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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1163 OF 2015

1. Amar S/o Uttamrao Kale,
Age: 29 years, Occu: Agri.,
R/o. Halli, Tq. Udgir, Dist. Latur
2. Uttamrao S/o Dattarao Kale,
Age: 69 years, Occu: Nil,
R/o As above
3. Sou. Sushilabai W/o Uttamrao Kale,
Age: 65 years, Occu: Household,
R/o As above
4. Atul S/o Uttamrao Kale,
Age: 40 years, Occu: Service,
R/o Shamnagar, Latur,
Tq. & Dist. Latur

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through P.S. Chakur
2. Sow. Sima W/o Amar Kale,
Age: 27 years, Occu: House-hold,
R/o C/o Bhausahab Ganpatrao Shinde,
Gharni, Tq. Chakur, Dist. Latur

...RESPONDENTS

Mr N. G. Kale, Advocate for petitioners;
Mrs M.A. Deshpande, Addl. Public Prosecutor for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 15th September, 2015

ORAL ORDER :

The petitioners herein are charged with an offence punishable under section 498-A read with sec. 34 of the Indian Penal Code, pursuant to a complaint under section 156 (3) of the Code of Criminal Procedure, lodged by respondent no.2 – wife.

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2. With the assistance of the respective Counsel, I have perused the contents of the complaint, which depicts that the part of cause thereof has appeared at village Gharani, i.e. the parental house of the complainant and part of it has arose at the place at which the accused are residing.

3. According to the petitioners, in view of provisions of section 178 of the Code of Criminal Procedure, the trial against them is not tenable within the jurisdiction of Judicial Magistrate First Class, Chakur, as the cause of action has arisen completely at their place of residence and as such, sought return of the criminal case. The said application (Exh.77) in Regular Criminal Case No.100 of 2010 came to be rejected by the Judicial Magistrate First Class, Chakur, by order dated 17th April, 2015. Thus, the present petition.

4. Mr Kale, learned Counsel appearing on behalf of the petitioners/accused made two-fold contentions. According to him, perusal of the complaint depicts that the entire cause of action has arisen at the residential place of the petitioners, which is at Shamnagar, which is within the jurisdiction of Judicial Magistrate First Class, Udgir. The other contention is, even if a part of cause of action has arisen in the jurisdiction of village Gharani, the parental home of the complainant, in view of law laid down by this Court in the matter of **Kanahya s/o Pralhad Rediya (Reddy) and ors. vs. The State of Maharashtra & anr.**, in **Writ Petition No.326 of 2009**, decided on **7th October, 2009** and the law laid down by the Apex

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Court, in the matters of **Manish Ratan & ors. vs. State of Madhya Pradesh & anr.**, reported in **2007 (1) SCC 262** and **Bhura Ram & ors. vs. State of Rajasthan & anr.**, reported in **AIR 2008 SC 2666**, proceedings need to be transferred to the Court of Judicial Magistrate First Class at Udgir. He submits that this Court should exercise jurisdiction under section 407 of the Code of Criminal Procedure ordering transfer of criminal case to Udgir Court.

5. While countering the above referred submissions, learned Addl. Public Prosecutor appearing on behalf of respondent no.1, has invited my attention to the nature of accusations in the complaint while registering an offence punishable under section 498-A read with sec. 34 of the Indian Penal Code against the petitioners. She would further submit that the trial in the criminal case has already commenced as the charges are framed against the accused persons and the petitioners have moved the application with an intention to protract the proceedings and thus, sought rejection of the writ petition.

6. Upon consideration of rival submissions and having perused the documents placed on record by the learned Counsel for the petitioners, it is required to be noted that if the cumulative effect is given to the allegations made in the complaint which was formed to be basis for registration of offence punishable under section 498-A read with sec. 34 of the Indian Penal Code against the petitioners, the same takes this Court to the only conclusion that part of cause of action has arisen at the parental place of

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the complainant, i.e. village Gharani, which admittedly comes within the jurisdiction of Judicial Magistrate First Class, Chakur.

7. Though the petitioners have urged that the charge-sheet needs to be returned to the prosecution for presenting the same to the competent court at Udgir, yet it is required to be noted that the Judicial Magistrate First Class, while dealing with such submission, was alive to the contents of the complaint, the investigation carried out by the investigating officer in the background of allegations made in the complaint and having regard to the provisions of sub-section (c) of section 178 of the Code of Criminal Procedure, has inferred that part of the cause of action has arisen in the jurisdiction of the Judicial Magistrate First Class, Chakur, as it was a continuing offence.

8. It is also required to be taken note of, as is rightly observed by the Judicial Magistrate First Class, Chakur that while framing the charge against the present petitioners, they have not raised any objection to the jurisdiction of the Court for trying the case in question.

9. So far as reliance placed by the learned Counsel appearing on behalf of the petitioners, in the matter of Kanahya s/o Pralhad Rediya (Reddy) (cited supra), it is required to be noted that, in the said case the accusations were pertaining to offences punishable under sections 498-A. This Court, while analyzing the contents therein has noted that the solitary incident narrated in the F.I.R. was not reported to the police immediately.

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Same incident was formed to be basis for initiation of prosecution at Bhusawal Court. The Court on merit analyzing the entire case has given finding that Judicial Magistrate at Bhusawal has no territorial jurisdiction and proceeded to order transfer of criminal case in exercise of powers under section 407 to the Chief Judicial Magistrate, Aurangabad.

10. So far as the allegations in the present case are concerned, the complaint, in clear terms speaks that part of the cause of action has arisen within the jurisdiction of the said Judicial Magistrate First Class, Chakur. Nothing has been placed on record by the learned Counsel appearing on behalf of the petitioners, or at least, it was not brought out to the notice of the Court from the charge-sheet, as to how the Court is taking up the matter at Chakur, is not armed with the jurisdiction to deal with the same. Apart from above, the considerations in the case of Kanahya s/o Pralhad Rediya (Reddy) (cited supra), where this Court has relied upon the judgment of the Apex Court, in the matter of Bhura Ram & ors. (cited supra), are altogether different. In my opinion, the learned Judicial Magistrate First Class, Chakur has rightly proceeded to decide the issue against the present petitioners as regards the cause of action.

11. If the judgments of the Apex Court, cited by the learned Counsel appearing on behalf of the petitioners, in the matter of Bhura Ram & ors. and Manish Ratan & ors. are perused, it is required to be noted that in the case in hand, the cause of action has arisen within the jurisdiction of the Judicial Magistrate First Class, Chakur, who has confirmed the same from

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perusal of the charge-sheet which was submitted before him at the time of framing of charge against the petitioners. As is observed herein above, it is noted that in the present case, it is an continuing offence on the part of the accused.

12. In view thereof, in my opinion, no error of jurisdiction could be noticed. Criminal Writ Petition thus fails and stands dismissed.

(N.W. SAMBRE, J.)

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