

HIGH COURT OF UTTARAKHAND
AT NAINITAL

C482 No. 1689 of 2023

Ajay Kumar Gupta and others ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

Advocate: Mr. Deep Chandra Joshi, Advocate, for the applicants.
Mr. B.C. Joshi, AGA, for the State.
Mr. Harshit Sanwal, Advocate, for the respondent.

Hon'ble Sharad Kumar Sharma, J.

This matter was taken up today in the pre-lunch session, whereby, in compliance of the earlier order passed by this Court on 28.08.2023, the parties were directed to be called upon to appear in person in order to enable them to participate in the mediation proceedings.

2. The C482 Application was taken up once again in the post-lunch session along with the Mediator's report dated 03.10.2023, wherein he has reported that the parties are not in a position to settle their dispute, as they could not reach to an amicable settlement. Hence, this C482 Application has to be decided on merits.

3. Briefly stated facts and the basis of initiation of the C482 proceedings by the present applicants is by giving its challenge to the Chargesheet No. 24 of 2023 dated 21.11.2023 and the consequential summoning order dated 12.05.2023, as it has been passed by the Court of learned Judicial Magistrate, Tanakpur, District Champawat, in Criminal Case No. 496 of 2023, State Vs. Ajay Gupta and others, whereby the present applicants have been

summoned to be tried for the offence under Sections 323, 498A of IPC and Section 3/4 of the Dowry Prohibition Act.

4. The prime argument of the learned counsel for the applicants is as to whether the proceedings before the Court of Judicial Magistrate, Tanakpur, District Champawat, would at all be tenable in view of the set of allegations levelled in the FIR No. 83 dated 01.10.2022, as it was got registered by the complainant against the present applicants?

5. Though the chain of offence, which has been narrated and as read over by the learned counsel for the applicants, it will have a continuous cause of action both places, i.e. at Bareilly, as well as that of District Champawat, because it was an half hearted argument, which has been argued by the learned counsel for the applicants and that too, without there being any specific pleading to the said effect with regard to the jurisdiction where the matter could have been tried.

6. Apart from above, if the contents of the FIR itself is taken into consideration, apart from reference of certain complaints which have been filed before the SHO, Bareilly on 15.05.2022 (which is not on record), there is no other specific mention with regard to any act of offence, which is complained of, to have specifically taken place at Bareilly between the parties.

7. Apart from it, since the offence being of a matrimonial in nature, this Court is of the view, that where there is continuous cause of action, if part of the cause of action has

taken place at Champawat, as referred to in the FIR, which makes reference of the complaint dated 25.04.2021, the applicants cannot raise a plea that the proceedings drawn by way of registration of an FIR, the Court of Judicial Magistrate, who has taken cognizance in the matter, would not have the jurisdiction to try the aforesaid offence.

8. The aforesaid principle was dealt with by the Hon'ble Apex Court in the judgment as reported in **2020 (17) SCC 484, Nitika Vs. Yadwinder Singh and Others**, where the Hon'ble Apex Court has observed in paras 3, 4 & 7 which are extracted hereunder, that the place of suing would be the place where after the dispute has arisen between the parties where the wife is residing.

“3. In para 44 of the judgment the following has been observed by the High Court: (*Yadwinder Singh case* [*Yadwinder Singh v. State of H.P.*, 2018 SCC OnLine HP 2149] , SCC OnLine HP)

“44. In the peculiar facts and circumstances of the case, as has been discussed above, this Court has arrived at a conclusion that Police at Nalagarh has/had no jurisdiction to enquire into the contents of FIR and as such there is no occasion for this Court to go into the correctness of the allegation as well as sustainability of charge, if any, framed against the petitioners. As has been noticed hereinabove, inherent power under Section 482 CrPC, is to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 CrPC itself. True, it is, that it should be exercised ex debito justitiae to do real and substantial justice. Judgment referred to hereinabove nowhere suggests that power under Section 482 CrPC cannot be exercised by the Court at all, rather exercise of it would depend upon the facts of the case before it. Hon'ble Apex Court in the aforesaid judgment has held that inherent power should not be exercised to stifle a legitimate prosecution. But, what is legitimate prosecution depends upon facts of the particular case. In the case at hand, as has been, elaborately discussed hereinabove clearly suggests that police at Nalagarh has/had no authority/jurisdiction to investigate into allegations contained in FIR, which admittedly took place at Jalandhar and as such courts at Nalagarh have/had no jurisdiction to continue with the proceedings, which are apparently based upon the investigation carried out by police at Nalagarh and as such same cannot be allowed to sustain. Since police at Nalagarh had no jurisdiction, as has/had been held hereinabove, proceedings if any pending before courts at Nalagarh cannot be allowed to sustain.”

4. The learned counsel for the appellant contends that the present case is fully covered by the three-Judge Bench judgment of this Court in *Rupali Devi v. State of U.P.* [*Rupali Devi v. State of U.P.*, (2019) 5 SCC 384 : (2019) 2 SCC (Cri) 558] This Court was dealing with a similar question pertaining to first information report under Section 498-A IPC. This Court in paras 14, 15 and 16 laid down the following: (SCC pp. 389-90)

“14. “Cruelty” which is the crux of the offence under Section 498-A IPC is defined in *Black's Law Dictionary* to mean ‘The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)’. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of “domestic violence” in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which defines cruelty. The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered

view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home result in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code.”

7. What this Court has laid down in para 16 above clinches the issues. It was held by this Court that at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code.

9. The aforesaid principle has been further laid down in the judgment by the Hon’ble Apex Court based upon the judgment in the matters of **Rupali Devi Vs. State of Uttar Pradesh and others**, as reported in **2019 (5) SCC 384**. The Hon’ble Apex Court in para 14, 15 & 16 of the said judgment has observed that the Court, at the place where the wife takes shelter after leaving or being driven away from the matrimonial home on account of act of cruelty by the husband or his relatives would be depended upon the factual situation to have jurisdiction to entertain a complaint alleging commission of offence under Section 498A of IPC.

“14. “Cruelty” which is the crux of the offence under Section 498-A IPC is defined in *Black’s Law Dictionary* to mean “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to

continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of “domestic violence” in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define “cruelty”. The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code.”

10. In that eventuality, apart from the fact that there is no specific plea raised by the applicants in the C482 Application, coupled with the answers given by the Hon’ble

Apex Court in the matters of **Nitika (*supra*)** the argument of the learned counsel for the applicants may not be acceptable with regard to the jurisdiction which he has raised without there being a pleading raised to the said effect coupled with it is conjoint reading with the allegations levelled in the FIR.

11. Hence, this Court is of the view that the applicants' contention about the commission of offences, accruing of a cause of action and the place of suing is not sustainable which could be accepted by this Court in the exercise of its inherent jurisdiction.

12. Thus, the C482 Application lacks merit and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

03.10.2023