

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 477 OF 2016**

- 1] Satish Dharmu Rathod
Age : 29 years, Occu. Service
R/o 1/6 MIDC Police Vasahat
Andheri (E) Mumbai.
- 2] Atish Dharmu Rathod
Age : 22 years, Occu. Student
R/o as above.
- 3] Dharmu Tukaram Rathod
Age : 56 years, Occu. Service
R/o as above.
- 4] Kamlabai Dharmu Rathod
Age : 51 years, Occu. Household
R/o as above.

...APPELLANT
(Ori. Accused)

versus

- 1] The State of Maharashtra
Through Police Station, Cantonment
Chawani Aurangabad
(In Cr. No. 0338/2015)
(Copy to be served on P.P.
High Court of Bombay Bench
At Aurangabad.)
- 2] Sushma Satish Rathod
Age : 21 years, Occu. Housewife
R/o C/o Santosh Ganpat Pawar
Flat No.402, Gloriya Housing Society,
Near Padegaon Power House,
Bhavsingpura, Aurangabad.
Tq. & Dist. Aurangabad.

...RESPONDENTS
(Ori. Complainant)

.....
Mr. A.S. Deshmukh, Advocate for Applicant
Mr. D.R. Kale, APP for Respondent-State
Mr. S.P. Salgar, Advocate for Respondent No. 2
.....

**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 8TH FEBRUARY, 2017.

PRONOUNCED ON : 21ST FEBRUARY, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] The applicant moved the present application, invoking the remedy under Section 482 of Cr.P.C. to quash and set aside the FIR vide Crime No. 338 of 2015, registered at Cantonment Police Station, Aurangabad under Section 498-A and 323, 504 and 506 r/w. 34 of IPC. The present complaint is filed by the first informant Smt. Sushama w/o. Satish Rathod, r/o. Andheri (East) Mumbai.

2] It has been contended that the first informant Smt. Sushama w/o. Satish Rathod approached to the Cantonment Police Station on 9.10.2015 and ventilated the grievances that her marriage was solemnized on 7/5/2015 with the applicant Satish Dharmu Rathod, at Kandhar. After the marriage, she joined the company of the husband for cohabitation at matrimonial home located at Kandhar and thereafter at Mumbai. The husband Satish, his parents and brothers all were residing jointly at Mumbai. According to complainant Sushama, while cohabitation at matrimonial home, she was subjected to maltreatment and harassment by the applicant on account of demand of money as well as domestic cause. The husband Satish was unemployed and has a habit of smoking as well as drinking liquor. The inmates of the matrimonial home maltreated the complainant mentally and

physically. Eventually, she left the matrimonial home, came to Aurangabad and started residing with her parents. Thereafter, she preferred the complaint to initiate the proceedings against the applicant for the offence of cruelty and criminal intimidation etc. Pursuant to the FIR, the police of Cantonment Police Station registered the Crime No. 338 of 2015 and set the criminal law in motion. The I.O. proceeded to record the statement of witnesses acquainted with the facts of the case.

3] Meanwhile, the applicants moved the present application under Section 482 of Cr.P.C. and prayed to quash and set aside the impugned FIR, filed by the complainant Smt. Sushama Satish Rathod. According to the applicants, allegations made in the FIR are false, malafide and not appreciable at all. The contents of the FIR are all fabricated and after-thought. There was no ill-treatment or harassment to the complainant Sushama at matrimonial home but the FIR came to be filed in order to cause mental and physical harassment to the applicants. The complainant Sushma is not interested to cohabit with the husband Satish. Her character prior to the marriage was also suspicious and the parents performed her marriage against her will. The complainant Sushma given threats of self-immolation to the applicants. In view of the aggressive demeanour and conduct of complainant Sushma, the applicants approached to the higher authorities and police personnel and lodged complaints against the complainant Sushma and others. Therefore, the impugned complaint, registered against the applicants is malafide and not sustainable in the eye of law. It has also been alleged that the police of cantonment police station, Aurangabad have

no territorial jurisdiction to investigate into the crime as no part of crime is shown committed within the territorial limits of Cantonment Police Station, Aurangabad. The alleged office of cruelty and criminal intimidation etc. are shown committed at Kandhar and Mumbai. Therefore, the FIR registered at Cantonment Police Station, Aurangabad deserves to be quashed and set aside for lack of jurisdiction to investigate into the crime.

4] We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also delved into the documents produced on record. After appreciating the recitals of the FIR, we find that there are prima facie circumstances on record, depicting commission of offence of cruelty as envisaged under Section 498A of the IPC. There are allegations about the voluntary causing hurt and criminal intimidation as contemplated under Section 323, 504 and 506 of IPC. The allegations nurtured in the FIR made out prima facie offences as alleged against the applicants. The recitals in the FIR, if considered at its face value and accepted in its entirety, it reflects that the offences, as alleged against the applicants are made out for investigation into the crime. There are allegations of mental and physical cruelty as well as unlawful demand of money on the part of applicant/accused. The complainant Sushama was subjected to ill-treatment to meet the unlawful demands. Therefore, considering the nature of allegations nurtured on behalf of complainant, we are not prepared to exercise inherent powers under Section 482 of Cr.P.C. in favour of the applicants to quash and set aside the alleged FIR.

5] It is a settled principle of law that for exercise of inherent powers under Section 482 of Cr.P.C., it is essential to proceed entirely, on the basis of allegations made in the complaint or documents accompanied with it per-se, but the Court has no jurisdiction to examine the correctness or otherwise of the allegations. The Apex Court in the matter of ***State of Haryana Vs. Bhajanlal and others, reported in AIR 1992 SC 604***, in para.109, delineated the guidelines as under :-

“109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

6] In the backdrop of aforesaid legal guidelines, we are not in agreement with the contentions put forth on behalf of applicants, for exercise of inherent powers to quash and set aside the impugned FIR registered against them. In case, we proceed to appreciate the allegations of applicants about the suspicious conduct and demeanour of complainant Sushma, it would amount to conduct a judicial enquiry on merits, which is not permissible at the initial stage of the proceedings. The inherent powers under Section 482 of Cr.P.C. should be exercised either to prevent abuse of process of any court or otherwise to secure ends of justice. But, the Court has no authority to examine the correctness or otherwise of the allegations. Therefore, we are of the opinion that, at this juncture, the inherent powers under Section 482 cannot be exercised in favour of the applicants to quash

and set aside the FIR filed on behalf of the complainant Smt. Sushma at Cantonment Police Station, Aurangabad. Hence, we proceed to reject the prayer of the applicant for quashing and setting aside the FIR.

7] However, learned counsel for the applicants harped on the circumstances that the police of cantonment police station have no territorial jurisdiction to investigate into the crime, as no part of the cause of action arose in Aurangabad. Therefore, the investigation alleged to be conducted by the cantonment police station, is without jurisdiction and powers. The learned counsel therefore submitted that the alleged FIR is required to be quashed and set aside or may be transferred to the concerned police station, at Kandhar or Mumbai. According to learned counsel for applicants, the police of cantonment police station, ought to have registered the crime under “ZERO” number and same has to be transmitted to the concerned police station at Mumbai or Kandhar, having territorial jurisdiction to deal with the matter. But, it has not been done by the concerned cantonment police station and, therefore, the entire proceeding is liable to be vitiated and quashed.

8] We find no force in the arguments propounded on behalf of the learned counsel for the applicants to quash the entire investigation conducted by the Cantonment Police Station on the ground of lack of territorial jurisdiction. The powers of investigation into cognizable offences are contained in Chapter XII of the Cr.P.C. The Section 154 of the said Chapter deals with the information in cognizable offences, whereas, Section

156, deals with investigation into cognizable offence. These provisions of Cr.P.C. gives a statutory right to the police to investigate into the circumstances of any cognizable offence without authority from the Magistrate and this right of police to investigate cannot be interfered in exercise of powers under Section 482 of Cr.P.C. The relevant provision of Section 156 of Cr.P.C. is reproduced hereinbelow :-

156. “Police officer's power 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.

(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.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned. “

Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.

9] It is evidence from the aforesaid provision of sub-section 2 of section 156 of Cr.P.C. that no proceeding of police officer in any stage shall,

or at any stage be called in question on the ground that the case was one which the officer was not empowered to investigate. However, the law postulates that, after completion of investigation, result of such investigation is required to be forwarded as contemplated under Sections 168, 169 and 170 of Cr.P.C. At this stage, reliance is kept on the exposition in the case of *Satvinder Kaur Vs. Sate (Government of NCT Delhi) and another* reported in (1999) 8 SCC 728, in which the Apex Court in para.10 has observed thus :-

“10. It is true that territorial jurisdiction also is prescribed under sub-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 enquire 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. 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.”

10] In view of the settled principles of law mentioned above, we are unable to persuade ourselves to appreciate contentions put forth on behalf of the learned counsel for the applicants, to cause interference in the investigation of the crime by the cantonment police station. At this stage, when investigation is in progress, the impugned FIR cannot be quashed and set aside on the alleged ground that, as no part of offence is committed within the territorial jurisdiction of Aurangabad police Station, the I.O. has no jurisdiction to investigate into it. The law does not permit to cause any interference in the investigation by exercising inherent powers under Section 482 of Cr.P.C. Section 156(2) of Cr.P.C. contains an embargo that no proceeding of police officer shall be called in question on the ground that he has no territorial jurisdiction. We reiterate that the material collected by the I.O. cannot be judicially scrutinized for arriving at the conclusion that the police officers of particular police station, would not have territorial jurisdiction.

11] In the above premises, we are of the considered opinion that the circumstances on record categorically demonstrate that the allegations made in the FIR, if taken into consideration at its face value, and accepted in its entirety, prima facie constitute an offence of cruelty as envisaged

under Section 498A of I.P.C. against the applicants. The contentions propounded on behalf of the applicants against first informant Sau. Sushama require judicial enquiry to examine the correctness and truthfulness of aspersions casted on behalf of applicants. It cannot be appreciated at this stage, by adopting the course of judicial scrutiny, which is not permissible while exercising powers U/sec. 482 of Cr.P.C. Therefore, the application being devoid of merit, deserves to be dismissed. However, in case the Investigation Officer arrives at the conclusion that the aforesaid crime is not committed within the territorial jurisdiction of Cantonment Police Station, in such eventuality, he has an liberty to forward the impugned FIR to the concerned Police Station of Kandhar or Mumbai having jurisdiction over the area in which the crime is committed. Hence, the Criminal Application stands dismissed. No orders as to costs.

At this stage, learned counsel for the applicant prays for continuation of interim relief which was in force till this date. Said prayer is vehemently opposed by learned counsel appearing for respondent No.2.

Since the investigation is in progress and as it is the exclusive domain of the I.O., we are not inclined to stall the investigation or restrain the I.O. from filing charge sheet. Hence, the prayer stands rejected.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-