates that any demand was made and for that matter the individual entrustment

was already created without claiming ownership by the wife simplicitor. Consequently, so long as a demand is not made and discharged or refused

by the husband an offence u/s 406 IPC cannot be made out-See the case of Pratibha Rani Vs. Suraj Kumar and Another, .

13. In view of the aforesaid discussion, this writ petition succeeds and is allowed. The police of police station Kotwali, Mathura shall not

investigate the case crime u/s 498-A IPC registered at police-station Kotwali, Mathura and shall transfer the same to police station Kotwali,

Bareilly for investigation in accordance with law and the Petitioners-accused shall not be taken into custody and/or arrested in Case Crime No.

711 of 1992 u/s 498-A IPC meanwhile