

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 461 of 2019

1. Barkha Soni (Saraf) W/o Ajay Soni, Aged About 24 Years, R/o Near Malsai Pond, Kushalpur, Raipur, Tahsil and District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Station House Officer, Police Station City Kotwali, District Balodabazar-Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. State of Chhattisgarh, Through Station House Officer, Police Station - Mahila Thana Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Vivek Saraf S/o Basant Saraf, Aged About 35 Years, R/o Infront Of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
4. Basant Kumar Saraf S/o Late Bhagwandeem Saraf, Aged About 65 Years, R/o Infront of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
5. Reeta Saraf W/o Basant Saraf, Aged About 62 Years, R/o Infront of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
6. Namrata Saraf W/o Vikas Saraf, Aged About 33 Years, R/o Infront Of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
7. Vikas Saraf S/o Basant Saraf Aged About 37 Years, R/o Infront Of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
8. Anis Kumar Saraf S/o Shankarlal Saraf, Aged About 46 Years, R/o Infront of Boys School, Near Gandhi Chowk Balodabazar, District Balodabazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Petitioner – Shri Shobhit Mishra, Advocate.

For State/Respondents 1 and 2 – Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-08-2019

1. It is submitted that the petitioner had filed complaint in Police Station Mahila Thana Raipur which was though lodged, but, not registered in the police station and later on, the FIR was transferred to the Police Station City Kotwali

Balodabazar for registering the same in that police station. It is submitted that this transfer of the FIR is illegal and arbitrary. The petitioner had visited the police Station City Kotwali in counseling proceeding where she was threatened and chased by the persons. The Mahila Thana Raipur also has the jurisdiction to investigate the case. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Rupali Devi Vs. State of Uttar Pradesh & Ors.** delivered in CRA No.71 of 2012 dated 09-04-2019; and on the judgment of this Court passed in **Writ Petition (Cr.) No.190 of 2015** titled as **Aaisha Uttarwar Vs. State of C.G. and another** dated 29-04-2016. Therefore, it is prayed that the orders be passed for transfer of the case registered as Crime No.208/2018 registered in Police Station City Kotwali District Balodabazar-Bhatapare to Police Station Mahila Thana Raipur in the interest of justice.

2. Learned counsel for the State opposes the petition and submission made.

3. Respondent Nos.3, 4, 5, 6, 7 and 8 are not summoned.

4. In matter of Rupali Devi Vs. State of Uttar Pradesh & Ors.(supra) the three judges Bench of Hon'ble the Supreme Court has held in paragraph 14, 15, and 16 that :-

14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in

Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or wellbeing, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the

husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.”

In the matter of Aisha Uttarwar Vs. State of Chhattisgarh and another (supra), this Court has held in para 14 and 15 that :-

“14. Thus, applying the law laid down by the Supreme Court in above-stated judgments to the facts of the present case, it would appear that the offence under Section 498-A of the IPC registered against the accused persons is a cognizable offence, in which, the Station House Officer, Tarbahar, Bilaspur (Chhattisgarh) has rightly registered the F.I.R. under Section 154(1) of the CrPC. As the offence under Section 498-A of the IPC being cognizable, the Station House Officer, Tarbahar Bilaspur (Chhattisgarh) was obliged to investigate the said offence completely by

virtue of provisions contained in Section 156(1) of the Cr.P.C., and unless, the investigation of said crime is completed fully as per procedure laid down in Cr.P.C., F.I.R. could not have been directed to be transferred and such a direction is contrary to law laid down by Their Lordships of Supreme Court in **Satvinder Kaur v. State (Govt. of NCT of Delhi) and another**, 1 (1999) SCC 728. Consequently, transfer of F.I.R./case diary at an early/initial stage by the Superintendent of Police for further investigation to Police Station Alwal, District Secunderabad (Telangana) through the Deputy Commissioner of Police, Secunderabad (Telangana) at the instance of Police Station Tarbahar, District Bilaspur (Chhattisgarh) by Superintendent of Police, Bilaspur by memo dated 09/07/2015 is unsustainable and contrary to provision contained in the Code of Criminal Procedure, 1973, as such order dated 09/07/2015 is accordingly quashed.

15. Consequently, the Deputy Superintendent of Police, Secunderabad (Telangana) is directed to send back the case diary of crime No. 500/2015 registered in Police Station Alwal (Secunderabad) to Police Station Tarbahar, Bilaspur (Chhattisgarh). Upon receipt of the case diary as stated above, the Station House Officer, Tarbahar, District Bilaspur (Chhattisgarh) is directed to complete the investigation of the said crime expeditiously and without further loss of time. The Superintendent of Police Bilaspur/Station House Officer Police Station Tarbahar, Bilaspur is at liberty to take decision with regard to transfer of case diary or to proceed with Section 170 of Cr.P.C. after completion of full investigation of said crime.”

5. This law is well settled and the jurisdiction for investigation and trial of the case is available to the police and Court in Raipur also and the matter is clearly covered under Section 179 of the Cr.P.C. Hence, the petition is allowed and disposed off at motion stage with following directions. The aforesaid FIR

registered in City Kotwali Balodabazar for offence under Section 498(A), 34 of the IPC is hereby ordered to be transferred to Mahila Thana Raipur for the purposes of further investigation and completing other proceedings before filing of the charge sheet.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil