

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

**CRIMINAL APPLICATION NO. 6724 OF 2017**

Sambhaji s/o Vitthalrao Patil,  
age 42 years, occ. Agril.,  
R/o Dongaon, Ta. Gangapur,  
District Aurangabad ... Applicant

VERSUS

- 1] Sau. Shobha w/o Sambhaji Patil,  
age 43 years, occ. Household,  
R/o Hatnur, Tal. Kannad,  
District Aurangabad,
- 2] Sonali w/o Sambhaji Patil,  
age 28 years, occ. Household,  
R/o Dongaon, Tq. Gangapur,  
District Aurangabad,
- 3] Sushila w/o Vitthalrao Patil,  
age 68 years, occ. Household,  
R/o Shillegaon, Tq. Gangapur,  
District Aurangabad,
- 4] Suvarna w/o Pandurang Muley,  
age 43 years, occ. Household,  
R/o Dhorkin, Tq. Paithan,  
District Aurangabad,
- 5] Pandurang s/o Namdeo Muley,  
age 48 years, occ. Agril. & business,  
R/o as above,
- 6] Sanjay s/o Vitthalrao Jadhav,  
age 45 years, occ. Agril. & business,  
R/o Besides Bus Stand, Gangapur,  
Tal. Gangapur, District Aurangabad,

- 7] Jyoti @ Suvarna w/o Sanjay Jadhav,  
age 38 years, occ. Household,  
R/o as above,
- 8] Pushpa @ Laxmibai w/o Ambadas Mohite,  
age 53 years, occ. Household,  
R/o Tapargaon, Tal. Kannad,  
District Aurangabad,
- 9] Ambadas s/o Patilba Mohite,  
age 58 years, occ. Agril.,  
R/o Kannad, Tal. Kannad,  
District Aurangabad,
- 10] Satish s/o Vasantrya Khosare,  
age 43 years, occ. Service,  
R/o Galleborgaon, Tal. Khultabad,  
District Aurangabad,
- 11] Rajendra s/o Vitthalrao Patil,  
age 48 years, occ. Service,  
R/o Dongaon, Tal. Gangapur,  
District Aurangabad,
- 12] Kalpana w/o Rajendra Patil,  
age 40 years, occ. Household,  
R/o Shillegaon, Tq. Gangapur,  
District Aurangabad,
- 13] Appasaheb s/o Jaywantrao Waware,  
age 53 years, occ. Service,  
R/o Raghunath Nagar, Tal. Gangapur,  
District Aurangabad,
- 14] Balu s/o Jaywantrao Waware,  
age 53 years, occ. Service,  
R/o Divshi Pimpalgaon, Tal. Gangapur,  
District Aurangabad,
- 15] Kalyan s/o Appasaheb Patil,  
age 63 years, occ. Agril.,  
R/o Ghodegaon, Tal. Gangapur,  
District Aurangabad,

16] Vaishali w/o Kalyanrao Patil,  
age 58 years, occ. Household,  
R/o as above,

17] Pappu s/o Jaywantrao Waware,  
age 38 years, occ. Agril.  
R/o Divhshi Pimpalgaon,  
Tal. Gangapur,  
District Aurangabad,

...Respondents  
(No.1 Complainant)

.....

Mr. S.S.Thombare, advocate for the applicant  
Mr. Shyam C.Arora, adv. for Resp.no.1  
Mr. S.V.Jadhavar, adv. for Resp. nos. 2 to 17

.....

**CORAM : K.L.WADANE, J.**

**DATE OF RESERVING**

**THE JUDGMENT**

**: 21.3.2018**

**DATE OF PRONOUNCEMENT**

**OF THE JUDGMENT**

**: 22.3.2018**

**J U D G M E N T :**

Rule. Rule returnable forthwith. With  
the consent of the learned counsel for the  
parties, the application is taken up for final  
hearing.

2] Heard Mr. S.S.Thombare, learned counsel  
for the applicant, Mr. S.C.Arora, learned counsel  
for respondent no.1 and Mr. S.V.Jadhavar, learned  
counsel for respondent nos. 2 to 17.

3] Applicant is original accused no.1 and respondent no.1 is original complainant. Respondent nos. 2 to 17 are original accused.

4] Respondent no.1 filed private complaint before the Judicial Magistrate, First Class, Kannad, alleging that the applicant performed second marriage with accused no.2 and their marriage took place at Aurangabad. After presentation of the complaint, the complaint was kept for inquiry under Section 202 of the Criminal Procedure Code. Accordingly, the verified statement of respondent no.1 complainant has been recorded. Thereafter, the Trial Court issued process against the applicant and respondent nos. 2 to 17 for the offence punishable under Section 494 r/w Section 109 of the Indian Penal Code. Subsequently, during pendency of trial, applicant and respondent nos. 2 to 17 have filed an application and questioned the jurisdiction of the Judicial Magistrate, First Class, Kannad. Respondent no.2 herein has filed say on it and has

specifically contended that the complainant was/is residing within the territorial jurisdiction of the Judicial Magistrate, First Class, Kannad.

5] Learned Magistrate has rejected the application on the ground that the complainant was residing at Hatnoor and there is also possibility that the applicant might have resided at Hatnoor as well as Aurangabad.

6] Being aggrieved by the order, dated 27.10.2017, passed by the learned Chief Judicial Magistrate, Kannad, below Exh. 211 in Regular Criminal Case No. 39 of 2009, the applicant has preferred this application.

7] Mr. Thombare, learned counsel for the applicant mostly has concentrated his argument upon the address of respondent no.1 and has placed reliance upon the address of respondent no.1 mentioned in Petition No. C-2 of 2014 filed by respondent no.2 and her son and daughter before

the Family Court, Aurangabad, wherein the address of respondent no.1 is mentioned as at Khadkeshwar, Aurangabad.

8] Mr. Thombare, learned counsel has, therefore, argued that at the time of commission of offence or thereafter, respondent no.1 never resided at village Hatnoor, and as such, the learned Magistrate at Kannad has no jurisdiction to try and entertain the complaint.

9] As against this, Mr. Arora, learned counsel for respondent no.1 has argued that respondent no.1 is permanently resident of village Hatnoor, Taluka Kannad and same is clear from the address of respondent no.1 mentioned in the title clause of Regular Criminal Case No. 39 of 2009, wherein the address of respondent no.1 is mentioned as Hatnoor, Taluka Kannad.

10] In addition to that, the applicant has relied upon the copy of residence certificate,

issued by the Sarpanch of village Hatnoor, as well as the identity card, issued by Varad Ganesh Shikshan Prasarak Mandal, Aurangabad, wherein the address of respondent no.1 is mentioned as Hatnoor, Taluka Kannad. In addition to that, the copy of Adhar card and School Leaving certificate are produced on record, wherein the address of daughter of respondent no.1 is also mentioned as Hatonor, Taluka Kannad. So, according to learned counsel Mr. Arora, there is sufficient evidence on record to show that respondent no.1 is residing at the address mentioned in title clause of complaint itself.

11] Mr. Thombare, learned counsel has relied on the observations in the case of **Y.Abraham Ajith and others vs Inspector of Police, Chennai and another**, reported in (2004) 8 SCC 100, a case pertaining to the offence punishable under Sections 498 and 406 of the Indian Penal Code. He also relied upon the observations in the case of **Manish Ratan and others vs State of M.P. And**

**another**, reported in (2007) 1 SCC 262, a case relating to the demand of dowry. He also cited a judgment in **Criminal Application No. 2768 of 2008**, relating to the offence punishable under Section 498-A of the Indian Penal Code. He further relied upon the observations in the case of **Preeti Gupta and another vs State of Jharkhand and another**, reported in (2010) 7 SCC 667, a case relating to the offence punishable under Section 498-A of the Indian Penal Code.

12] On perusal of the facts and observations of the above cited authorities and looking to the offences levelled against the accused in the aforesaid authorities, it appears that their place of trial is governed under Section 177 of the Criminal Procedure Code, however, in the present case, the applicant and respondent nos. 2 to 17 have been charged for the offence punishable under Section 494 of the Indian Penal Code. Therefore, the provisions of Section 182(2) of the Criminal Procedure Code are relevant to determine the

jurisdiction of the criminal court and place of trial. The place of trial for the offence punishable under Section 494 of the Indian Penal Code is governed under the provisions of Section 182 of the Criminal Procedure Code, which reads as follows : -

" 182. Offences committed by letters, etc.

(1) .....

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860 ) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage<sup>1</sup> or the wife by the first marriage has taken up permanent residence after the commission of the offence. "

13] On perusal of the aforesaid provisions, it appears that there are three places contemplated for the trial of offence punishable under Section 494 of the Indian Penal Code i.e. (i) the court within whose local jurisdiction the offence was committed, (ii) the offender last resided with his or her spouse by the first marriage, and by way of

amendment a third place is contemplated i.e.(iii) the wife by the first marriage has been taken up permanent residence after the commission of the offence. So relying upon the third clause relating to the place of offence added by way of amendment, Mr. Arora, learned counsel has submitted that the Judicial Magistrate, First Class at Kannad has jurisdiction to try and entertain the complaint. In support of his contention, Mr. Arora, learned counsel, therefore, has rightly relied upon the observations in the case of **Ravinder Kaur vs Gurmit Singh and others**, reported in **1985 Cri.L.J. 601**. Para 3 thereof reads thus : -

" 3. As it seems to me, the spirit of Section 182(2) of the Code of Criminal Procedure is to throw open a convenient jurisdiction to the offended spouse. Even while reading evidence for the purpose, the Courts have to lean towards that angle in fixing jurisdiction. Though it is true that the allegations in the complaint and the evidence of the wife are silent about her permanent residence within the territorial jurisdiction of the Court at Nabha, yet the Courts below could have drawn the inference from the mere incidence of her residence within jurisdiction, to be permanent

residence. An absolute strict construction of the word 'permanent' in the sequence could lead to many an undesirable result and an abuse of the process of the Court. Thus, the impugned order of the Additional Sessions Judge is quashed and that of the Judicial Magistrate 1st Class supplanted (sustained?) by holding that the wife had a permanent residence, after the commission of the offence complained of, within the territorial jurisdiction of the Criminal Court at Nabha. And further that the trial Magistrate had the jurisdiction to try the offence. Ordered accordingly. "

14] Mr. Arora, learned counsel, has also relied upon the observations in the case of **Tekumalla Muneiah and others vs Chittari Babunuri Ammanamma and another**, reported in 1991 Cri.L.J. 548, particularly para 4 thereof, which reads thus : -

" 4. As per the above section, it is clear that the first wife can file a complaint at the place where she has taken up a permanent residence after the commission of the offence, if the first wife takes up a permanent residence, she can file a petition in the Court which has got jurisdiction over the area in which she resides. Where the first wife has been residing permanently in a particular place earlier to the commission of the offence, and continues to reside in that place even after the commission of

the offence, it can be said that she is residing in that place even after the commission of the offence. Therefore, the Court of that place has got jurisdiction. Merely because the section refers to the place where the first wife takes a permanent residence after the commission of the offence, it cannot be said that the wife who was living at that place earlier to the commission of the offence and continues to do so even after the commission of the offence, is not residing at that place after the commission of the offence. The section must be interpreted in accord with the intention of the Parliament. The incorporation of the clause "or the wife by the first marriage has taken up permanent residence after the commission of the offence" in the section is mainly to facilitate the first wife to file a complaint at the place where she permanently resides after the commission of the offence. I accordingly see no force in the submission of the learned Counsel and hold that the first wife who was living at a particular place earlier to the commission of the offence and continues there must be deemed to have taken permanent residence at that place after the commission of the offence in terms of S. 182 (2) Cr. P.C.. and that the Court having territorial jurisdiction over that place, namely Nellore in the present case, can entertain the complaint. "

15] Mr. Arora, learned counsel, further relied upon the observations in the case of **Ganesh**

**Harsingh Patil vs State of Maharashtra**, reported in 2002 (1) Mh.L.J. 74, wherein there is reference to the case reported in the case of Ravinder Kaur vs Gurmit Singh and others, reported in 1985 Cri.L.J. 601, and this Court observed as follows : -

“ It can be seen that even in this case, the alternate plea raised by the counsel of the wife was opposed on the ground of absence of pleadings. However, apart from liberally reading the averments in the pleadings the learned Judge has also gone on record to observe that the spirit of Section 182(2) of the Code is to throw open the convenient jurisdiction to the offended spouse i.e. making an alternative venue available to the offended spouse for initiating the prosecution. ”

16] On perusal of the aforesaid observations, it is clear that the pleading has to be liberally construed so as to determine the place of trial and the jurisdiction of the Criminal Court. Here, in the present case, the applicant mentioned her address as at Hatnoor, Taluka Kannad in the title clause of the complaint itself. In addition to that, there is sufficient material on record to show that respondent no.1 is resident of Hatnoor.

Furthermore, when the application was moved by the accused persons questioning the jurisdiction, respondent no.1 complainant has submitted her say and has stated that respondent no.1 is residing within the territorial jurisdiction of Criminal Court.

17] In view of above, prima facie, it appears that the residence of respondent no.1 was/is within the territorial jurisdiction of Criminal Court at Kannad. Hence, there is no substance in the application. And application is liable to be dismissed. Accordingly, Criminal Application is dismissed. No costs.

**(K.L.WADANE, J.)**

dbm