

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 400 of 2017**

1. Pankaj Upadhyay S/o Shri Akhileshwar Upadhyay Aged About 34 Years Caste Brahmin, Presently Residing At Kosabadi , Korba, Tahsil & District Korba, Chhattisgarh.
2. Akhileshwar Upadhyay S/o Late Ramakant Upadhyay Aged About 63 Years Caste Brahmin, Presently Residing At Kosabadi , Korba, Tahsil & District Korba, Chhattisgarh.
3. Smt. Kamla Upadhyay W/o Shri Akhileshwar Upadhyay Aged About 56 Years Caste Brahmin, Presently Residing At Kosabadi , Korba, Tahsil & District Korba, Chhattisgarh.
4. Dheeraj Upadhyay S/o Shri Akhileshwar Upadhyay Aged About 28 Years Caste Brahmin, Presently Residing At Kosabadi , Korba, Tahsil & District Korba, Chhattisgarh.
5. Smt. Pinkil Pandey W/o Dr. Pradeep Pandey Aged About 33 Years R/o Quarter No. 151, Sector-1, Type-B, Balco Nagar, Tahsil & District Korba, Chhattisgarh.

---- Petitioners

Versus

State Of Chhattisgarh Through Police Station Balco Nagar, District Korba, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri A.K. Prasad, Advocate.
For Respondent/State	:	Shri Prasun Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/04/2017**

(1) The petitioners herein, who are the accused persons, are facing trial for commission of offence punishable under Section 498-A read with Section 149 of the Indian Penal Code before the Judicial Magistrate, First Class, Korba. At the time of framing charges against them, petitioners moved an application under Section 188 of the Cr.P.C. stating that as the offences are alleged to have been

committed by them in United States of America, previous sanction from the Central Government under Section 188 of the Cr.P.C. is required and, therefore, the offence cannot be tried/enquired into in India without previous sanction of Central Government.

(2) The trial Court, by its impugned order, did not find favour with the submissions made by petitioners and framed charges against them rejecting their submissions, against which, they preferred revision before the Court of Sessions, which was dismissed for want of prosecution, against which, instant petition under Section 482 of the Cr.P.C. has been filed questioning the same.

(3) Learned counsel for the petitioners would submit that undisputably and admittedly, offences are alleged to have been committed by petitioner No.1-husband outside India (U.S.A.), and, therefore, the trial Court can not proceed with trial without previous sanction of the Central Government, as envisaged in Section 188 of the Cr.P.C.. He would further submit that so far as petitioners No. 2 & 3 are concerned, they are father-in-law & mother-in-law of the complainant, respectively; according to the complaint, offence is alleged to have been committed by them in India and outside India (U.S.A.) also and, therefore, provisions of Section 188 Cr.P.C. is also applicable in their favour. He also submits that so far as petitioners No. 4 & 5 are concerned, who are brother-in-law & sister-in-law of the complainant, they have been falsely implicated in the offence in question.

(4) Per contra, Shri Bhaduri, learned Govt. Advocate would submit that according to the allegation made in the complaint (Annexure

P-3), complainant has clearly alleged that petitioners No. 2 to 3 have treated her with cruelty in India after 27.12.2012 at Korba (C.G.) and, therefore, no previous sanction of the Central Government is required so far as petitioners No. 2 & 3 are concerned. He further submits that so far as petitioners No. 4 & 5 are concerned, they never visited U.S.A. and, therefore, question of sanction under Section 188 Cr.P.C. does not arise.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(6) The complainant, in her complaint (Annexure P-3), had stated that after solemnization of marriage demand of dowry was made and petitioner No.1 left for United States of America on 27.12.2012, after which the demand was continuously made by petitioners No. 2 to 5, who happen to be the father-in-law, mother-in-law, brother-in-law & sister-in-law, respectively of the complainant. It was further stated that complainant went with applicant No.1 to United States of America on 01.02.2013, thereafter applicants No. 2 & 3 arrived to USA on 25.07.2013 and again demand of dowry was made in USA. It has further been alleged that as per complaint (Annexure P-3), the petitioner was subjected to verbal and physical assault and abuse in USA and she was assaulted on 23.09.2013. Complainant further submit that petitioners No. 2 & 3 continued to make the demand of dowry and subjected her to cruelty from 2.11.2013 onwards when the complainant went to her matrimonial house at Balco, Distict Korba, District Korba on occasion of Deepawali and Chhat Pooja.

(7) From careful perusal of the complaint, it is quite apparent that so far as petitioner No. 1 concerned, it is alleged that he has assaulted and abused the complainant in USA; so far as petitioners No. 2 & 3 are concerned, it is alleged that they have abused and assaulted the complainant in India and in the United States of America also; so far as petitioners No. 4 & 5 are concerned, they never visited at U.S.A. and it is alleged that they have assaulted and abused the complainant in India.

(8) The short question for consideration would be whether Section 188 of the Cr.P.C. is attracted in facts of the present case. Section 188 Cr.P.C. provides as under :-

“188. Offence committed outside India. - When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

(9) I will take up case of petitioners No. 2 & 3 first. It is allegation of the complainant that offences by petitioners No. 2 & 3 are alleged to have been committed in U.S.A. and India also, therefore, so far as petitioners No. 2 & 3 are concerned, provisions of Section 188 of the Cr.P.C. are not attracted at all. So far as petitioners No. 4 & 5 are concerned, they undoubtedly are not covered by protection offered by Section 188 of the Cr.P.C. as the conduct of these petitioners nowhere shows that they have committed any offence under Section 498-A/149 of the Indian Penal Code at a place and territory outside

India.

(10) Now, the case of the petitioner No.1 is concerned, it is alleged in the complaint itself that offence has been committed by petitioner No. 1 in the United States of America.

(11) In case of **Ajay Agrawal Vs. Union of India and others**¹, their Lordships of the Supreme Court dealing with Section 188 of the Cr.P.C. has relied on the judgment of ***K. Satwant Singh Vs. State of Punjab***² and has observed as under:-

“In *K. Satwant Singh Vs. State of Punjab* a Constitution Bench of this Court was to consider as to when section 188 of the Code would be applicable to a case. The facts therein was that the appellant had cheated the government of Burma whose office was at Simla punishable under Section 420 IPC. The accused contended that the part of the act was done at Kohlapur where payment was to be and on the basis the Court at Simla had no jurisdiction to try the offence without prior sanction of the political agent. Considering that question of this Court held that if the offence of cheating was committed outside British India, the sanction would be necessary but on facts it was held that:

“..... It seems to us, on the facts established in this case, that no part of the offence of cheating was committed by the appellant outside British India. His false representation to the Government of Burms that money was due to him was at a place in British India which induced that Government to order payment of his claims. In fact, he was paid at Lahore at his own request by means of cheques on the Branch of the Imperial Bank of India at Lahore. The delivery of the property of the Government of Burms, namely, the

1 (1993) 3 SCC 609

2 AIR 1960 SC 266

money, was made at Lahore, a place in British India, and we cannot regard, in the circumstances of the present case, the posting of the cheques at Kohlapur either as delivery of property to the appellant at Kohlapur or payment of his claims at Kohlapur. The entire argument founded on the provisions of Section 188 of the Code, therefore, fails.”

Far from helping the appellant the ratio establishes that if an offence was committed in India the need to obtain sanction under Section 188 is obviated.”

(12) In the matter of **Thota Venkateswarlu Vs. State of Andhra Pradesh and another**³, their Lordships of the Supreme Court have clearly held that the Magistrate is free to proceed against the accused in respect of the offence having been committed in India and to complete the trial and to pass judgment there in without being inhibited by other offence for which sanction is required. Para 11 of the report states as under:-

“11- Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188, Cr.P.C.. However, the trial Court cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences from which sanction would be required.”

(13) Applying the principle of law laid down by the Supreme Court in **Ajay Agrawal** (supra) & **Thota Venkateswarlu** (supra), it is quite vivid that offence is alleged to have been committed by petitioner

3 2011 Cr.L.J. Volume 4925 (SC)

No. 1 outside the India i.e. United States of America, therefore, in the considered opinion of this Court, provisions of Section 188 of the Cr.P.C. are squarely attracted and the trial Court cannot proceed beyond the cognizance stage against petitioner No.1 without sanction of the Central Government as mandated under Section 188 of the Code of Criminal Procedure. The trial Court is, however, free to proceed against the petitioners No. 2 to 5 in respect of the offence having been committed in India and to complete the trial and pass judgment therein. It is held that previous sanction of the Central Government under Section 188 of the Cr.P.C. is required so far as petitioner No. 1 is concerned and no such sanction is required for petitioners No. 2 to 5.

(14) Accordingly, the petition under Section 482 Cr.P.C. is allowed in part in terms indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-