
Shaher Bano Vs State of Uttar Pradesh and Others

Criminal Revision No. 1369 of 2015

Court: Allahabad High Court

Date of Decision: April 22, 2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 177, 177, 178, 178, 178(c)#Dowry Prohibition Act, 1961 - Section 3, 4#Penal Code, 1860 (IPC) - Section 34, 406, 498-A, 504, 506

Citation: (2015) 2 ACR 2289 : (2015) 8 ADJ 145 : (2015) 5 ALJ 222

Hon'ble Judges: Vijay Lakshmi, J

Bench: Single Bench

Advocate: Pushkar Srivastava, for the Appellant

Judgement

Vijay Lakshmi, J.

This revision has been preferred against the order dated 18.02.2015, passed by Judicial Magistrate, Chakiya, Chandauli

in Complaint Case No. 262 of 2015 (Shaher Bano v. Sahjade Hussain and another), under Sections 498-A, 406, 504 and 506 I.P.C. and

Section 3/4 D.P. Act, Police Station Chakiya, District Chandauli, whereby the complaint of the revisionist was dismissed under Section 203

Cr.P.C. for want of jurisdiction.

2. Heard learned counsel for the revisionist as well as learned A.G.A. and perused the record.

3. Learned counsel for the revisionist has challenged the validity and correctness of the impugned judgment on the ground that learned Magistrate

without going through the complaint dated 20.1.2015 and without keeping in view the fact that the cause of action arose at Chandauli, wrongly and

illegally rejected the complaint on the ground of lack of jurisdiction. Learned counsel for the revisionist has submitted that the offence alleged

against opposite party nos. 2 and 3 is a continuing offence and the impugned order is against the spirit of Sections 177 and 178 of Cr.P.C. He has

further contended that because the complainant/wife has been forced to reside at her parental home at Chandauli due to cruelty and torture of

accused persons, the cause of action is continuing at Chandauli also.

4. Some background facts, necessary for disposal of this revision, are that the revisionist-Shaher Bano instituted a complaint case in the court of

Judicial Magistrate, Chakiya, Chandauli under Sections 498-A, 406, 504 and 506 I.P.C. and Section 3/4 D.P. Act, alleging that she was married

to opposite party No. 2 according to Muslims rites in May, 2014. Her father had given Rs. 50,000/- cash and sufficient dowry in the marriage but

her husband and in-laws being dissatisfied with the given dowry, started harassing her in connection with demand of a motorcycle and Rs.

1,00,000/- in cash as additional dowry. On 18.9.2014, all of them assaulted the complainant/revisionist by kicks and fists apart from slapping and

throwing filthy abuses against her and threatened to kill her. The complainant informed her father through the mobile phone about the incident who

came and tried to resolve the dispute but to no avail. Ultimately, on 26.9.2014 she was sent to her parental home by her husband and in-laws with

the threat that she would not be taken back if their demands were not fulfilled. Since then neither her husband nor any of her in-laws has taken care

of her and her husband is planning to marry some other lady.

5. In support of the complaint, the complainant recorded her statement under Section 200 and of her father and a neighbour under Section 202

Cr.P.C.

6. However, the learned Judicial Magistrate, Chakiya, Chandauli dismissed the complaint under Section 203 Cr.P.C. by the impugned order

expressing his view that as the matrimonial home of complainant is situated at Village Gajodha, P.S. Shiv Sagar, District Rohtash (Bihar) and the

entire sequence of occurrence has taken place at Gajodha and there is no incident of District Chandauli, hence the case cannot be tried in the

Court of Chandauli.

7. Learned counsel for the revisionist has challenged the aforesaid order by placing reliance on the law laid down by the Apex Court in the case of

Sunita Kumari Kashyap Vs. State of Bihar and Another, AIR 2011 SC 1674 : (2011) CriLJ 2667 : (2011) 2 Crimes 181 : (2011) 3 JCC 1932 :

(2011) 4 JT 236 : (2011) 3 RCR(Criminal) 26 : (2011) 4 SCALE 572 : (2011) 11 SCC 301 : (2011) 3 SCC(Cri) 173 : (2011) 2 UJ 1465 :

(2011) AIRSCW 2481 : (2011) 3 Supreme 261 in which Hon"ble Apex Court under the similar circumstances and while interpreting sections

178(c), 179 and Chapter XIII of Cr.P.C. has held that if due to harassment and ill treatment by the husband and in-laws, victim lady has been sent

to her parental home under the threat that if demands were not fulfilled, she would not be allowed to come back, the offence is a continuing offence

attracting Clause (c) of Section 178 Cr.P.C.

8. 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 of Cr.P.C. are relevant which are reproduced as under:

Section 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.

Section 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.

Section 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.

9. From the provisions of Section 179 Cr.P.C. mentioned above, it is clear that if anything happens 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.

10. Now reverting back to the facts of the case in hand it is apparent from the allegations made in the complaint that the wife/revisionist has been

sent to her parental home and has been forced to live there under compelling circumstances. The complaint and the statements of witnesses

recorded under Sections 200 and 202 Cr.P.C. also show that the husband and in-laws sent the revisionist to her parental home after assaulting her

with kicks and fists after threatening her that if their demand of a motorcycle and Rs. 1,00,000/- cash were not fulfilled, she would not be allowed

to come back. Consequently, the revisionist has to live in her parental home in a state of mental tension and depression and to lead a neglected life

despite being a married woman. As the consequence of the act of cruelty has ensued at Chandauli, it cannot be said that the offence does not

continue at Chandauli (the parental home of revisionist).

11. In Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, AIR 1997 SC 2465 : (1997) CriLJ 2985 : (1997) 5 JT 478 : (1997) 4 SCALE

112 : (1997) 5 SCC 30 : (1997) 3 SCR 1127 : (1997) AIRSCW 2401 : (1997) 4 Supreme 448 , similar issue was considered by the Apex

Court and it was held that clause (c) of Section 178 of the Code is attracted and the Magistrate at wife's parents' place has also jurisdiction to

entertain the complaint.

12. In State of M.P. Vs. Suresh Kaushal and Another, (2001) 2 DMC 102 : (2001) 4 SCALE 233 : (2003) 11 SCC 126 , again in a similar

circumstance, considering the provisions of Section 179 with reference to the complaint relating to the offences under Section 498-A read with

Section 34 IPC, the Apex Court held as under:

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.

13. In view of the above discussed legal position, the impugned order dated 18.02.2015, holding that the proceedings at Chandauli are not

maintainable due to lack of jurisdiction, cannot be sustained. Accordingly, the impugned order dated 18.02.2015 is set aside. The revision is

allowed and the Judicial Magistrate, Chakiya, Chandauli is directed to proceed with the Complaint Case No. 262 of 2015 and decide the same in

accordance with law. It is made clear that I have not expressed any opinion on the merits of the case and claims of both the parties and the above

mentioned conclusion is confined only to the territorial jurisdiction of the Court of Chandauli.