

Mamta Shahi and another Vs State of Uttarakhand and another

Court: Uttarakhand High Court

Date of Decision: Aug. 2, 2018

Acts Referred: Code of Criminal Procedure, 1973 " Section 482
Protection of Women from Domestic Violence Act, 2005 " Section 5, 12, 17, 18, 19, 20, 22, 23, 27(1)(a)

Hon'ble Judges: LOK PAL SINGH, J

Bench: Single Bench

Advocate: Lalit Sharma, Pramod Tiwari, Amit Kapri

Final Decision: Dismissed

Judgement

LOK PAL SINGH, J.

1. Present petition, under section 482 Cr.P.C., is preferred for quashing of the order dated 11.06.2018 passed by Sessions Judge, Pithoragarh in

criminal appeal no. 47 of 2017 and order dated 12.06.2017 passed by Judicial Magistrate-I Didihat District Pithoragarh in criminal case no. 4 of 2017

filed under section 5, 12, 17, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act 2005 (hereinafter referred as the Act).

2. Brief facts of the case are that second respondent wife of second petitioner (residing at Serasonali Patti , Borabunga Tehsil Didihat District

Pithoragarh), filed complaint under sections 5, 12, 17, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act 2005 against the

petitioners in the court of Judicial Magistrate Ist Didihat. She also filed an affidavit in support of her application mentioned her address as above.

3. On receipt of summons, petitioners moved an application (paper no. 19 Ka) to the fact that the court of Judicial Magistrate, Ist Didihat has got no

jurisdiction to hear the case, as second respondent is not residing at the address given in the application, whereof in an application, earlier moved by

second respondent, she has given her address of Chiniyanaula Ranikhet.

4. Second respondent filed an objection stating therein that her parents are resident of Serasonali Patti, Borabunga Tehsil Didihat District Pithoragarh

and she is living with her parents along with her minor daughter. The learned Magistrate, after hearing counsel for the parties and considering the fact

that at the time of filing of complaint against the petitioners she is residing in the territorial jurisdiction of the Judicial Magistrate, Didihat, rejected the

application by order dated 12.06.2017.

5. Feeling aggrieved by an order dated 12.06.2017, applicants have preferred criminal appeal no. 47 of 2017 Ravindra Singh and another vs. State and

another before the court of Sessions Judge, Pithoragarh. The appeal was listed on various dates before the Sessions Judge, Pithoragarh, but applicants

did not appear to pursue their appeal, ultimately, the Sessions Judge vide order dated 11.06.2018 dismissed the appeal for non prosecution and remitted

the record to the trial court.

6. Once the appeal was dismissed in default, the petitioners have a remedy to recall the order by filing recall application showing sufficient reason of

their absence. In the present case, instead of filing recall application, petitioners have preferred this criminal miscellaneous application before this

Court for quashing of order passed by Judicial Magistrate Ist Didihat as well as an order passed by the Sessions Judge, Pithoragarh. Perusal of the

impugned order dated 12.06.2017 would reveal that the learned Magistrate has considered the response of second respondent that she is residing with

her parent and dismissed the application of the petitioners. In view of section 27(1)(a) of the Act the court having the jurisdiction where the persons

aggrieved permanently or temporarily resides or carries on business or is employed. For kind reference, section 27(1)(a) is extracted hereunder:-

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.

7. Second respondent in her application has mentioned that she is residing with her parents who are permanent resident of Serasonali Patti, Borabunga

Tehsil Didihat District Pithoragarh and this fact has not been denied by the petitioners.

8. Admittedly, second respondent is not getting maintenance etc. from second petitioner. The Magistrate concerned has recorded its finding on

jurisdiction on the basis of the material available before him.

9. The appeal, filed by the petitioners was dismissed in default by order dated 11.06.2018. Firstly, they did not appear to pursue their appeal and the

record of the case was summoned by the appellate court; therefore the proceedings initiated by second respondent by filing the complaint before the

Judicial Magistrate, Didihat were indirectly stayed.

10. It is not the intention of the legislation to keep the matter pending. Filing of an appeal was the statutory remedy available to the applicant, therefore,

they must have pursue their appeal but they have failed to pursue their appeal, which was dismissed in default. Since, the petitioners did not pursue the

appeal; they cannot blame the court that the appeal has wrongly been dismissed.

11. After hearing learned counsel for the parties and perusal of the material available on record, it is evidently clear that second respondent has given

address of her parents with whom she is residing. In view of the provision contained in section 27(1)(a) of the Act, the Judicial Magistrate-Ist Didihat

has got the jurisdiction to hear the complaint filed by second respondent.

12. It is well established principle of law that inherent power conferred on the High Court under Section 482 Cr.P.C. has to be exercised sparingly

with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The powers under Section

482 Cr.P.C. are not the powers of trial court or as an appellate court. The powers only can be exercised in the following manner:

(1) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

13. The above settled legal proposition laid down by the Hon'ble Apex Court in the case of Hamida vs Rashid alias Rasheed and others, (2008) 1

SCC 474, Monika Kumar vs State of U.P., (2008) 8 SCC 781.

14. The learned trial court had rejected the application filed by the applicants, thereafter the applicants preferred an appeal. The appeal has been

dismissed for want of prosecution. A recall application to recall the order of dismissal of appeal has not been filed. In exercise of jurisdiction under

Section 482 Cr.P.C., this Court cannot convert itself as a trial court or appellate court. The statutory jurisdiction cannot be given a go bye. Inherent

jurisdiction only can be exercised to prevent abuse of process of any Court or to secure the ends of justice. Neither is it a case of abuse of process of

Court nor to secure the ends of justice. Thus, this Court does not find any illegality and abuse of the process of the Court.

15. Thus, in view of this Court, present criminal misc. application is sheer abuse of process of law. The criminal misc. application is devoid of merits

and the same is hereby dismissed. However, it is made clear that the applicants are at liberty to avail legal remedy available to them.