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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No. 190 OF 2015

Aaisha Uttarwar, D/o Vilas V. Uttarwar, W/o Varun Chandra Madhani, aged about 25 years, R/o P-5, Opposite B-39, Kranti Nagar, Bilaspur, District Bilaspur (Chhattisgarh)

---Petitioner

Versus

1. State of Chhattisgarh through Police Station Tarbahar, Bilaspur (Chhattisgarh)
2. State of Telangana, through Police Station Alwal, District Secunderabad (Telangana)

---Respondents

For Petitioner : Dr. Shailesh Ahuja, Advocate.
For Respondent No.1 : Mr. Arun Sao, Dy. Advocate General.
For Respondent No.2 : None.

Hon'ble Shri Justice Sanjay K. Agrawal

C A V ORDER

29/04/2016

1. Petitioner herein seeks to challenge the transfer of First Information Report (hereinafter referred as "F.I.R.") No. 0/2015 registered at Police Station Tarbahar, Bilaspur, District Bilaspur (Chhattisgarh) dated 28/06/2015 for offence under Section 498-A of the Indian Penal Code (hereinafter called as

"IPC") by the Superintendent of Police, Bilaspur to the Police Station Alwal, District Secunderabad (Telangana) by its memo. order dated 09/07/2015.

2. The aforesaid challenge has been made by the petitioner herein on following factual backdrop :-

2.1 The petitioner was married to Shri Varun Chandra Madhani on 18/12/2014 at Bilaspur and after the marriage, the petitioner stayed with her husband and in-laws at Vainkatpuram, Police Station Alwal, District Secunderabad (Telangana).

2.2 It is the case of the petitioner that she was treated with cruelty in connection with demand of dowry by her husband and in-laws at her matrimonial home at Vainkatpuram and on account of ill-treatment meted with her at her matrimonial home, she came back to her parental house at Bilaspur on 24/03/2015 and filed a complaint before the Police Station Tarbahar Bilaspur, District Bilaspur on 26/04/2015. Ultimately, upon preliminary inquiry, on 28/06/2015, F.I.R. No. 0/2015 for the offence under Section 498-A of the IPC was registered against the petitioner's husband and in-laws

in the Police Station Tarbahar Bilaspur, District Bilaspur (Chhattisgarh).

2.3 Mr. Varun Chandra Madhani is the husband of petitioner, Mr. M. Vijyendra, Mrs. M. Jaylaxmi and Mrs. Shruti Poorna Madhani are in-laws of petitioner. In course of investigation, the petitioner herein and witnesses of crime were examined by Police Station Tarbahar, Bilaspur and ultimately, Superintendent of Police, Bilaspur by memo dated 09/07/2015 transferred the case diary of crime No. 0/2015 to the Police Station Alwal, District Secunderabad (Telangana) through the Deputy Commissioner of Police, Secunderabad (Telangana) for further investigation holding that the place of occurrence falls within the territorial jurisdiction of Police Station Alwal.

2.4 Feeling aggrieved against the aforesaid order/act, the petitioner/victim has filed instant writ petition stating *inter alia* that the offence under Section 498-A of the IPC is a cognizable offence and the Officer In-charge of the police station was obliged to investigate the offence completely and without completion of the investigation, it was not within the jurisdiction of the Superintendent of

Police, to transfer the F.I.R./case diary to the Police Station Alwal, District Secunderabad (Telangana) for further investigation and therefore, the order of transfer of F.I.R./case diary to the Police Station Alwal, District Secunderabad (Telangana) is unsustainable in law and therefore, order dated 09/07/2015 passed by Superintendent of Police be set-aside and Station House Officer, Police Station Tarbahar Bilaspur be directed to investigate the offence completely and respondent No. 2 be directed to send back the case diary back to Police Station Tarbahar Bilaspur for investigation of the matter.

2.5 Respondent No.1/State has filed its return stating *inter alia* that the F.I.R. No. 0/2015 has been registered against the petitioner's husband and in-laws for offence under Section 498-A of the IPC on 28/06/2015. After the marriage, the petitioner resided with her husband and in-laws at Vainkatpuram, Police Station Alwal, District Secunderabad (Telangana), where accused persons are said to have subjected the petitioner with cruelty in connection with demand of dowry, and thus offence was committed within the territorial jurisdiction of Police Station Alwal, District Secunderabad (Telangana).

Therefore, there is no jurisdictional error in the order dated 09/07/2015 transferring the case diary of said crime by the Superintendent of Police, Bilaspur (Chhattisgarh) to Police Station Alwal, District Secunderabad (Telangana) through the Deputy Commissioner of Police, Secunderabad (Telangana) for further investigation.

2.6 It has been further stated that after receipt of the case diary, Police Station Alwal, District Secunderabad (Telangana) has registered F.I.R. No. 500/2015 against accused persons and started investigation in the matter, as such, writ petition deserves to be dismissed.

3. Learned counsel for the petitioner would submit that offence under Section 498-A of the IPC is a cognizable offence and any Officer In-charge of Police Station without the order of Magistrate is statutorily entitled to investigate the cognizable offence and by virtue of provision contained in Section 156(1) of the Code of Criminal Procedure, 1973 (hereinafter called as “Cr.P.C.”) the Investigating Officer cannot refuse to investigate the offence on the ground that the offence was not committed within the territorial jurisdiction of his Police Station, as such, the transfer of the First

Information Report by the Superintendent of Police, Bilaspur (Chhattisgarh) by memo order dated 09/07/2015 is unsustainable and contrary to law, therefore, it deserves to be quashed.

4. On the other hand, learned counsel for the State/respondent No.1 would submit that on the preliminary investigation, Station House Officer Tarbahar Bilaspur, District Bilaspur has found that the alleged offence has been committed within the territorial jurisdiction of Police Station Alwal, District Secunderabad (Telangana), therefore, on the basis of preliminary inquiry and after registering F.I.R. No. 0/2015 under Section 498-A of the IPC, entire police case diary has been transferred to Police Station Alwal, District Secunderabad (Telangana) through the Deputy Commissioner of Secunderabad (Telangana) by memo dated 09/07/2015, which is in accordance with law and no interference is warranted in order impugned and as such, writ petition deserves to be dismissed.

5. In order to decide the question raised at the bar, it would be appropriate to notice provisions contained in Chapter XII of the Cr.P.C. which provides for information to the police and their powers to investigate. Section 154 of the

Cr.P.C. provides for information in cognizable cases. Section 155 of the Cr.P.C. provides for information as to non-cognizable cases and investigation of such cases. Section 156 of the Cr.P.C. provides for Police officer's power to investigate cognizable case. Section 156(1), (2) & (3) provides as under:-

> **"156. Police officer's to investigate cognizable case.-** (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
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> (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

6. A careful perusal of Section 156(1) of the CrPC would show that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII and therefore, in case of cognizable offence, investigating officer is bound to inquire

into the cognizable offence and cannot refuse to investigate and if he comes to the conclusion after full investigation, that said cognizable offence was not committed within the territorial jurisdiction of his Police Station than F.I.R. can be forwarded to the police station having jurisdiction over the area, in which, the crime is committed.

7. In the matter of **Satvinder Kaur v. State (Govt. of NCT of Delhi) and another**[1]**,** Their Lordships of the Supreme Court have clearly held that in cognizable offence, the Station House Officer under Section 156 of the Cr.P.C., has statutory authority to investigate the offence for which the F.I.R. has been lodged and he cannot refuse to investigate it. Paragraph-10 of the report states as under:-

> "10. It is true that territorial jurisdiction also is prescribed under sub-sec-section (1) to the extent that the Officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170.

1 **(1999) SCC 728**

> Section 170 specifically provides that if, upon an investigation, it appears to the Officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it."

8. At this stage, it would be appropriate to notice Section 170 of the Cr.P.C. which provides for case to be sent to Magistrate empowered to take cognizance, when evidence is sufficient by the Station House Officer. Section 170(1) of the Cr.P.C. reads as under:-

> **"170. Cases to be sent to Magistrate when evidence is sufficient.-** (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such

Magistrate until otherwise directed."

9. On a careful perusal of sub-section (1) of Section 170 of the Cr.P.C., it is quite vivid when it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial.

10. Thus, it is well settled law that in a cognizable offence, Station House Officer of Police Station is required to investigate the cognizable offence thoroughly and completely even if he has no territorial jurisdiction to investigate the offence and he has to complete the investigation and on completion of such investigation, he has to proceed either to transfer the F.I.R. to jurisdictional police or take recourse to provision contained in Section 170 of the Cr.P.C. and he cannot refuse to investigate on the ground of want of territorial jurisdiction.

11. In **Satvinder Kaur** (supra), the Supreme Court has struck a proposition that if the Investigating Officer arrives at a conclusion that the crime was not committed within the

territorial jurisdiction of the police station, than F.I.R. can be forwarded to the police station having jurisdiction over the area in which the crime is committed and further held that in a case which requires investigation, the police officer can not refuse to investigate it for any reason whatsoever.

12. The law laid down in **Satvinder Kaur** (supra) has been followed with approval by the Supreme Court in the matter of **Naresh Kavarchand Khatri v. State of Gujrat and another**[2]**,** by holding as under :-

> "6. …….The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the event it is found that they do not have any jurisdiction in the matter….."

Their Lordships further held as under :-

> "13. ……We fail to understand as to how at such an early stage, the investigation should have been directed to be transferred, having regard to the fact that Waghodia Police Station where the institution' in question is situated is within the jurisdiction of Vadodara (District) and is, therefore, not a case where the accused would have been even otherwise gravely prejudiced in joining investigation."

13. In the matter of **Rasiklal Dalpatram Thakkar v. State of Gujrat and others**[3]**,** Their Lordships of the Supreme Court

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2 **(2008) 8 SCC 300**
3 **(2010) 1 SCC 1**

considered the following question of law :-

> “22. The principal question which emerges from the submissions made on behalf of the parties is whether in regard to an order passed under Section 156(3) Cr.P.C. the police authorities empowered under Sub-Section (1) of Section 156 can unilaterally decide not to conduct an investigation on the ground that they had no territorial jurisdiction to do so.”

Their Lordships answered the above-stated question as under :-

> “27. In our view, both the trial Court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 Cr.P.C. to hold that it was not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction.
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> 30. It is the settled law that the complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The Investigating Agency was required to place the facts elicited during the investigation before the Court in order to enable the Court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the Investigating Agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the concerned Police Station in Mumbai.
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> 33. ……. The said question is not in issue

> before us and as indicated hereinbefore, we are only required to consider whether the Investigating Officer in respect of an investigation undertaken under Section 156(3) Cr.P.C. can file a report stating that he had no jurisdiction to investigate into the complaint as the entire cause of action had arisen outside his jurisdiction despite there being material available to the contrary. The answer, in our view, is in the negative and we are of the firm view that the powers vested in the Investigating Authorities, under Sections 156(1) Cr.P.C., did not restrict the jurisdiction of the Investigating Agency to investigate into a complaint even if it did not have territorial jurisdiction to do so. Unlike as in other cases, it was for the Court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it."

14. Thus, applying the law laid down by the Supreme Court in above-stated judgments to the facts of the present case, it would appear that the offence under Section 498-A of the IPC registered against the accused persons is a cognizable offence, in which, the Station House Officer, Tarbahar, Bilaspur (Chhattisgarh) has rightly registered the F.I.R. under Section 154(1) of the CrPC. As the offence under Section 498-A of the IPC being cognizable, the Station House Officer, Tarbahar Bilaspur (Chhattisgarh) was obliged to investigate the said offence completely by virtue of provisions contained in Section 156(1) of the Cr.P.C., and unless, the investigation of said crime is completed fully as per procedure

laid down in Cr.P.C., F.I.R. could not have been directed to be transferred and such a direction is contrary to law laid down by Their Lordships of Supreme Court in **Satvinder Kaur** (supra). Consequently, transfer of F.I.R./case diary at an early/initial stage by the Superintendent of Police for further investigation to Police Station Alwal, District Secunderabad (Telangana) through the Deputy Commissioner of Police, Secunderabad (Telangana) at the instance of Police Station Tarbahar, District Bilaspur (Chhattisgarh) by Superintendent of Police, Bilaspur by memo dated 09/07/2015 is unsustainable and contrary to provision contained in the Code of Criminal Procedure,1973, as such order dated 09/07/2015 is accordingly quashed.

15. Consequently, the Deputy Superintendent of Police, Secunderabad (Telangana) is directed to sent back the case diary of crime No. 500/2015 registered in Police Station Alwal (Secunderabad) to Police Station Tarbahar, Bilaspur (Chhattisgarh). Upon receipt of the case diary as stated above, the Station House Officer, Tarbahar, District Bilaspur (Chhattisgarh) is directed to complete the investigation of the said crime expeditiously and without further loss of time. The Superintendent of Police Bilaspur/Station House Officer

Police Station Tarbahar, Bilaspur is at liberty to take decision with regard to transfer of case diary or to proceed with Section 170 of Cr.P.C. after completion of full investigation of said crime.

16. Thus, the writ petition is allowed to the extent indicated here-in-above but without imposition of cost(s). Copy of this order be sent to the Director General of Police, Chhattisgarh for information and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

Tiwari

Head Note

The Station House Officer of Police Station can transfer the case diary of cognizable offence only after completion of investigation to the Police Station having jurisdiction.

संज्ञेय अपराध की केस डायरी पुलिस थाने के थाना प्रभारी द्वारा संबंधित अधिकारिता वाले पुलिस थाने को अन्वेषण पूर्ण होने के उपरांत ही स्थानान्तरित की जा सकती है।