

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 546 of 2015****Reserved on 05.10.2016****Delivered on 27.10.2016**

1. Ramchandra Dhandhaniya S/o Late Kanshi Ram (father in law of the complainant/respondent No.1).
2. Sushma Dhandhaniya W/o Ramchandra Dhandhaniya (mother in law of the complainant/respondent No.1).

Both are R/o Flat No. 1303 Building No. 339 Kalpataru Sector No. 3 Shrishti Meera Road Thane, Mumbai, Maharashtra 401107.

3. Richa Bhotika W/o Suraj Bhoutika (sister in law of complainant/respondent No.1).
4. Suraj Bhotika S/o Lat Radhe Shyam (Brother in law of the complainant/respondent No.1).

Both R/o Flat No. 301, Nafi Apartment Ranchoor Nagar, Udna Surat Gujrat, (Presently Residing At Flat No. 105, C-2, Karmakshetra Comrade Harbansal Marg Mumbai 400037.

---- Petitioners**Versus**

1. Smt Anuja Bajpai Dhandhaniya W/o Punit Kumar Aged About 32 Years (Present Resident Of 201 Madhurisha Heights, Near Power Petrol Pump, Risali Bhilai Tahsil & District Durg Chhattisgarh.
2. Punit Kumar S/o Ramchandra Dhandhaniya Mention View Apartment No. 3304, Canro Taxes U.S.S. (America) 77384.
3. State Of Chhattisgarh Through Station House Officer Navai, District Durg, Chhattisgarh.
4. Station House Officer Mahila Thana, Durg District Durg, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri RS Marhas, Advocate.
For Respondent No.1	:	Shri Sumesh Bajaj and Shri Pragalbha Sharma, Advocates.
For Respondent/State	:	Shri Vaibhav A. Gowardhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

1. The instant petition under Section 482 CrPC has been preferred against the order of JMFC, Durg, whereby the court below has taken cognizance against the petitioners for the offence punishable under Sections 498-A and 509 IPC and Section 3 of Prohibition of Dowry Act and have registered a criminal case No.3504/2015.
2. The complainant in the present case is the respondent No.1. The petitioner No.1 & 2 are the father in law and mother in law of the complainant. Petitioner No.3 is the daughter of the petitioner No.1 and the sister in law of the complainant and petitioner No.4 is the Husband of the petitioner No.3 and as such he is the Brother in law of the complainant.
3. The respondent No.1 complainant got married to the son of petitioner No. &2 namely Punit Kumar i.e. respondent No.2 on 27.02.2014. It was the second marriage for both the complainant as well as respondent No.2. The marriage was solemnized at the Arya Samaz Mandir, Santakruz, Mumbai. At the time of marriage, the respondent No.2-husband was working at New York, USA and the respondent No.1- wife-complainant was working with M/s Renault a company based at Chennai and was posted also at Chennai. It is said that after the marriage, the respondents No.1&2 both had stayed at the residence of petitioners No.1&2 for a period of about three days and

thereafter the respondent No.2-Husband went for his employment to New York, USA and the respondent No.1-complainant left for employment purpose at Channai. It is said that it was mutually agreed between the parties that the respondent No.1 complainant i.e. wife of the respondent No.2 shall go to New York only after getting sponsorship of green card and for which purpose in the month of March, 2014 i.e. very next month of the marriage she had again visited Mumbai and stayed for a brief period with the petitioners No.1&2 i.e. parents of Husband. This visit to Mumbai of the complainant was in order to complete the formalities required for getting sponsorship of green card for visiting USA. However, it is said that after some time the relationship between the respondents No.1&2 got strained and the efforts for reconciliation between the two at the instance of petitioners No.1&2 also failed. Meanwhile, the respondent No.2 is said to have filed a divorce petition in the Montgomery Court, Texas, USA.

4. Subsequently, it is said that the respondent No.1 wife had visited USA and stayed at her relatives house and tried to have a mediation with the respondent No.2, but either side did not cooperate with each other and which finally failed. The respondent No.1-wife then came back to India and filed a complaint case before the Mahila Police Thana, Durg on 08.09.2014 alleging harassment against the respondent No.2 and his family members and the police authorities have registered a case under Section 498-A IPC.
5. It is said that Mahila Police Thana, Durg, issued summons to the petitioners, who, in turn, appeared before the authorities and

conciliation meeting was held after which the police authorities did not register any offence against the petitioners herein. In between, the respondent No.1 preferred a petition before the Family Court, Durg, seeking for injunction against the proceedings of divorce petition filed by the respondent No.2 before the Montgomery Court, Texas, USA, but the Family court dismissed the same on 25.09.2014. Against the said order, the respondent No.1 preferred an appeal before this High Court which was registered as FAM No.99 of 2014. The said appeal was also dismissed on 08.01.2015 with liberty to prefer a civil suit having jurisdiction. Meanwhile, it is said that the respondent No.1 complainant again filed a complaint case before the JMFC, Durg for registering an offence under the provisions of Domestic Violence Act against the petitioners. The court proceeded ex parte against the petitioners. Subsequently, an application for setting aside ex parte order was filed which was allowed by the court below on 29.05.2015 and permitted the petitioners to participate in the proceedings. Against the said order, a revision petition was also filed by the respondent No.1 which was dismissed with cost of Rs. 5000/- on 30.03.2015.

6. Upon failure of all these, the respondent No.1-complainant again filed a complaint before the JMFC, Durg, on 20.10.2014 for registering an offence under Section 498-A, 509 read with Section 34 IPC and Section 3 of Prohibition of Dowry Act. Meanwhile, it is said that the respondent No.2 Husband has been successful in getting a decree of divorce in his favour on 17.02.2015 from Montgomery Court at USA. It is pertinent to mention that the said decree of divorce obtained by the

respondent No.2 from the court at USA was a bi-party order as notice to the respondent No.1-complainant had been duly served and she had also filed her reply before the said court.

7. Upon receiving the complaint by the JMFC, Durg, it had ordered the concerned authorities i.e. Station House Officer, Newai, Durg, to submit a report on the complaint lodged by the complainant. The SHO did submit report before the JMFC, Durg, stating that no offence has taken place within the territories of State of Chhattisgarh. Subsequently, the matter was fixed for recording preliminary evidence on 20.04.2015. After examining two of the witnesses on behalf of the complainant, vide order dated 28.05.2015, the JMFC, Durg took cognizance of the complaint and ordered for registration of complaint case against the petitioners for the offence under Sections 498-A and 509 IPC and Section 3 of Prohibition of Dowry Act and notices were issued. Case has been registered as Criminal Case No.3504 of 2015. It is this registration of complaint and taking cognizance by the magistrate which is assailed by the petitioners in this present petition.
8. According to the petitioners, firstly the court at Durg does not have a jurisdiction for entertaining the said complaint on account of fact that no part of the cause of action whatsoever has taken place within the territories of district Durg so as to take cognizance in the matter. According to the petitioners, the marriage took place at Mumbai and after the marriage, whatever period the Husband and Wife stayed together was at Mumbai in the house of the petitioners No.1&2. Subsequently also when the respondent complainant visited Mumbai

in connection with completion of formalities for visiting USA, she has stayed at Mumbai. Thereafter, there has been no personal meeting between any of the parties in any stage within the territories in the State of Chhattisgarh on the basis of which complainant could have sought for registration of a case before the JMFC, Durg. Thus, the order for registration of the complaint is bad in law and deserves to be set aside only on this ground.

9. Secondly, it was alleged that whatever allegations that have been levelled by the complainant against the petitioners and respondent No.2 would reflect that it is primarily the conversation between the respondents No.1&2 which has been highlighted in the complaint and that there has not been any strong allegations made against the present petitioners so as to implicate them for the offence for which a case has been registered.
10. It was also contended that the duration of the stay which the respondent complainant had stayed with the petitioners No.1&2 was so short that there was no action whatsoever for being harassed in any manner so as to bring home the charge for which case has been registered. Likewise, it was also argued that even the short duration of stay of the complainant with the petitioners No.1&2 was also immediately following the marriage and during this time the relation between them was not in any manner strained, rather it was very cordial and therefore, the allegations made by the complainant against the petitioners No.1&2 are totally false, baseless and has been made with a specific intention of harassing the petitioners.

11. According to petitioners, the complaint case has been lodged only with an intention to put pressure upon the respondent No.2 who had been successful in getting decree of divorce from the court at USA. That, the complaint has been filed because of the vendetta which the respondent No.1 had against the petitioners and respondent No.2. It was further contended by the petitioners that so far as petitioners No.3&4 are concerned, they have neither stayed with the complainant at any point of time nor have they directly or indirectly had the personal talk or have met one to one with the complainant at any point of time, yet they have been falsely been implicated which by itself reflects that it has been done with vengeance which the complainant had against the respondent No.2 and his family members. According to the petitioners, except for a vague and omnibus oral statement made in the complaint, there is no iota of evidence or proof to establish that the petitioners No.3&4, who are not residing with the petitioners No.1&2, but are residing separately and are also carrying on their business separately, have harassed the respondent No.1-complainant.

12. It was also contended by the petitioners that a plain perusal of the complaint by itself would reveal that the ingredients necessary for making out an offence punishable under the provisions of Section 498-A or for that matter under Section 506-B IPC are missing and except for a vague, bald and omnibus averment, there is no element of prima facie proof of any sort of harassment, cruelty, ill treatment or torture made by the petitioners upon the respondent No.1-wife. In the

absence of which, the taking of cognizance by the Magistrate is bad in law, illegal and deserves to be set aside/quashed.

13. It was lastly contended that a perusal of the contents of the charge sheet would clearly reveal that whatever little allegations that have been made by the complainant is predominantly against the father in law of the complainant i.e. petitioner No.1 and as far as other accused persons are concerned, the allegations are totally bald, baseless and omnibus.

14. In support of his contentions, reliance has been placed in the judgment passed in *Geeta Mehrotra & Another Vs. State of Uttar Pradesh & Another*, reported in 2012(10)-SCC-741 and prayed for quashment of entire criminal proceedings initiated against the petitioners.

15. Opposing the petition, learned counsel for the respondents submitted that only on account of the fact that the CrMP has been filed, it does not mean that the application has to be entertained. The petitioners have to show a prima facie strong legal case made out in their favour so as to interfere with the registration of the complaint and the process initiated thereon. According to the respondent-complainant, there has been no illegality or perversity which could be alleged to have occurred while taking cognizance on the complaint made by the respondent No.1. According to him, this petition is totally premature and it would not be appropriate at this juncture to consider the case on its merits. Relying upon the complaint (Annexure A/3) it is submitted that there are specific allegations against all the petitioners made in the complaint itself, and therefore, it cannot be said to be a baseless

or bald complaint case. So far as jurisdictional error alleged to have been made by the petitioners accused persons, the same is not a ground for assailing registration of the complaint in the present CrMP. Therefore, the petitioners cannot be permitted to raise the grounds which are not mentioned in the petition. In support of his contention, reliance has been placed in case of Jagdish Ram Vs. State of Rajasthan & Another, reported in AIR 2004 SC 1734, and thus, prayed for rejection of the petition holding it to be devoid of merit.

16. Having considered the rival contentions put forth on either side what is relevant to take note of the fact is, vide the present CrMP the present petitioners seek to assail the order dated 28.05.2015 whereby the court below has taken cognizance of the complaint made by the respondent No.1 and on the basis of which the JMFC, Durg has ordered for registration of the complaint i.e. criminal complaint case No.3504/2015. It is this order dated 28.05.2015 which has been assailed by the petitioners as has been stated in the preceding paragraphs.

17. Primarily the proceedings has been assailed on the ground of their being no strong, cogent and prima facie material available in the complaint or that would come during the course of investigation with which the petitioners could be implicated. So far as jurisdictional aspect is concerned, though the petitioners have not raised anything in writing in the petition assailing the action on the part of the Magistrate on the ground of jurisdiction, but what cannot be brushed aside is the admission on the part of the petitioners that on conciliation proceeding

being initiated, the petitioner No.1, father in law of the complainant, did come to Durg and participated in the said proceeding that was held. Therefore, it cannot be said that no part of the cause of action has occurred within the territorial jurisdiction of the State of Chhattisgarh or for that matter within District Durg.

18. Thus, in accordance with provisions of Section 178 of CrPC, it can be safely held that so as to bring home the case within the territories of District Durg, all that has to be seen is whether any cause of action has arisen here in the State of Chhattisgarh more particularly in District Durg. However, the fact that the father of the respondent-Husband has come to Durg, Chhattisgarh, is sufficient indication of some part of the cause of action having arisen within the territories of District Durg, Chhattisgarh.

19. It would be necessary to refer the provisions of Section 177 and 178 of CrPC which for ready reference are being reproduced hereunder:

“177. Ordinary place of inquiry and trial – Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. 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.”

20. A plain reading of these two provisions clearly hold that ordinarily the complaint and the trial would be by the Court within whose local jurisdiction the offence is said to have been committed. If the offence

has been committed partly in one local area and partly in another area where the offence is continuing one, and continues to be committed in more than one local areas, it may be tried by a court having jurisdiction of either of such local areas. It would also be relevant at this juncture to refer the law in this regard as laid down by the Supreme Court in the case of Y. Abraham Ajith & Ors. Vs. Inspector of Police, Chennai & Another, reported in 2004(8) SCC 100, wherein in paragraphs 12 to 18 it has been held as under:

“12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases.

14. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment

of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18. In Halsbury Laws of England (Fourth Edition) it has been stated as follows: "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

21. Thus, it cannot be said that the Magistrate at Durg had no jurisdiction to take cognizance in the matter and this court does not find any infirmity in the order passed by the court below in this regard.

22. So far as the other grounds raised by the petitioners in respect of the offence not made out against the petitioners are concerned, we will

have to consider the contents of the complaint which has been filed before the court below. A plain perusal of the complaint (Annexure A/3) by itself would clearly reflect that the complaint made by the respondent No.1 is primarily and predominantly against the respondent No.2-Husband and his father and mother, even though the allegations against the father, mother that have been made are all general in nature. At the same time, if we look into the contents of the complaint, it would clearly reflect that the allegations made against the petitioners No. 3 & 4 are totally omnibus and general. The reference of the petitioners No.3&4 also has been made only very rarely. Further, a plain perusal of the complaint and the alleged event that have been transpired in the intervening period i.e. period during which it is alleged that the relationship between the parties were cordial, would suggest that the allegations levelled against the petitioners No. 3&4 does not seem to be based on correct facts and that the allegations levelled also does not seem to have ever occurred for the reason that petitioners No.3&4 are residing separately initially at Surat, Gujrat and subsequently now at Mumbai. Except for the bald allegation, there has been no specific instance, date or the nature of attack made by the petitioners No.3&4 on the complainant is reflected from the complaint.

23. The Hon'ble Supreme Court in case of Arnesh Kumar v State of Bihar and Another, reported in 2014 (8) SCC 273, in paragraph 4 has held as under:-

“4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC

was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.....”

24. The mothers and the sisters of the husband are liberally included in the list of accused persons. In Indian society arrest brings humiliation, curtails freedom and casts scars forever.

25. Again in case of *Sunil Bharti Mittal Vs. Central Bureau of Investigation*, reported in 2015 (5) SCC-609, the Supreme Court has held as under:

“53. However, the words "sufficient grounds for proceeding" appearing in the Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

26. The view of the Supreme Court in the aforementioned judgments was that the pious intention and object of the lawmakers was a person ought not be dragged into Court merely because a complaint has been filed.

27. In a land mark decision of the Supreme Court in case of *Kek Hormusji Gharda and Others v. Mehervan Rustom and Another*, reported in

2009 (6) SCC- 475, the Supreme Court has held in paragraph 19 as under:-

“19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the Complaint Petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the Court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure.”

28. The Criminal justice delivery system should not be used to abuse process of law or for that matter misuse process of Court. In the event if it is found by the Court particularly High Court in exercise of its powers under Section 482 CrPC when in given case inspite of the fact that there was no evidence whatsoever and only a bald and general allegation without any iota of materials to substantiate, only because there is a bald allegation made the said person should not be subjected to undergo trauma of entire trial. The trauma increases more when the accused persons are staying at far away distant place and are forced while facing trial to appear before the Court on all the date of hearing which is nothing less than harassment both mental as well as physical and many times as observed by the Supreme Court in the case of Arnesh Kumar (Supra) it is done solely with the purpose of subjecting in-laws to harassment and torture. In the instant case also when we look into the allegation made against the present petitioners No.3&4, it clearly reflects that except for the bald allegations of instigating the family members, there is no other specific allegation or specific overt act alleged against them. Moreover, petitioners No.3&4

as per the complainant in her complaint itself admittedly initially stayed at Surat, Gujrat and subsequently thereafter at Mumbai. In the opinion of this Court they have been implicated only on account of being the sisters and brother-in-law of the husband.

29. In the given facts and circumstances of the case this Court is of the opinion that the Court below so far as petitioners No.3&4 are concerned, the framing of charge against them does not appear to be proper, legal and justified, and the same therefore deserves to be and is accordingly set aside / quashed and they are discharged from all the charges levelled against them.

30. So far as the charges framed against the petitioners No.1&2 are concerned, taking into consideration the fact that all the allegations have been made against the Husband and his father and mother, and in the complaint also most of the places where allegations are made, it is reflected to have been committed by the father, mother and the Husband, which at least at this juncture for the purpose of registration of the complaint clearly establishes prima facie substance and the same does not warrant any interference and the present CrMP accordingly stands partly allowed to that extent.

31. Accordingly, the CrMP is allowed in part and the registration of case against the petitioners No.1&2 is affirmed, however, the registration of the complaint against the petitioners No.3&4 is set aside/quashed. No order asto costs.

Sd/-
(P. Sam Koshy)
Judge

inder