

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No. 925 of 2014

Reserved on 30/08/2016

Delivered on 05 /09/2016

1. Bihari Lal Gupta S/o Late Manu Lal Gupta Aged About 61 Years R/o Azad Chowk, Rajnandgaon, Ps, Tah. And Distt. Rajnandgaon C.G.
2. Smt. Rajni Devi Gupta W/o Biharilal Gupta Aged About 53 Years R/o Azad Chowk, Rajnandgaon, Ps, Tah. And Distt. Rajnandgaon C.G.
3. Ku. Rinki Gupta D/o Bihari Lal Gupta Aged About 26 Years R/o Azad Chowk, Rajnandgaon, Ps, Tah. And Distt. Rajnandgaon C.G.
4. Shailesh Gupta S/o Bihari Lal Gupta Aged About 37 Years R/o Gaushala Road, Rajnandgaon, Ps Tah. And Distt. Rajnandgaon C.G.
5. Smt. Shreya Gupta W/o Shailesh Gupta Aged About 31 Years R/o Azad Chowk, Rajnandgaon, Ps, Tah. And Distt. Rajnandgaon C.G.
6. Ravindra Gupta S/o U.P. Gupta Aged About 37 Years R/o Saraswati Vihar, Gudgaon, Hariyana.
7. Manisha Gupta W/o Ravindra Gupta Aged About 31 Years R/o Saraswati Vihar, Gudgaon, Hariyana.

---- Applicants

Versus

- State Of Chhattisgarh Through Distt. Magistrate Distt. - Koriya C.G.

---- Non-applicant

For Applicants	:	Shri Raj Kumar Gupta, Advocate
For Non-applicant-State	:	Shri U.K.S. Chandel, Panel Lawyer
For intervenor	:	Shri Malay Bhaduri, Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. Order

1. The present Cr.M.P. has been filed under Section 482 CrPC seeking for quashment of the charges framed against the Applicants for the offence under Section 498(A)/34 IPC by Judicial Magistrate First Class (for short 'JMFC), Manendragarh in Criminal Case NO. 219/12 and have also

challenged the order dated 04.08.2014 passed by the First Additional Sessions Judge, Manendragarh District Court in Criminal Revision No. 64/2013.

2. The relevant facts for adjudication of the present petition is that the complainant in the instant case namely Prianka Gupta lodged an F.I.R. on 30.09.2011 (Annexure A/3) wherein she has levelled allegation of ill-treatment, harassment and torture including the physical and mental torture at the hands of the Applicants who are their in-laws on account of bringing insufficient dowry and also demanding further dowry. On the basis of the said F.I.R. Criminal No. 350/2011 was registered against the Applicants for the offence under Section 498(A)/34 IPC and subsequently the matter was put to trial before the Judicial Magistrate First Class, Manendragarh in Criminal Case No. 219/2012 and vide order dated 02.08.2013 the Court below has framed charges against the Applicants for the offence under Section 498(A)/34 IPC and fixed the case further for recording of the prosecution evidences. The Said framing of charge was subjected to challenge by way of criminal revision registered as Criminal Revision No. 64/2013. The Revisional Court also after considering the submissions put forth by the Revisioner rejected the Revision Petition vide impugned order dated 04.08.2014 wherein the Revisional court primarily had gone into the issue of jurisdiction of the Court at Manendragarh and the Revisional Court held that since the allegations levelled by the complainant was of continuous in nature and there was also an allegation of the husband Applicant having visited the place of the complainant, the Revisional Court rejected the Revision holding that the Court at Manendragarh too have jurisdiction to entertain the said case.
3. Assailing the two orders, that is the order of the JMFC framing charge as well as the rejection by the Revisional Court, learned Counsel for the

Applicants submits that primarily he intends to assail the two orders on the ground of territorial jurisdiction of the JMFC, Manendragarh in respect of entertaining the said complaint. The Counsel for the Applicants in addition submits that even on merits the Applicants have strong case in as much as from the available materials on record, no case whatsoever for the offence under Section 498(A)/34 of IPC is made out. He further alleged that there are only vague and omnibus allegations levelled against the Applicants. No specific allegations against the Applicants or for that matter specific overt act on the part of any of the Applicants giving specific instances is reflected in the complaint, thus prima facie itself no case is made out against the Applicants. According to the Applicants since a plain reading of the entire complaint made by the complainant Prianka Gupta itself would reveal that no such case or for that matter an act which would fall within the ambit of Section 498(A) IPC was said to have been committed within the territorial jurisdiction of the JMFC, Manendragarh.

4. The Counsel for the Applicants further alleges that so far as the Applicants No. 6 & 7 are concerned they are sister-in-law of the complainant and her husband and that they are permanently residing at Gurgaon, Haryana and they rarely visit Rajnandgaon and that they have never stayed with the complainant at any instance and in addition there has been no direct or indirect allegations against these two Applicants made out. According to the Applicants since there being no specific overt act/allegation from specific instances made by the complainant against the Applicants No. 6 & 7, the Court below ought to have considered this and should have discharged the Applicants No. 6 & 7 from the entire criminal proceedings itself as no case under Section 498(A) of IPC is made out against the Applicants No. 6 & 7.
5. According to the Applicants all the allegations and counter allegations

against the Applicants in the complaint are all instances that transpired within the territory of the JMFC, Rajnandgaon, therefore only on the basis of a bald averments and allegation made by the complainant itself can not be a determinative factor for granting jurisdiction to a particular Court.

6. Per contra Counsel for the State as well as intervenor-complainant opposing the Petition submit that the present Petition at this Juncture is pre-mature for the reason that it is only the charge which has been framed against the Applicants and that all the averments and contentions put forth by the Applicants in their submissions are all matters of evidence which can not be thrashed out and adjudicated upon without evidence having recorded on behalf of respective contesting parties.
7. According to the Counsel for the State as well as intervenor the Court below at the time of framing of charge is required to look into only the materials available in the record which were placed before it in the charge sheet and it is for the trial Court to prima facie reach to a conclusion that the offence if any is made out or not. According to the Counsel for the State and the intervenor the law in this regard is well settled that at the time of framing of charge the Court below would not conduct mini trial or for that matter conduct a roving inquiry so as to reach to a specific conclusion .
8. According to the Counsel for the State the complaint which has been lodged against the Applicants at the behest of Respondent No.2, the complainant, the police authorities were left with no other option but to register an offence particularly when there is a strong and specific allegation against the Applicants.
9. The Counsel for the State as well as intervenor so far as issue of territorial jurisdiction is concerned submits that in the complaint itself it is very specifically reflected that in the F.I.R. she has mentioned the fact that after

she came back to her parental home there had been repeated phone calls made by the Applicants as well as husband of the Respondent No. 2 using foul and indecent languages. Further there is also an allegation that the husband of the complainant intervenor had in fact also visited the parental home of the complainant and there it is further alleged that he had also assaulted the complainant by even slapping her at her parental home. This relevant fact by itself is sufficient for proving the territorial jurisdiction of the Court at Manendragarh.

10. In support of his contention learned Counsel for the intervenor relied upon the judgment of the Supreme Court in case of **Taramani Parakh v. State of M.P. and Others¹**, **Bharat Parikh v. Central Bureau of Investigation and Another²** **State of Madhya Pradesh v. Suresh Kaushal and Another³** **Smt. Sujata Mukherjee v. Prahant Kumar Mukherjee⁴** and a decision of Kerala High Court in case of **K.C. Mathew and Another v. Reena Paul⁵**.

11. Having considered the rival contentions put forth on either side so far as the issue of territorial jurisdiction of the Court is concerned the said issue recently had come up before this Court to be decided in the matter of **Satyaprakash Mishra and Others v. State of Chhattisgarh and Another** in **Cr.M.P. No. 858/2015** delivered on 22.08.2016, wherein also the Court below under somewhat similar facts and circumstances of the case where the wife had being subjected to torture, ill-treatment and harassment and taken shelter at her parental home, lodges a complaint stating that subsequent to her coming back to her parental home she has received many phone calls and messages which would constitute ill-treatment and harassment. Taking that into consideration this Court has

1 (2015) 3 CCSC 1427 (SC)

2 (2008) 10 SCC 109

3 (2002) CRI. L.J. 217

4 (1997) CRI. L.J. 2985

5 (1998) CRI. L.J. 2300

held that the Court where she has received telephonic calls would have territorial jurisdiction to entertain the complaint. The said judgment of this Court was relying upon the decision of the Supreme Court in the case of **Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another**⁶.

12. Once when this Court has taken a view relying upon the judgment of Supreme Court under the judicial propriety this Court is inclined to take the same view as in the instant case also subsequent allegation in the complaint after she had come from her matrimonial home to the parental home is that there had been many phone calls made continuing and later the husband had visited her residence and had also assaulted her. There the Court below was right to reach to the conclusion of its having jurisdiction.

13. Under the provisions of the Section 178(C) CrPC the Police station has jurisdiction area where the complainant resides where when some part of the cause of action has transpired would also have jurisdiction. Relying upon the judgment by this Court in the case of **Satyaprakash (supra)** and also the judgment of the Supreme Court in case of **Y. Abraham Ajith (supra)** this Court has no hesitation in reaching to the conclusion that the Court at Manendragarh does have the territorial jurisdiction. That in the aforesaid facts the objection raised by the Applicants questioning the territorial jurisdiction of Court at Manendragarh is not sustainable and is therefore rejected.

14. The other major issue which has to be decided is whether in the case diary there are sufficient materials available for the Court below to have prima facie frame the charge under Section 498(A)/34 IPC. Now for proper appreciation of the said issue it would be quite relevant to consider

6 (2004) 8 SCC 100

contents of the complaint which has been lodged by the complainant Non-applicant No.2. Now in the F.I.R. itself the statement of the complainant is that the Applicants No. 1 to 5 stay together for ready reference relevant portion is reproduced herewith :-

“.....परिवार में मेरे पति के अलावा सास, ससुर, जेठ-जेठानी, छोटी ननद, बड़ी ननद तथा पति रवीन्द्र गुप्ता साथ में रहते हैं।.....”

15. Likewise so far as the Applicants No. 6-7 are concerned again in the F.I.R. she has stated that her sister-in-law after marriage is staying at Delhi and occasionally they are visiting Rajnandgaon which again for ready reference is reproduced as below:-

".....बड़ी ननद की शादी हो चुकी है जो दिल्ली में रहते हैं, किन्तु अक्सर तीज त्यौहार में आना जाना होता रहता है।....."

16. Coming to the allegation part if we look into the FIR the allegations are general in nature and most of the time the term family members have been referred to and no any individual person has been referred so far as act of harassment, ill-treatment and torture is concerned. Though allegations are general in nature there is allegation that all the family members who are staying together have used abusive languages. So far as Applicants No. 6 and 7 are concerned the only allegation in the entire F.I.R. against them is that these persons used to instigate. For ready reference relevant portion of the complaint is reproduced as below:-

".....बहन बहनोई के कहने पर मेरे साथ अक्सर मारपीट करने लगे"

17. And all other allegation referred to are in respect of those persons who were staying at Rajnandgaon. Therefore, even though allegations being omnibus they being strong allegations would only be attributable to those persons who were staying at Rajnandgaon. By no stretch of imagination can these acts for the purpose of bringing home the offence under Section 498A be made attributable upon the Applicants No. 6 & 7 who as per the version of the complainant herself has after their marriage staying at Delhi.

There is no allegation whatsoever of any particular overt act on their part except for vague, bald, general and omnibus allegation of instigation by the Applicants No. 6 & 7 nor is there any document with the charge-sheet so as to substantiate the allegations.

18. The Hon'ble Supreme Court in case of **Arnesh Kumar v State of Bihar and Another**⁷ 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.....”

19. 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.

20. In case of **Sunil Bharti Mittal v Central Bureau of Investigation**⁸ the Supreme Court in paragraph 48 has held as under :-

“48. Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.”

21. Again in paragraph 53 the Supreme Court in the same judgment has held

⁷ (2014) 8 SCC 273

⁸ (2015) 4 SCC 609

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.”

22. 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.

23. In a land mark decision of the Supreme Court in case of **Kek Hormusji Gharda and Others v. Mehervan Rustom and Another**⁹ 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.”

24. 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

9 (2009) 6 SCC 475

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 Applicants No. 6 & 7 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 the Applicants No. 6 & 7. Moreover, Applicants No. 6 & 7 as per the complainant in her complaint itself admittedly are staying at Gurgaon, Haryana. In the opinion of this Court they have been implicated only on account of being the sisters and brother-in-law of the husband.

25. In the given facts and circumstances of the case this Court is of the opinion that the Court below so far as Applicants No. 6 & 7 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.

26. So far as the charges framed against the Applicants No. 1 to 5 are concerned, in the factual background of the case and all the allegations made in the FIR, this Court is of the opinion that the same does not warrant any interference at this stage and the present Cr.M.P. accordingly stands partly allowed to that extent.

Sd/-

(P. Sam Koshy)
Judge