

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 4015 OF 2014

1. Mrs. Kailashben Mahendrabhai Patel
Age : 62 years, Occu. Household,
R/o Rainbow Park, V.V. Road,
Karamsad, Dist. Anand (Gujarat)
2. Rahul Mahendrabhai Patel,
Age : 29 years, Occu. Business,
R/o Rainbow Park, V.V. Road,
Karamsad, Dist. Anand (Gujarat)
3. Mahendrabhai Bhikhabhai Patel
Age : 64 years, Occu. Business,
R/o Rainbow Park, V.V. Road,
Karamsad, Dist. Anand (Gujarat)
4. Vijay Ranchhodbhai Patel
Age : 62 years, Occu. Service,
R/o Rainbow Park, V.V. Road,
Karamsad, Dist. Anand (Gujarat)

Versus

1. The State of Maharashtra
Through its Police Inspector,
Sadar Bazaar Police Station, Jalna.
2. Nimisha Niraj Patel,
Age : 35 years, occu. Household,
R/o Bunglow No. 55 "Matoshree"
Shaligram Society, Vinukaka Marg,
Bakrol, Dist. Anand (Gujrat)

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Mr. Jay Kansara a/w Mr. Ruchir Wani i/b Mr. A.S. Bajaj Advocate for Applicant.

Mr. S.G. Karlekar, APP for Respondent State

Mr. S.B. Deshpande h/f J.P. Legal Associates, Advocate for Respondent No.2

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

**ORDER RESERVED ON 3RD APRIL, 2017
ORDER PRONOUNCED ON : 5TH MAY, 2017**

ORDER : [PER K.K. SONAWANE, J.]:-

1] The applicants moved the present application invoking the remedy under Section 482 of the Cr.P.C., with the following prayer :-

“(B) That the FIR registered in connection with Crime No. 81 of 2013 registered in Sadar Bazar Police Station, Jalna, under Section 498(A), 323, 504, 506 r/w. Section 34 of Indian Penal Code against the applicants be quashed and set aside,

(B-A) That the Charge sheet filed under Section 173 of Criminal Procedure Code in connection with Crime No. 81 of 2013 registered in Sadar Bazar Police Station, Jalna under Section 498(A), 323, 504, 506 r/w. Section 34 of Indian Penal Code against the applicants before the learned Chief Judicial Magistrate, Jalna on 30/7/2013 be quashed and set aside.”

2] The genesis of the application, culled out in brief is that, the first informant Nimisha w/o. Niraj Patel, approached to the police of Sadar Bazar police station and filed FIR alleging that her marriage was solemnized in the year 2002 with the husband - Mr. Niraj Patel r/o. Karamsad, District Anand, Gujarat State in the year 2002 and after the marriage, she joined the company of husband at matrimonial home for cohabitation. She begotten one daughter Jinal and Son Wansh, during the wedlock from husband Niraj. Her mother-in-law, Shobhana Ben, passed away long back when her husband was 2/3 years old. Thereafter, her father-in-law, i.e. applicant No.3 Mahendrabhai Patel performed second marriage with applicant No.1 Kailashben. Applicant No.2 Rahul is the son of spouses - applicant No.1 Kailashben and applicant No.3 Mahendrabhai and step-brother of husband of first informant Nimisha. There was a wholesale and retail business of tobacco of applicant No.3 Mahendrabhai at Mumbai and the Niraj - husband of first informant, used to look after the entire affairs of the business. The

first informant, Nimisha was residing with husband Niraj at Mumbai for education of her children. According to first informant, when she gave birth to daughter Jinal in the hospital at Jalna, her mother-in-law i.e. Applicant No.1 Kailashben came to the hospital to see the daughter-in-law i.e. first informant Nimisha. At that time, applicant No.1 scolded the first informant Nimisha and reprimanded that she would not accept first informant Nimisha as she had given birth to the female child. She also exhorted that no share in the property will be given to herself and her husband Niraj and she refused to give the keys of locker containing gold and silver ornaments. Applicant No.1 Kailashben picked up quarrel with the first informant and her parents/brother etc. Thereafter, the applicants straightway went away directly from the hospital. It has been further alleged that after 2/4 months, the first informant had been to her matrimonial home at Mumbai with her brother. But, the applicant No.1 Kailashben and applicant No.3 Mahendrabhai Patel did not allow her brother to enter into the house and told him to take the sister back to his house. The applicants also hurled abuses to the brother of the first informant. The hapless brother returned to home leaving the sister Nimisha at matrimonial home in Mumbai. The first informant grumbled that she was being harassed and ill-treated by the applicants on one or other pretext. The applicants were not giving sufficient food. They used to assault and torture the first informant. It has been alleged that prior to 4 years when she had given birth to son - Wansh, at that time also, applicant Nos. 1 and 2 visited her at Jalna and raised quarrels with the parents and brother of first informant. The applicants given threats

that even though she had delivered the son, she would not get any share in the property. They gave threats of dire consequences and went away. The applicant No.2 Rahul also tortured and harassed the first informant Nimisha mentally and physically. They did not allow the husband of first informant to look after the business affairs. The applicant No.2 Rahul by making her forged signature taken out the school leaving certificate of her daughter and created hurdles in her education. There was continuous mental and physical torture to the first informant on the part of applicants. When the first informant was at her matrimonial home located in Karamsad, District Anand, at that time also, the applicants picked up quarrel with herself and her husband. Applicant No.4 Vijay Patel Munim of applicant No.2 had given threats of life to the first informant. Eventually, the first informant Nimisha and her husband left the house of the applicants and came to Jalna for residence owing to lack of security. Thereafter, she approached to the Sadar Bazar police station and preferred the impugned FIR for the charges of mental and physical cruelty, criminal intimation, illegal demand of money etc. against the applicants.

3] Pursuant to FIR, the police of Sadar Bazar police station registered the crime No. 81 of 2013 and set the criminal law in motion. I.O. recorded the statements of witnesses acquainted with facts of the case. I.O. collected relevant documents. Meanwhile, applicants filed the present application under Section 482 of Cr.P.C. and prayed to quash and set aside the impugned FIR filed by first informant Nimisha Patel. Pending the present

application, I.O. Preferred the charge sheet against the applicants before learned Magistrate at Jalna and, therefore, by requisite amendment, applicants prayed for quashing and setting aside the charge sheet filed against them before the learned Magistrate at Jalna.

5] Learned counsel for the applicants, vehemently submitted that the allegations nurtured in the FIR against the applicants are false, baseless and frivolous one. There are no allegations against the husband. The first informant - Nimisha cast allegations against the applicants with malafide intention, to harass them and to fulfill her illegal demand of share in the property of applicants. The impugned criminal proceeding is an abuse of process of law. There are no specific overt act and allegations against the applicants in the FIR. The allegations nurtured against the applicants are vague, omnibus and general in nature and not sufficient to constitute the ingredients of alleged offences. According to learned counsel for the applicants, the entire endeavour on the part of first informant and her husband is to get the share in the property of the applicants by hook or crook. Therefore, in order to give mental torture to the applicants, the impugned FIR came to be filed. There are civil litigations pending in between the applicants and husband of the first informant. The impugned FIR is filed at Jalna which is at a distance of more than 600 Kilometers from Karamsad, Dist. Anand, Gujarat State. These circumstances itself indicate that the first informant has preferred the FIR at Jalna only with an intention to cause mental and physical harassment to the applicants by attending the court proceedings from 600 Kilometer distance. According to learned

counsel, applicants are from affluent family and hence, it would be unbelievable that the applicants would make such a demand of money from the parents of the first informant. According to learned counsel, all the allegations made in the FIR are so vague and improbable that there would not be any reasonable ground to initiate the criminal proceedings against the applicants. There is no sufficient evidence available on record to file charge sheet against the applicants. Learned counsel fervidly submitted that no such offence as alleged had taken place within the jurisdiction of learned Magistrate at Jalna and, therefore, the police of Sadar Bazar police station has no jurisdiction to investigate and file charge sheet against the applicants. All the allegations are baseless and not sustainable. Therefore, the impugned FIR as well as the resultant charge sheet deserves to be quashed and set aside.

6] Learned counsel for applicants relied upon exposition of law in the case of *Anand vs. State of Maharashtra, 2014 SCC OnLine Bom. 1160*, *Pallavi vs. State of Maharashtra, 2015 SCC OnLine Bom. 6173*; *Preeti Gupta and another vs. State of Jharkhand and another, (2010)7 Supreme Court Cases 667*.

7] Per contra, learned APP and learned counsel for Respondent No.2 vociferously opposed the contentions put forth on behalf of applicants and submitted that the impugned FIR categorically demonstrates the circumstances of maltreatment and harassment by the applicants to the first

informant. The applicant No.1 Kailshben, and others tortured the first informant, on one or the other pretext. The applicants refused to give share in the family property to the first informant and her husband. The applicant No.1 also taken away gold and silver ornaments of the first informant. There are allegations about the mental and physical cruelty at the hands of applicants. I.O. recorded the statements of the witnesses acquainted with the facts of the case. These all witnesses also stated about the mal-treatment and harassment to the first informant on the part of the applicants. Therefore, the learned APP and learned counsel for respondent No.2 prayed not to nod in favour of applicants and to reject the application.

8] We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the investigation papers and the relevant documents produced on record. It is 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 the allegations made in the complaint/or documents accompanied. 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. Ch. Bhajanlal and others reported in AIR 1992 SC 605*, 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.”

9] In view of the aforesaid principle of law, it is crystal clear that in cases where the allegations are absurd and do not make out any case, certainly, it would be an abuse of process of law. In such circumstances, the criminal proceeding initiated on the basis of such allegations is essential to be quashed and set aside. But, if there is a triable case and the allegations nurtured in the FIR make out a prima facie case, in such circumstances, it would not be permissible to exercise the inherent jurisdiction under Section 482 of Cr.P.C. Moreover, it is also not require for the court to go deep into the reliability and genuineness of the allegations made in the FIR.

10] In the instant case, the recitals of the FIR if carefully considered reflects that there are prima facie circumstances, depicting commission of crime of cruelty as envisaged under Section 498-A of IPC. The first informant has categorically made reference of instance which occurred in the hospital at the time of her delivery, when she had given birth to a female child. The first informant, attributed the overt acts of applicant No.1 Kailashben, applicant No.3 Mahendrabhai when she accompanied with her brother came to matrimonial home at Mumbai after delivery. The applicant No.2 Rahul, by making her forged signature obtained the school leaving certificate of daughter of first informant with ill-intention to cause mental torture to first informant, as referred supra. This Court, while exercising the powers under Section 482 of Cr.P.C. would not embark upon an enquiry about the genuineness and truthfulness of the allegations

nurtured in the FIR against the applicants. However, it seems that there were strain relations in between the family of the first informant on account of property dispute. The husband of the first informant was looking after the affairs of the business of tobacco of applicant No.3 at Mumbai. There were civil litigation going on in between applicants and husband of first informant. The first informant also stated about her residence at native of her husband at Karamsad, Dist. Anand, Gujarat State. The first informant specifically mentioned about the overt act of applicant No.4, who is the Munim of applicant No.3. He had given threats of life to first informant while squabble between family members. These circumstances demonstrate that the spouses left the native place and started residing at parents house in Jalna, apprehending lack of security and safety and proper environment in the matrimonial home. I.O. recorded the statements of witnesses acquainted with the facts of the case. We have gone through the statements of prosecution witnesses. It was transpired that prima facie case is made out against the applicants. We would reiterate that the first informant was subjected to mental torture and harassment by applicants is a matter of facts to be tested on the anvil of merit in detail trial. Therefore, at this stage we are not inclined to nod in favour of applicants, for quashing the impugned FIR and consequent charge sheet filed against the applicants. In contrast, the allegations in the FIR, if considered at its face value and accepted in its entirety, would establish the offence of cruelty as well as criminal intimation against the applicants. There were allegations of unlawful demand of money on the part of the applicants. Therefore, we find

it difficult to exercise the inherent powers under Section 482 of Cr.P.C. in favour of the applicants.

11] So far as reliance placed by the learned counsel for the applicants on the judicial pronouncement of this court Bench at Aurangabad in case of Anand Pundlik Birhade vs. State of Maharashtra and others, and Pallavi Sagar Gaur Vs. State of Maharashtra and others, as well as judgment of the Apex Court in the matter of Preeti Gupta vs. State of Jharkhand and others (cited supra), is concerned, we find that these case laws are misplaced and would not advance the case of applicants any further. These citations are distinguishable on facts and circumstance with the matter in hand. Therefore, it would not render any assistance to the case of applicants in this matter.

12] The another legal issue raised on behalf of applicants is in regard to territorial jurisdiction as contemplated under Section 178 and 179 of Cr.P.C. According to learned counsel for the applicants, no offence has been committed within the local limits of the jurisdiction of Chief Judicial Magistrate, Jalna. Therefore, the police of Sadar Bazar police station or the learned CJM, Jalna have no jurisdiction to entertain the enquiry or trial. Hence, the impugned FIR deserves to be quashed for lack of territorial jurisdiction.

13] Learned counsel for the respondent No.2 assailed that in the impugned FIR, it has been alleged that the applicants visited Jalna on the occasion of delivery of first informant Nimisha and at that time, they picked

up quarrel with the daughter in law - Niraja and her parents. The applicants also gave threats of dire consequences to the first informant to deprive herself as well as her husband from the share in the family property. According to learned counsel, the offence under Section 498-A is continuing one and it is committed in more local areas than one. Therefore, one of the local area where offence is committed has an jurisdiction to proceed with the criminal case instituted against the applicants. He relied upon the authoritative pronouncement of the Honourable Apex Court, in the case of ***Sunita Kumari Kashyap Vs. State of Bihar and another, reported in AIR 2011 SC 1674,***

14] We have considered the issue of territorial jurisdiction raised on behalf of applicants. We find force in the contentions put forth on behalf of learned counsel appearing for the respondent. It is true that the FIR is registered at Sadar Bazar police station and trial of the same, would be continued before learned Magistrate at Jalna. It has already referred (supra) that the applicants visited Jalna on two occasions, first, at the time of delivery of first informant Nimisha when she had given birth to the daughter Jinal and secondly, at the time of birth of son Wansh. It has been alleged that on both occasions, particularly, applicant No.1 picked up quarrel with the first informant Nimisha and her parents. The applicants exhorted and scolded the daughter in law Nimisha and gave threats on each occasion that they would not give any share in the property. In such circumstances, inference can be drawn that the offence of cruelty was committed partly in

the local area of Jalna Tahsil, Maharashtra State and partly in Mumbai, as well as Karamsad, Dist. Anand, Gujarat State, The Apex Court in the matter of Sunita Kumari Kashyap (cited supra) in para. No.6, observed as under :-

“6) Chapter XIII of the Code of Criminal Procedure, 1973 (in short "Code") deals with jurisdiction of the criminal courts in inquiries and trials. [Sections 177-179](#) are relevant which are as follows:

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.

179. Offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

From the above provisions, it is clear that the normal rule is that the offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. However, when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more than one local area and takes place in different local areas as per [Section 178](#), the Court having jurisdiction over any of such local areas is competent to inquire into and try the offence. [Section 179](#) makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

15] In the light of aforesaid exposition of law, we find force in the arguments advanced on behalf of learned counsel for respondent No.2. We have already given details about the allegations made in the FIR, as referred supra against the applicants. In the FIR, there are specific assertions by the first informant about the ill-treatment and cruelty at the hands of the applicants when they had visited the first informant in the hospital at Jalna at the time of her delivery. These circumstances are sufficient to arrive at the conclusion that offence as alleged in this case was continuing one having been committed in more local areas than one. The part of the local area being at Jalna, the learned Magistrate, Jalna has an jurisdiction to deal with the criminal case instituted against the applicants.

16] In view of aforesaid discussion, we are of the considered opinion that the allegations nurtured against the applicants on behalf of first informant in FIR, prima facie, made out the offence of cruelty under Section 498-A of IPC. There are also allegations about assault, criminal intimidation etc. The circumstances on record prima facie indicate that the first informant was subjected to ill-treatment and harassment on the part of applicants. Therefore, it would not be just and proper at this initial stage to quash and set aside the impugned FIR by exercising powers under Section 482 of Cr.P.C. The genuineness and veracity of the allegations is a matter of detail trial. Therefore, we are not inclined to nod in favour of the applicants.

17] In squeal, the application stands dismissed. We make it clear that the observations made hereinabove, are prima facie in nature and confined to the adjudication of present application. It would not be an impediment for the applicants for availing the remedy of filing an application for discharge, if any, before the concerned trial court. Moreover, the learned trial court shall not be influenced with the observations made hereinabove while deciding the applications for discharge, if any, filed by the applicants.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

After pronouncement of the judgment, learned counsel appearing for the applicants prays for continuation of ad-interim relief granted earlier and which was in operation during pendency of application, for further period of four weeks. Such prayer is vehemently opposed by learned counsel APP appearing for State and also learned counsel appearing for respondent No. 2.

Once, we reached to the conclusion that First Information Report cannot be quashed, stay to the further proceedings would cause prejudice to the interest of the parties. Hence, prayer stands rejected.

grt/- **[K.K.SONAWANE]**
JUDGE

[S.S. SHINDE]
JUDGE