

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.443 OF 2017

1. Dr. Saurabh s/o Shivhar **... Petitioners**
Velukar,
Age 32 years, Occu: Medical
Practitioner & Student

2. Adv. Surekha Shivhar Yelurkar
Age 53 years, Occu: Advocate

3. Dr. Shivhar s/o Kerba Yelurkar
Age 62 years, Occu: Retired

All R/o Meghdoot, Kava Naka,
Katpur Road, Latur

VERSUS

1. The State of Maharashtra

2. Dr. Mayuri Saurabh Yelurkar
Age 29 years, Ocu: Medical
Practitioner, R/o C/o Venkatrao
Shete, Vakil Colony, Near
Hanuman Temple, Gangakhed,
District Parbhani.

... Respondents

S/Shri S. H. Jagiasi, D. S. Jagiasi and N. D. Jagiasi,
Advocates for the petitioners,

Shri A.P. Basarkar, APP for the Respondent/State

Mr. S. V. Mundhe, Advocate for respondent No.2.

CORAM : K. L. WADANE, J.

RESERVED ON : 6th April, 2018.

PRONOUNCED ON : 11th April, 2018.

JUDGMENT:

1. Rule. Rule made returnable forthwith. With

consent of parties, the petition is taken up for final disposal.

2. Present writ petition is filed by the petitioners/original accused for following relief:

"(B) By issuing a writ of mandamus or any other appropriate writ, order or direction of like nature, the order dated 18.02.2017, passed by the learned Additional Sessions Judge, Gangakhed in Criminal Revision No. 21/2016 so also the order passed below Exh.27 in R.C.C. No. 26/2015 by the learned Judicial Magistrate, First Class, Gangakhed, dated 19.09.2016 may kindly be quashed and set aside."

3. Brief facts of the case may be stated as follows:

(1)Petitioner No.1 is husband of respondent no.2 and petitioner Nos. 2 and 3 are parents of petitioner No.1. Marriage of petitioner No.1 and respondent No.2 took place on 14.02.2013. According to the petitioners, after the marriage, respondent No.2 resided with petitioner No.1 for about three months and thereafter she left the matrimonial house on her own accord. Petitioners requested respondent No.2 to come and resume company of petitioner No.1, however, there was

no response.

(2) On 07.08.2014, respondent No.2 lodged complaint with Women's Grievances Redressal Forum. Thereafter, on 16.11.2014, respondent No.2 again lodged complaint with the Police Station, Gangakhed alleging that the petitioners were ill-treating respondent No.2 on various counts and they were also demanding an amount of Rs.20 lakhs for higher education of petitioner no.1, who is Doctor by profession. It is alleged that due to ill-treatment given by the petitioners, respondent no.2 was required to be admitted in the Hospital. On the basis of complaint lodged by the complainant/respondent No.2 offence came to be registered against petitioners at Crime No.291/2014 for the offence punishable under section 498-A, 504, 506 read with section 34 IPC with the Police Station, Gangakhed Dist.Parbhani where the parents of respondent No.2 are residing.

(3) After registration of crime, concerned police have conducted investigation and submitted charge sheet. Petitioners filed application for discharge but the learned Judicial Magistrate, First Class, Gangakhed

rejected the application on 19.09.2016. Being aggrieved with the same, the petitioners have preferred Criminal Revision Application No.21/2016 before the Additional Sessions Judge, Parbhani. Learned Additional sessions Judge rejected the revision application. Hence this writ petition.

4. I have heard arguments of Mr. Jagiasi, Advocate for the petitioners, Mr. Mundhe, learned counsel for respondent No.2 and learned APP for the State.

5. Learned counsel for the petitioners has argued on following points:

(1)Jurisdiction of the Criminal Court with reference to place on trial;

(2) Inordinate delay in filing of complaint; and

(3)Earlier complaint filed by respondent No.2 before the Women's Grievance Redressal Forum was closed.

During the course of argument, leaned counsel for the petitioners invited my attention to the contents of the complaint as well as supplementary statement of respondent No.2. Looking to the entire contents of the

complaint as well as supplementary statements and statements of other witnesses all the alleged ill-treatment given to the respondent No.2 was at her matrimonial place i.e. at Latur. Admittedly, the petitioners are resident of Latur whereas, parents of respondent No.2 are resident of Gangakhed, Dist. Parbhani. Therefore, according to the learned counsel for the petitioner, the Criminal Court at Gangakhed has no jurisdiction to take cognizance of the alleged offence. Therefore, on this count itself, the first information report and the charge-sheet needs to be quashed.

6. Learned counsel for the petitioners has relied on the provisions of sections 177, 178 and 179 of the Criminal Procedure Code, which reads as under:

"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. "

7. I have carefully gone through the First Information Report/complaint and statements recorded by the Investigating Officer during investigation. On perusal of the same, it appears that entire allegations are with reference to the ill-treatment given by petitioners to respondent No.2 at Matrimonial place i.e. at Latur. There is no allegation against the petitioners about ill-treatment to respondent no.2 when

she was residing at her parental house nor it is stated by any of the witnesses that the petitioners have demanded money when respondent No.2 was residing at her parental house.

8. Learned counsel appearing for the petitioner has relied upon the observations of Gujrat High Court in the case of **Jagdishprasad Ramshwarupprasad Gupta & ors. Vs. State of Gujrat and another in Cri. Misc. Application No.11014/2015**, which reads thus:

"21.A plain reading of the FIR and the charge-sheet papers reveal that the allegations levelled by the respondent No.2 are quite vague, general and sweeping, specifying no instances of criminal conduct. Although the Respondent No.2 is much more annoyed with her husband, with an obvious motive, has arrayed all the close relatives of her husband in the FIR. The Police also seems to have recorded stereo-type statements of the witnesses who are none other than the parents and other relatives of the respondent No.2 and has filed a charge-sheet. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of process of the Court. The Court owes a duty to subject the

allegations levelled in the complaint to a thorough scrutiny to find out prima facie whether there is any grain or truth in the allegations or involving certain individuals in a criminal charge. To prevent abuse of process of the Court; and to save the innocent from false prosecutions at the hands of unscrupulous litigants, the criminal proceedings even if they are at the stage of framing of the charge, if they appear to be frivolous and false, should be quashed at the threshold.

9. Aforesaid observations are inapplicable to the facts of the present case because, there are specific allegations against each of the accused/petitioners with reference to ill-treatment to respondent no.2 and an offence punishable under 498-A IPC is registered. Therefore, it is not desirable to quash and set aside the F.I.R. Besides the complaint, there are specific allegations made by various witnesses in their statements before the Police. Therefore, it cannot be termed that the allegations against the petitioners are vague.

10. As referred above, certainly none of the acts alleged by respondent No.2 had taken at the place

where the offence is registered i.e. at Gangakhed, Dist. Parbhani. The entire series of instances, allegations took place at Latur. In such circumstances, it was for the investigating officer to register the offence at Crime No.0 and then transfer it to the police station at Latur, where the petitioners are residing. Instead of doing so, the Gangakhed police registered the offence, carried out the investigation and submitted charge sheet. Apparently, it seems that Criminal Court at Gangakhed Dist. Parbhani has no jurisdiction to try and decide the criminal case against the present petitioners in view of provisions of section 177, 178 and 179 Cr.PC. Merely because the charge sheet was submitted in the criminal Court where the Criminal Court has no jurisdiction to try and decide the case, on that count alone the criminal proceeding cannot be quashed and set aside. That proceeding can be transferred from the Court of Judicial Magistrate First Class, Gangakhed to criminal Court at Latur.

11. Learned counsel or respondent No.2 has rightly relied upon the observation of this Court in the case of **Shekhar Shivdas Mahire & ors. Vs. Sau. Sarikabai**

Shekhar Mahire and Anr., reported in 2010 ALL MR (Cri) 1766, wherein it is observed that FIR alleging that petitioners has physically and mentally ill-treated complainant on account of unlawful demand of dowry and thereby committed offence under section 498A. There are no allegations of any ill treatment at place where parents of complainant resided. Entire allegations pertain to matrimonial home of the complainant. Therefore, it is held that Court at the place where complaint resides i.e. her parent's place has no jurisdiction to entertain complaint. However, in the interest of justice, this Court, in the aforesaid case, has transferred the criminal case from the place of parents of victim to the place where her in-laws are residing. In Para 15 of the judgment this Court has observed as under:

"15. In the present case as already discussed herein above, there are no allegations of any ill-treatment at the place where the parents of the complainant resided. The entire allegations pertain to the matrimonial home of the complainant i.e. Nashik. In that view of the matter, he proceeding before the Court at JMFC, Shahada are not tenable. However, I find that

inspite of quashing the proceedings, it would be in the interest of justice to transfer the proceeding from the Court of JMFC Shahada to the Court of learned Chief Judicial Magistrate, Nashik. The application is therefore allowed by directing the proceeding bearing CR No.126/2006 registered with Shahada Police Station and Charge-sheet No.09/2007 filed in RCC No.14/2007 pending before the learned J.M.F.C. Shahad to be transferred to the Court of learned Chief Judicial magistrate, Nashik, who shall allot the same to the Court of competent jurisdiction at Nashik. It is needless to stage that the proceedings shall stand transferred from the present stage along-with the evidence, if any, recorded."

12. Here, in the present case also, as already discussed herein above, there are no allegations of any ill-treatment at the place where the parents of the complainant resided. Entire allegations pertain to matrimonial home of the complaint i.e. at Latur. In view of the matter, the proceedings before the Judicial Magistrate, First Class, Gangakhed Dist. Parbhani are not tenable. However, I find that instead of quashing the proceedings, it would be in the interest of justice to transfer the proceedings from

the court of the Judicial Magistrate, First Class, Gangakhed Dist. Parbhani to the Court of Chief Judicial Magistrate, Latur.

13. Second point of argument of the petitioners is that there was inordinate delay of 18 months caused in filing of the FIR. While considering the writ petition, that aspect cannot be taken into consideration because the complaint may explain the detail as to why the first information report/complaint was lodged after about 18 months. So far as the third point of arguments on behalf of the petitioners is concerned, it is seen that earlier complaint lodged by respondent No.2 with Women's Grievance Redressal Forum is closed. I have carefully gone through the proceedings before the Women's Grievance Redressal Forum from which, it appears that the proceeding was closed as parties to the proceeding were not cooperating and not attending the proceedings and the complainant/respondent no.2 was intending to file complaint with the police. Therefore, the delay in filing the first information report and closing of the earlier complaint cannot be the ground to quash and set aside the proceedings.

14. In view of the above, the writ petition is disposed of with direction, that the proceeding in Crime/FIR No.291/2014 registered with Gangakhed Police Police Station and Charge-sheet filed in RCC No.26/2015 pending before the learned J.M.F.C. Gangakhed Dist. Parbhani is transferred to the Court of learned Chief Judicial Magistrate, Latur, who shall try himself or allot the same to the Court of competent jurisdiction at Latur. It is needless to state that the proceedings shall stand transferred from its present stage along-with the evidence, if any, recorded.

15. Rule is accordingly discharged. No costs.

(K. L. WADANE, J.)

JPC