

Court No. - 74**Case :-** APPLICATION U/S 482 No. - 3752 of 2024**Applicant :-** Majid Khan**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Mohammad Fateh**Counsel for Opposite Party :-** G.A.**Hon'ble Saurabh Shyam Shamsbery,J.**

1. The Court proceed to decide present case, i.e., an objection with regard to jurisdiction of an application filed under Section 125 Cr.P.C., in the background that Supreme Court in a judgment passed about four and half decades ago, has observed that provisions of Section 125 Cr.P.C. is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. (See, Captain Ramesh Chander Kaushal vs. Mrs. Veena Kuashal and others, AIR 1978 SC 1807)
2. Above observation has been followed in Smt. Dukhtar Jahan vs. Mohammed Farooq (1978)1 SCC 624; Vimla (K.) vs. Veeraswamy (K.) (1991)2 SCC 375; Kirtikant D. Vadodaria vs. State of Gujarat and another (1996)4 SCC 479; Chaturbhuj vs. Sita Bai (2008)2 SCC 316 and Bhuwan Mohan Singh vs. Meena and others (2015)6 SCC 353.
3. In the present case, Opposite Party No. 2, i.e., complainant, has filed an application under Section 125 Cr.P.C. on 30.07.2021 declaring herself to be resident of District Bareilly.
4. In aforesaid case applicant appeared and filed an objection that complaint is resident of Delhi and she has filed an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as "Act, 2005"*) stating that she was a resident of Delhi and during proceeding thereof the address was verified also. Applicant has challenged the maintainability of application so filed under Section 125 Cr.P.C. on ground of jurisdiction.

5. Complainant has filed a reply to aforesaid objection mentioning specifically that her permanent address where her parents reside is at Bareilly and only for the purpose of job she stayed at Delhi and she has frequent visits to her permanent address at Bareilly.

6. Principal Judge, Family Court, Bareilly considered the application of complainant and objection of applicant and passed impugned order dated 21.01.2023 whereby objection with regard to jurisdiction was rejected. For reference impugned order is reproduced hereinafter:

पुकारा गया। उभयपक्ष उपस्थित। 13-ख प्रार्थनापत्र पर उभयपक्ष को सुना। उक्त प्रार्थनापत्र विपक्षी की ओर से वाद का क्षेत्राधिकार इस न्यायालय को नहीं होने के बिन्दु पर प्रस्तुत किया गया है तथा कथन किया है कि आवेदिका ने वाद सं० - 5412/200 निदा कुमार बनाम माजिद खाँ अंतर्गत धारा 12 घरेलू हिंसा अधिनियम मुख्य मेट्रोपोलिटन मजिस्ट्रेट, साउथ ईस्ट साकेत दिल्ली में दिनांक 28.10.2020 को पंजीकृत कराया था जिसमें उसने अपना निवास एच-14 ए, लेन नं०- 3 ए गफफार मंजिल, जामिया नगर, नई दिल्ली-25 बताया है जबकि यह वाद बरेली का निवासी होने का कथन करते हुए बरेली में दाखिल किया है। ऐसी दशा में वाद की सुनवाई का क्षेत्राधिकार इस न्यायालय को नहीं है। अतः वाद खारिज किया जाये।

आपत्ति दिनांकित 17.12.2022 के माध्यम से कथन किया है कि आवेदिका अपनी नौकरी के सिलसिले में किराये के मकान में रहती है जबकि बरेली में उसके माता -पिता निवास करते हैं तथा यह उसका स्थाई निवास है तथा वह उसका दिल्ली से आना जाना बना रहता। है।

अतः आपत्ति के माध्यम से वाद खारिज किये जाने की माँग की गई है।

सुना एवं पत्रावली का अवलोकन किया। आवेदिका ने बरेली को स्थाई निवास बताते हुए वाद प्रस्तुत किया है उसने वर्ष 2020 में एक अन्य मुकदमा नई दिल्ली के पते से विपक्षी के विरुद्ध दायर किया है। उसने न्यायालय के समक्ष यह बताया कि यह अभी भी दिल्ली में किराये के मकान में रहती है तथा उसका बरेली आना जाना रहता है। चूँकि आवेदिका का स्थाई पता बरेली है तथा वह रोजगार के सिलसिले में नई दिल्ली में भी रहती है इसलिए बरेली में वाद प्रस्तुत करने का क्षेत्राधिकार समाप्त नहीं हो जाता है। आवेदिका दिल्ली के पते से भी वाद प्रस्तुत कर सकती है तथा बरेली के पते से भी प्रस्तुत कर सकती है। अतः प्रार्थनापत्र निरस्त किये जाने योग्य है।

आदेश

प्रार्थनापत्र 13-ख निरस्त किया जाता है। पत्रावली वास्ते प्रतिवाद पत्र दिनांक 02.03.2023 को पेश हो।

7. Sri Mohammad Fateh, learned counsel for applicant, has placed reliance on a judgment passed by High Court of Madhya Pradesh at Gwalior in Nirman Sagar vs. Smt. Monika Sagar Chaudhari and another (Criminal Revision No. 3060 of 2021), decided on 01.04.2022 that in terms of Section 126 Cr.P.C. the proceedings under Section 125 Cr.P.C. can be initiated in any district where he or his wife resides or where he last resided with her wife or as the case may be with the mother of the illegitimate child and further held that word 'reside' would not include a casual stay or a flying visit to a particular place.

8. Above submissions are vehemently opposed by Sri Mohd. Zubair, learned counsel appearing for Opposite Party No. 2 and he placed reliance on Captain Ramesh Chander Kaushal (supra) that since provisions of Section 125 Cr.P.C. are of welfare legislation, therefore, the issue of jurisdiction be also considered in a liberal manner.

9. On merit, learned counsel for Opposite Party No. 2 submits that Trial Court has considered that Bareilly is permanent residence of complainant where she is frequently visiting and only for the purpose of job she stays at Delhi though he has not disputed that an application under Section 12 of Act, 2005 was filed at Delhi.

10. Heard learned counsel for parties and perused the material available on record.

11. Aforesaid fact with regard to filing of application under Section 12 of Act, 2005 at Delhi as well as complainant resides at Delhi for the purpose of job, is not under dispute. It is also not under much dispute that complainant's parents are permanent resident of Bareilly. Marriage was also solemnized at Bareilly. Therefore, it cannot be much disputed that complainant is visiting at her permanent residence frequently. As such, it cannot be said that visit to Bareilly was a casual stay or a flying visit. Permanent address of complainant at Bareilly would fall within the contour of 'reside'.

12. The other argument of learned counsel for applicant is that since application under Section 12 of Act, 2005 was filed by complainant at Delhi, therefore, she is

now not permitted to file any application at Bareilly. However, if this argument is accepted, the very purpose of Section 125 Cr.P.C., which is already referred as a welfare legislation, would be frustrated. Therefore, this Court by invoking inherent power under Section 482 Cr.P.C. cannot become a tool to frustrate the very object of Section 125 Cr.P.C. merely on objection of jurisdiction. The Court cannot ignore that it is not much disputed that complainant's parents are permanent resident of Bareilly and she has frequent visit thereat.

13. The facts of present case are distinguishable from the facts of judgment cited by learned counsel for applicant in Nirman Sagar (supra). Section 126 Cr.P.C. provides that proceedings under Section 125 Cr.P.C. may be taken against any person in any district where he is residing or where he or his wife resides. Therefore, if wife resides at Bareilly, she can file complaint under Section 125 Cr.P.C. at Bareilly also. It is upto the complainant to chose the place of jurisdiction and in the present case complainant has chosen to file complaint at Bareilly.

14. In aforesaid circumstances, I do not find that there is any ground to interfere with impugned order whereby objection with regard to jurisdiction was rejected.

15. The application is accordingly rejected.

Order Date :- 30.8.2024

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