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ITEM NO.101

Court No.6

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO(s). 71 OF 2012

RUPALI DEVI

Appellant (s)

VERSUS

STATE OF U.P.& ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 16/01/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Vikrant Singh Bais, Adv.
Mr. Ajay Srivastava, Adv.
Ms. Mridula Ray Bharadwaj, Adv.

For Respondent(s) Mr.Praveen Chaturvedi, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Registry shall place the papers before the Hon'ble Chief Justice of India for constituting an appropriate Bench. Counsel for the parties to file additional set of papers in the within six weeks.

(Shashi Sareen) (Vena Khera)
Court Master Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.71 of 2012

Rupali Devi

....Appellant

Versus

State of U.P. and Ors.

....Respondents

O R D E R

An interesting question of some significance arises for consideration in this appeal. The question precisely is whether a case of cruelty on account of dowry harassment punishable under Section 498A of the IPC can be registered, investigated and punished in a jurisdiction different from the one from which the aggrieved spouse has been forced out on account of such harassment. The High Court has taken the view that

cruelty punishable under Section 498A of the IPC is not a continuing offence, nor can the same be investigated or punished in a jurisdiction outside the one in which the matrimonial house of the complainant is situate. The High Court has on that basis affirmed the order passed by the Revisional Court setting aside the order by which the Trial Court had taken cognizance of the offence against the respondents. The petitioner-wife has appealed to this Court to assail that view.

Section 177 of the Code of Criminal Procedure stipulates that every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed. Section 178, on the other hand, identifies the place of inquiry or trial and reads as under :

"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 498A of the IPC was added to the Code by Act No.46 of 1983 and deals primarily with cruelty by the husband or his relative against the wife. The essence of the provision is that whoever being the husband or relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment with a term which may extend to three years and shall be liable to fine also. The expression cruelty has been explained and defined in the explanation to Section 498A which reads:

"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."

What is significant is that any "wilful conduct" of a nature that is likely to drive the woman to commit suicide or to cause grave danger to her life, limb or health or any harassment to the woman where such a harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security is made punishable.

The appellant in the case at hand is married to respondent No. 2 and has a child born out of the wedlock. The child was 4= years old when she appears to have been harassed for dowry forcing her to leave her matrimonial house at Mau in the State of U.P. to take shelter with her parents at Deoria. A complaint lodged by her led to registration of FIR No.1196 of 2005 for offences punishable under Sections 498 A, 506, 313, 494 read with Sections 3 and 4 of the Dowry Prohibition Act followed by a charge sheet against the husband and his relatives-respondents herein before the Chief Judicial Magistrate at Deoria. The Chief Judicial Magistrate, Deoria took cognizance of the offences alleged against the respondent and issued summons. That order was challenged by the respondent who filed an application before the CJM on the ground that he had no territorial jurisdiction in the matter as all the alleged acts of cruelty were committed at Mau outside the territorial jurisdiction of the Court at Deoria. The Chief Judicial Magistrate, however, rejected that contention holding that the offence of cruelty punishable under Section 498A of the Indian Penal Code was a continuing offence and since the complainant wife had taken shelter in her parents' house at Deoria, the Court at Deoria could take cognizance and try the accused for the said offence.

A revision petition filed against the said order by the respondent succeeded and was allowed by the Sessions Judge holding that the Courts at Deoria had no jurisdiction and that the offence of cruelty was not a continuing offence and that the same having been committed at Mau, Courts at Mau alone could take cognizance. That view was assailed by the

petitioner-wife before the High Court in a writ petition which has been dismissed by the High Court affirming the order passed by the Sessions Judge. The present appeal assails the correctness of the order passed by the High Court, as noticed earlier.

We have heard learned counsel for the parties at some length. The question that primarily arises for consideration is whether a woman forced to leave her matrimonial house on account of acts and conduct that constitutes cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with her parents. On behalf of the appellant it was contended that the provision of Sections 177 and 178 must be construed liberally so that a woman forced to leave her matrimonial house on account of the conduct of the accused persons is not left without an effective remedy against such conduct thereby frustrating the very object underlying Section 498A of the IPC. It was urged that Section 177 uses the expression 'ordinarily', which signifies that the rule prescribed thereby is only a general rule incapable of a strait jacket application. That apart in matters like the present the Court cannot remain oblivious of the social realities in which harassment of women for dowry is on the rise. The provisions of Section 498A introduced to curb that practice should therefore be so interpreted as to promote the object of weeding out such social ills. It was in particular contended that a woman who is forced to leave her matrimonial house on account of dowry or other acts of cruelty like the one in the instant case where the respondent-husband has kept another woman at home would amount to commission of a 'continuing offence' of cruelty and so long as such conduct or acts of cruelty continue to persist, the commission of the offence continues even when the woman has left the territorial jurisdiction of the Court where the husband and his relatives are residing. Any such continuing offence could then be taken cognizance of and the accused tried for the same under Section 178(c) of the Cr.P.C. It was also contended that the case at hand may as well fall under Section 178(b) inasmuch as while the offence of harassment/cruelty punishable under Section 498A may have been committed only at the matrimonial house of the complainant, so long as the facts constituting cruelty continue to subsist as a part of the conduct of the husband and his relatives, such offence can be taken to be committed even at the place where the wife has been forced to take shelter with her parents. Any fact situation may be covered by Section 178(b) where the offence is committed partly in one local area and partly in another or where the offence consists of several acts done in different local areas within the contemplation of Section 178(d) of the Cr.P.C.

Reliance was placed by learned counsel for the appellant upon the decisions of this Court in *Gokak Patel Volkart Lrd. Vs. Dundayya Gurushiddaiah Hiremath and Ors.* 1991 (2) SCC 141, *Arun Vyas and Anr. Vs. Anita Vyas* 1994 (4) SCC 690, *Sanapareddy Mahesdhar Seshagiri and Anr. Vs. State of Andhra Pradesh and Anr.* 2007 (13) SCC 165 and *State of M.P. Vs. Suresh Kaushal and Anr.* 2003 (11) SCC 126 in support of his submissions that cruelty is a continuing offence and that so long as the husband continues to be guilty of conduct which constitutes cruelty the fact that the wife is complaining to the Court where she is forced to take shelter with her parents does not deprive such Court of the jurisdiction to take cognizance and try the case.

On behalf of the respondent-husband reliance was placed upon the decision *Abraham Ajith and Ors. Vs. Inspector of Police, Chennai and Anr.* 2004 (8) SCC 100 *Manish Ratan and Ors Vs. State of M.P. and Ors.* 2007 (1) SCC 262 in support of the submission that in the absence of any overt act on the part of the husband or his relatives committed at the place where the wife has taken shelter it is not possible to contend that any offence has been committed within the jurisdiction of the court where such shelter has been taken and that the courts within whose jurisdiction the actual acts were committed alone would have the jurisdiction to entertain the complaint and try the case.

We have been taken through the decisions relied upon by the learned counsel for the parties each one of which is rendered by a two Judge Bench of this Court. That apart the decisions appear to be in conflict with each other. At any rate the law as stated in the pronouncements remains rather hazy and fluid. That apart, the question that falls for consideration arises very often and is a question of general public importance. The decisions cited at the bar also need to be reconciled and the apparent conflict resolved. We, therefore, deem it proper to refer this appeal to a

three-Judge Bench for an authoritative pronouncement.

The Registry shall place the papers before the Hon'ble Chief Justice of India for constituting an appropriate Bench. Counsel for the parties to file additional set of papers in the within six weeks.

.....J.
(T.S. THAKUR)

.....J.
(C NAGAPPAN)

New Delhi
January 16, 2014