

(2014) 01 AHC CK 0085

Allahabad High Court

Case No: Criminal Revision No. 756 of 2013

Vikas Rastogee

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: Jan. 17, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 397, 468
- Penal Code, 1860 (IPC) - Section 498-A
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 27, 27(1)(a), 28, 3

Citation: (2014) 1 ACR 675 : (2014) 2 ADJ 568 : (2014) 2 DMC 470

Hon'ble Judges: Bharat Bhushan, J

Bench: Single Bench

Advocate: Satish Chandra, Advocate for the Appellant; Pradeep Kumar Mishra, Advocate for the Respondent

Judgement

Bharat Bhushan, J.

This criminal revision is directed against the order dated 28.2.2013 passed by Additional District and Sessions Judge, Court No. 13, Varanasi in Criminal Appeal No. 159 of 2012 (Vikas Rastogee v. Pooja Rastogee) arising out of Criminal Complaint Case No. 36 of the 2012, u/s 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred as D.V. Act) whereby the criminal appeal filed by the revisionist against the order dated 12.9.2012 passed by ACJM. Court No. 10, Varanasi has been dismissed. The facts giving rise to the present criminal revision are that the marriage of revisionist Vikas Rastogee was solemnised with opposite party No. 2 Pooja Rastogee on 25.2.2007. Matrimonial discord erupted between them during same year. Revisionist alleges that his wife Pooja Rastogee failed to full fill her marital obligations but Pooja Rastogee blames the revisionist for demanding additional dowry and her mal-treatment at the hands of revisionist and his family members for failure to fulfill dowry demands. This matrimonial discord resulted in initiation of several litigations including the divorce petition at the

behest of revisionist, proceeding u/s 125 Cr.P.C., an FIR u/s 498-A IPC and Dowry Prohibition Act and application under the D.V. Act at several places at the instance of wife.

2. Considering the pendency of these cases, it would not be appropriate for this Court to discuss all the facts and available evidence in detail. Moreover, the scope of criminal revision is very limited u/s 397 Cr.P.C. as it imposes some limitations for exercise of revisional jurisdiction. Superior Courts can only examine the correctness, legality, propriety and jurisdictional error of any findings, sentence or order, passed by the inferior Courts. It cannot substitute its own findings in place of findings of the subordinate Courts. In exercise of the revisional jurisdiction, it will be beyond power and jurisdiction of superior Courts to re-assess the evidence. Appraisal of the evidence is not permissible in revision. Hon"ble Supreme Court in [State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri](#), has held that the High Courts while hearing revision do not work as a Appellate Court and will not re-appreciate the evidence, unless some glaring feature is pointed out which may show that injustice has been done.

3. For the purposes of present criminal revision, this Court has to decide as to whether the Court at Varanasi has territorial jurisdiction to entertain and decide the application of opposite party No. 2 (Pooja Rastogee) u/s 12 of the D.V. Act and secondly, as to whether the same is barred by limitation?

4. Admittedly, opposite party No. 2 has initiated several criminal proceedings from District Kaimur, Bihar. Revisionist claims once the opposite party No. 2 has shown District Kaimur, Bihar as her place of residence, she cannot initiate proceeding u/s 12 of the D.V. Act from Varanasi. Without going into details, it would be appropriate to refer the provision of Section 27 of the D.V. Act, which reads thus:

27. Jurisdiction.--(1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which--

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent Court to grant a, protection order and other orders under this Act and to try offences under this Act.

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

5. A bare perusal of Section 27(1)(a) of the Act would reveal that the Magistrate of first class has territorial jurisdiction within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed. Temporary residence of aggrieved person makes it possible to initiate proceedings under the D.V. Act from that place. Ordinarily question of "residence" is a mixed question of facts and law, therefore, it has to be decided keeping in mind the facts and circumstances of each case. It is true that the temporary residence ordinarily does not include the residence in hotel or hostel or places of such nature where the aggrieved person resides for few days or even for few months with or without any reason. These places or temporary residence of such nature cannot be used merely for the purpose of filing a domestic violence case. This temporary residence must also be continuing residence for considerable long time but whether the temporary residence has been acquired merely for filing a case under the D.V. Act, is a mixed question of facts and law, and it cannot be decided by the revisional Court. It can only be decided by trial Court after recording evidence.

6. For the purpose of present criminal revision it is prima facie apparent that aggrieved person does have some connection at Varanasi; where her father resides and owns property. Interestingly, the divorce petition filed at Kaushambi at the behest of revisionist also shows the address of Pooja Rastogee (opposite party No. 2) i.e. D-59/153/4-K-Shivpurva, Mahmoorganj, District Varanasi. This fact is fortified by the copy/order of the Court filed by the revisionist himself as Annexure 2 to the present criminal revision. This order of the Court passed in Matrimonial Case No. 103 of 2008 indicates that the revisionist himself acknowledges the fact that Pooja Rastogee (opposite party No. 2) reside at Varanasi at least temporarily. In the present criminal revision also the same address is shown. It is pertinent to point out that the criminal case was registered at P.S. Sagra, District Varanasi in which a charge-sheet has been filed by the Investigating Officer, copy of which is annexed by opposite party No. 2 with the counter-affidavit. The charge-sheet submitted by the I.O. also shows the Varanasi address of complainant Pooja Rastogee. Therefore, it cannot be said that the order passed by the learned Magistrate or lower appellate Court are misplaced. They examined the available evidence and concluded that the complainant lives at Varanasi at least temporarily which authorises her to initiate a complaint u/s 12 of the D.V. Act.

7. Learned counsel for the revisionist has raised another argument. He pointed out that the matrimonial discord erupted in the year 2007 and Pooja Rastogee left her matrimonial home in the same year. Therefore, the complainant should have filed her complaint within one year of the incident in view of Section 468 Cr.P.C. and Section 28 & 32 of the D.V. Act. He has drawn the attention of this Court to the judgment of Apex Court in [Japani Sahoo Vs. Chandra Sekhar Mohanty](#), and [Inderjit Singh Grewal Vs. State of Punjab and](#)

[Another, .](#)

8. I am afraid even this argument of learned counsel for the revisionist is not sustainable in view of definition of "domestic violence" given in Section 3 of the D.V. Act. Domestic Violence as per Section 3 of the D.V. Act not only entails the physical abuses but also includes the verbal, emotional and economic abuses. These abuses can at times be continuous in nature. It is not necessary to live together for torturing a person mentally or economically. Whether the allegations of Pooja Rastogee fall within the parameters of violence in terms of Section 3 of the D.V. Act is for the trial Court to decide as it is also a question of fact to be decided after recording the evidence. Pooja Rastogee has levelled certain allegations stating that she has continuously been maltreated in variety of ways for several years and that impelled her to file complaint u/s 12 of the D.V. Act in June, 2011. If her allegations are correct then the complaint cannot be termed as time barred. But this again is question of fact. Even the trial Court cannot decide this fact without the benefit of evidence. This Court has to navigate within the narrow compass of Section 397 Cr.P.C. on the basis of available facts. It is apparent that the Trial Court or lower appellate Court have not committed any illegality, impropriety or jurisdictional error.

9. In the circumstances, present criminal revision is not sustainable and is liable to be dismissed and accordingly dismissed. Let a copy of this order be sent to the concerned Court within 15 days for proceeding with the matter in accordance with law expeditiously. However, it would be open for the revisionist to raise both the questions of limitation as well as the question of jurisdiction before the trial Court during course of evidence and the Trial Court would be free to decide these questions again at the time of final disposal of the application u/s 12 of the D.V. Act.