

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 430 of 2020**

Smt. Preeti Sharma, W/o Gajendra Sharma, Aged around 30 years, Presently residing at Raja Para, Bagh Talab, Circuit House Road, Raigarh, Tahsil and District Raigarh, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through the Secretary, Ministry of Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
- 2.The Station House Officer, Police Station City Kotwali, Raigarh, Distt. Raigarh, Chhattisgarh.
- 3.The Station House Officer, Police Station Sakti, District Janjgir-Champa, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Hari Agrawal, Advocate
 For Respondents/State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23/11/2020

- 1.By way of this writ petition, the petitioner, being a victim of matrimonial offence punishable under Section 498-A read with Section 34 of IPC, seeks quashment of the order dated 06/06/2020

passed by the S.H.O., Police Station - City Kotwali, Raigarh transferring the FIR registered at the instance of the petitioner bearing No. 00/2020 to the Police Station - Sakti, Janjgir-Champa as FIR No. 228/2020 holding that the Police Station - Sakti, Janjgir-Champa has the jurisdiction to inquire and investigate the offences alleged as the petitioner lastly resided there with her husband and her in-laws.

2. It is the case of the petitioner that her marriage was solemnized with Gajendra Sharma on 22/02/2016 at Raigarh and thereafter, she started residing with her husband and her in-laws at her matrimonial house in Village Charpara, District Janjgir-Champa, but on the intervening night of 12/10/2019 and 13/10/2019, she was thrown out of her matrimonial house and since then, she has taken shelter at her parents' house and is residing with them at her parental house in Raigarh. On 06/06/2020, she lodged a report against her husband and her in-laws at Police Station - City Kotwali, Raigarh where the S.H.O. of the said police station registered FIR No. 00/2020 against her husband and her in-laws for offence under Section 498-A read with Section 34 of IPC, but thereafter, without any rhyme or reason the

S.H.O., Police Station – City Kotwali, Raigarh transferred the FIR to Police Station – Sakti, Janjgir-Champa holding that the Police Station – Sakti, Janjgir-Champa has the jurisdiction to inquire and investigate the matter, which is ex-facie illegal and without authority of law in view of the decision rendered by the Supreme Court in the matter of Rupali Devi v. State of U.P.¹, as such, the impugned order be set aside and the matter be directed to be transferred back to the Police Station – City Kotwali, Raigarh for inquiry and investigation in accordance with law.

3. The return has been filed by the respondents/State stating that though the S.H.O., Police Station – City Kotwali, Raigarh has the jurisdiction to inquire and investigate the matter, but at the same time, the S.H.O., Police Station – Sakti, Janjgir-Champa also has the jurisdiction to inquire and investigate the matter by virtue of decision rendered by the Supreme Court in Rupali Devi (supra), therefore, the FIR has rightly been transferred to the Police Station – Sakti, Janjgir-Champa for inquiry and investigation in accordance with law.

¹ 2019 (5) SCC 384

4. Mr. Hari Agrawal, learned counsel appearing for the petitioner, would submit that petitioner is a victim of matrimonial offence committed by her husband and her in-laws with regard to which she lodged a report at Police Station - City Kotwali, Raigarh pursuant to which FIR No. 00/2020 was registered by the S.H.O. of the said Police Station for offence under Section 498-A read with Section 34 of IPC, but thereafter, acting contrary to law and giving go-by to the decision rendered by the Supreme Court in Rupali Devi (supra), the FIR has been transferred to the Police Station - Sakti, Janjgir Champa as FIR No. 228/2020 which is absolutely illegal and bad in law. Even otherwise, he would cite the decision of this Court in Aaisha Uttarwar v. State of Chhattisgarh & Anr.² to submit that Police Station - City Kotwali, Raigarh has the jurisdiction to inquire and investigate the matter and the S.H.O., Police Station - City Kotwali, Raigarh, at the best, could have sent the final report to the S.H.O., Police Station - Sakti, Janjgir-Champa for proceeding in accordance with law, as such, either way, the course adopted by the S.H.O., Police Station - City Kotwali, Raigarh is clearly contrary to law and is in teeth

² 2016 (3) Cg LJ 434

of the decision rendered by the Supreme Court in Rupali Devi (supra) and by this Court in Aaisha Uttarwar (supra) as well.

5. Mr. Ravi Bhagat, learned Deputy Government Advocate, would support the impugned order and submit that the Police Station - Sakti, Janjgir-Champa also has the jurisdiction to inquire and investigate the matter.

6. I have heard learned counsel for the parties, considered their rival submissions and went through the records with utmost circumspection.

7. It is not in dispute that the petitioner, after getting married with her husband, started residing at her matrimonial home at Sakti, Janjgir-Champa and on account of matrimonial offence alleged to have been committed by her husband and her in-laws she lodged a report at Police Station - City Kotwali, Raigarh for offence punishable under Section 498-A read with Section 34 of IPC as after being thrown out from her matrimonial house by her husband and her in-laws the petitioner took shelter at her parental house in Raigarh. The S.H.O., Police Station - City Kotwali, Raigarh registered FIR No. 00/2020 at the instance of the petitioner for offence under Section 498-A read

with Section 34 of IPC against petitioner's husband and her in-laws, but thereafter, finding that it comes within the jurisdiction of Police Station - Sakti, Janjgir-Champa, the FIR was transferred to the Police Station Sakti Janjgir-Champa for inquiry and investigation.

8. The question for consideration herein is, whether such an act on the part of respondent No. 2 i.e. S.H.O., Police Station - City Kotwali, Raigarh is in accordance with law ?

9. The issue raised herein now stands determined by Their Lordships of the Supreme Court in the matter of Rupali Devi (supra) in which Their Lordships formulated the question of reference in paragraph 1 of the judgment, which states as under :-

"1."Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the parents or other family members ?" This is the precise question that arises for determination in this group of appeals."

10. Their Lordships, then proceeded to consider the aforesaid question in paragraph 14, which states as under :-

"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 cause 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."

11. Finally, Their Lordships concluded in paragraph 16

as under:-

"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."

12.The Principle of law laid down by the Supreme Court in Rupali Devi (supra) has further been followed by Their Lordships of the Supreme Court in the matter of Ruhi v. Anees Ahmad³.

13.Going by the principle of law laid down by Their Lordships of the Supreme Court in Rupali Devi (supra) would clearly show that as in the present case, the petitioner/wife having driven away from her matrimonial home at Sakti, Janjgir-Champa took shelter with her parents and started residing at her parental home at Raigarh, therefore, the Raigarh Court would also have the jurisdiction to entertain the complaint for matrimonial offence under Section 498-A read with Section 34 of IPC.

14.At this stage, it would be appropriate to notice Section 154 of CrPC which relates to information in cognizable cases and Section 156 which relates to Police officer's power to investigate cognizable case.

15.Section 156 of CrPC states as under :-

"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."

16. By virtue of Section 156(1) of CrPC, 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. Since, the Raigarh Court would have the jurisdiction to take cognizance of offence under Section 498-A read with Section 34 of IPC, therefore, the Police Station – City Kotwali, Raigarh will also have the jurisdiction to inquire and investigate the offence under Section 498-A read with Section 34 of IPC, as such, the S.H.O., Police Station – City Kotwali, Raigarh, after registering the offence, could have proceeded to investigate the offence in light of the principle of law laid down by the Supreme Court in Rupali Devi (supra) and he was absolutely unjustified in transferring the FIR holding that only Police Station Sakti, Janjgir-Champa will have the jurisdiction to inquire and investigate the offence.

17. Consequently, the impugned order dated 06/06/2020 passed by the S.H.O., Police Station - City Kotwali, Raigarh is clearly erroneous and is in teeth of the decision rendered by the Supreme Court in Rupali Devi (supra), therefore, it is hereby set aside upto the extent quoted herein-below :-

“कार्यवाही जो की गई उपरोक्त विवरण से धारा 498(क), 34 भा.द.वि. का प्रकरण संबंधकरविवेचना में लिया गया/नहीं लिया गया तथा स्वयं को प्रकरण विवेचना हेतु सौंपा गया, या छेत्राधिकार के दृष्टिगत थाना सक्ती जिला जांजगीर-चांपा को, स्थानांतरित किया गया या दं.प्र.सं. की धारा 498'ब' के अंतर्गत कार्यवाही की गई | अभियोगी/सूचनाकर्ता को प्रं.सू. पत्र पढ़वाकर /पढ़कर सुनाया गया, जिन्होंने सही-सही अभिलिखित होना स्वीकार किया | इसकी एक प्रति सूचनाकर्ता को निःशुल्क प्रदान की गई |”

18. The S.H.O., Police Station - Sakti Janjgir-Champa is directed to immediately send the FIR No. 228/2020 and all the proceedings relating to the FIR to the S.P., Raigarh who will ensure that the FIR No. 228/2020 for offence under Section 498-A read with Section 34 of IPC is investigated expeditiously in accordance with law and thereafter proceed further.

19. Accordingly, this writ petition stands allowed to the extent indicated herein-above. No cost(s).

20. A copy of this order be sent to the Director General of Police, Chhattisgarh for

compliance/being circulated to the Superintendent of Police of all the districts who would ensure that necessary information and training is provided to the Station House Officers and to comply the judgment of the Supreme Court in the matter of Rupali Devi (supra) and to ensure that no unnecessary transfer of FIR particularly, for offence punishable under Section 498-A of IPC is made by the Station House Officer(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR
WPCR No. 430 of 2020

Petitioner

Smt. Preeti Sharma

Versus

Respondents

State of Chhattisgarh & Ors.

(English)

FIR for offence punishable under Section 498-A of the IPC can be filed in the Police Station where the complainant resides with her parents after leaving her matrimonial home.

(Hindi)

भारतीय दंड संहिता की धारा 498-क के तहत दंडनीय अपराध हेतु प्रथम सूचना प्रतिवेदन उस थाने में दर्ज की जा सकती है जहाँ परिवादिनी अपने ससुराल को छोड़ने के बाद माता पिता के साथ निवासरत है ।