

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10136-2023
Date of decision: 11.05.2023

KRISHAN KUMAR GUPTA AND ANOTHERPetitioner

VERSUS

STATE OF UTTARAKHAND AND ORS.Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Vaibhav Gupta, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for seeking quashing of the FIR No. 93 dated 01.05.2023 (Annexure P-1) that has been registered against the petitioners at Police Station-Dallanwala, Dehradun for commission of offences under Section 498-A, 323, 504 and 506 of the Indian Penal Code, 1860 and under Section 3 and 4 of the Dowry Prohibition Act, 1961.

2. Learned Senior Counsel appearing on behalf of the petitioner contends that the petitioner No.1 is a practicing Advocate at Chandigarh and the petitioners are aggrieved of registration of FIR by the police authorities at Dehradun, Uttarakhand on the ground that the same is without jurisdiction even if the allegations levelled in the FIR are taken as gospel truth.

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3. Briefly summarized the facts as narrated by the petitioners are that Shaurya Gupta, the elder son of the petitioners completed his B.E. from Chandigarh in the year 2011 and was initially employed at Pune and thereafter at Noida and lastly at Gurugram. The respondent No.4 completed her studies from Chandigarh in the year 2007-2010 and after qualifying MBA from Bangalore in the year 2010-11 secured a job at ICICI Bank in Delhi where she remained posted from 2012 to 2018. Marriage of Shaurya Gupta was solemnized with respondent No.4 on 18.01.2019 at Chandigarh. Respondent No.4 also got a transfer to Gurugram in January, 2019 and remained posted in the said Bank as such till January, 2020. Thereafter she joined HDFC Bank, Gurugram as a Senior Manager February, 2020 and is currently working there. The son of the petitioners and respondent No. 4 started residing at House No. 163, Block-N, South City-I, Sector-40, Gurugram. It is alleged that on account of routine bickering between the husband wife, the respondent No.4 left the matrimonial house on 25.08.2022 and stayed at Hotel in Gurugram and is still staying there as had been stated by her in reply to the petition under Section 9 of the Hindu Marriage Act, 1955 pending at Chandigarh. Despite persuasion by the son of the petitioners, respondent No.4 refused to return. Consequently, a petition under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of the conjugal rights was filed by Shaurya Gupta at Chandigarh on 15.12.2022 where the respondent No.4 has already entered an appearance. It is alleged that as a counter blast and to harass the petitioners, the respondent No.4 made a false and malicious complaint in Dehradun on 22.02.2023 and that notwithstanding the guidelines laid down by the Supreme Court, the SHO, Dehradun had registered the above said FIR. The quashing of the aforesaid FIR registered at Dehradun is sought and the same is challenged on the ground of

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lack of jurisdiction. It is averred that no cause of action ever accrued at Dehradun for registration of FIR and that respondent No.4 as well as son of the petitioner had resided in Gurugram since the inception of marriage and were staying there even till the time of filing of the complaint for registration of criminal case. It was also referred that as per Sections 177 & 178 of the Criminal Procedure Code, 1973, the place of the inquiry and the trial is the place where the offence in question is alleged to have been committed and that no cause of action or part cause of action ever took place in Dehradun and as such registration of an FIR at Police Station Dallanwala, Dehradun is without jurisdiction and deserves to be quashed on the said ground alone.

4. An additional ground was also raised that no offence is made out even in case the entire FIR is accepted as gospel truth. Alongwith the petition, the petitioners have also appended judgments of the Hon'ble Supreme Court as well as the High Court to substantiate that only the Court where the cause of action has arisen would have the jurisdiction to entertain the offence and that the case cannot be registered at another place. A reference was made to the judgment of Hon'ble Supreme Court in the matter of "***Y. Abraham Ajith and others versus Inspector of Police, Chennai and another***", reported as **2004 (3) R.C.R. (Crl.) 988** where harassment to wife by husband was alleged to have taken place at place at Nagercoil. Wife came to live at Chennai thereafter. There was no allegation about any demand of dowry at such place. It was held that it is not a continuing offence within the meaning of Section 178 Cr.P.C. and Chennai Court would have no jurisdiction and the proper venue for trial of offence is the area of jurisdiction in which the events constituting the offence occur. Reference is also made to the judgment of Hon'ble Supreme Court in the matter of

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“Rupali Devi versus State of Uttar Pradesh & Others” reported as (2019) 5 SCC 384 which holds that the Court at the place where wife takes shelter after leaving matrimonial home shall also have jurisdiction to entertain complaint alleging commission of offence under Section 498-A of the Indian Penal Code, 1860.

5. Reference was also made to the judgment of Hon’ble the Supreme Court in the matter of **“Navinchandra N. Majithia versus State of Maharashtra and others”** reported as **2000 (7) SCC 640**.

6. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the present petition.

7. Article 226 (2) of the Constitution of India confers jurisdiction on a High Court in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

8. Article 226 of the Constitution of India reads as follows:

“226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

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(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.”

9. It is clear from the perusal of the same that for the purposes of maintainability or otherwise of a writ petition in a High Court, the prime aspect is whether the cause of action arose wholly or in part, within the

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territorial jurisdiction of such Court. The prime question which necessarily flows from the same is as to what would constitute a “cause of action”. The above said expression has been dealt with by the Hon’ble Supreme Court in the judgment of **“Navinchandra N. Majithia versus State of Maharashtra and others (supra)”** wherein the Hon’ble Supreme Court held as under:

“18. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary)

19. In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

21. A Bench of three learned Judges of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu reported as (1994) 4 SCC 711 considered at length the question of territorial jurisdiction under Article 226(2) of the Constitution of India. Some of the relevant observations made in the judgment are extracted hereunder: (SCC pp. 716-17, paras 5-6)

"5. Clause (1) of Article 226 begins with a non obstante clause notwithstanding anything in Article 32- - and provides that every High Court shall have power throughout the territories in relation to which it exercises

jurisdiction', to issue to any person or authority, including in appropriate cases, any Government, 'within those territories' directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. This is at best its case in the writ petition.

6. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. In Chand Kour v. Partab Singh Lord Watson reported as ILR (1889) 16 Cal 98 said:

... the cause of action has no relation whatever to the defence which may be set up by the defendant,

nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.'

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an inquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

(emphasis supplied)

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38. "Cause of action" is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words a "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the

Code of Civil Procedure, which section also deals with the jurisdictional aspect of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

39. In Read v. Brown (1888) 22 QBD 128 Lord Esher, M.R., adopted the definition for the phrase "cause of action" that it meant

"every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved"

40. The Privy Council has noted in Mohd. Khalil Khan v. Mahbub Ali Mian reported as AIR 1949 PC 78 that the aforesaid definition adopted by Lord Esher M.R. had been followed in India. Even thereafter the courts in India have consistently followed the said interpretation without exception for understanding the scope of the expression "cause of action".

41. Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action, wholly or in part, arises" vide State of Rajasthan v. Swaika Properties (1985) 3 SCC 217. A three-Judge Bench of this Court in Oil and Natural Gas Commission v. Utpal Kumar Basu (supra) observed that it is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment

in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations.

"If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

10. A further reference is also made to the following extract of the judgment of the Hon'ble Supreme Court in matter of ***"Rupali Devi versus State of Uttar pradesh and Others"*** reported as **2019 (5) SCC 384**.

"6. A look at the provisions of Chapter XIII of the Code of Criminal Procedure, 1973 (CrPC) dealing with the jurisdiction of the criminal court in inquiries and trials will now be required. Section 177 of the Code of Criminal Procedure contemplates that "every offence shall ordinarily be inquired

into and tried by a court within whose local jurisdiction it was committed". It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.

7. *Sections 178 and 179 are exceptions to the above rule and may be set out hereinunder:*

"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."

8. *Section 178 creates an exception to the "ordinary rule" engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take*

cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

9. *At this stage it may also be useful to take note of what can be understood to be a continuing offence. The issue is no longer res integra having been answered by this Court in State of Bihar v. Deokaran Nenshis (1972) 2 SCC 890. Para 5 may be usefully noticed in this regard: (SCC p. 892, para 5)*

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

10. *The question that has been posed for an answer has nothing to do with the provisions of Sections 178(b) or (c). What has to be really determined is whether the exception*

carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

11. *To answer the above question, one will have to look into the Statement of Objects and Reasons of the Criminal Law [Second Amendment Act, 1983 (Act 46 of 1983)] by which Section 498-A was inserted in the Penal Code. The section itself may be noticed in the first instance:*

"498-A. Husband or relative of husband of a woman subjecting her to cruelty. *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation. For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

12. *Section 498-A of the Penal Code was introduced by the Criminal Law (Second Amendment) Act, 1983. In addition to the aforesaid amendment in the Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by Magistrates into cause of such deaths were also amended. Section 198-A was also inserted in the Code of*

Criminal Procedure with regard to prosecution of the offences under Section 498-A. Further by an amendment in the first schedule to CrPC, the offence under Section 498-A was made cognizable and non-bailable. Of considerable significance is the introduction of Section 113-A in the Evidence Act by the Criminal Law (Second Amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113-A is in the following terms:

"113-A. Presumption as to abetment of suicide by a married woman. *When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*

Explanation. For the purposes of this section, "cruelty" shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860)."

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The abovementioned object of the amendment cannot be overlooked while answering the question arising in

the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (Second Amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. *"Cruelty" which is the crux of the offence under Section 498-A 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 ill-treated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise 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 498-A of the Penal Code. The definition of "domestic violence" in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define "cruelty". The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass 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 498-A 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 CrPC 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*

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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 498-A of the Penal Code.”

11. There can be no dispute qua the ratio as laid down by the Hon’ble Supreme Court. This Court is required to examine as to what constitutes the “cause of action” insofar as the institution of the present proceedings are concerned. The meaning of “cause of action” thus has to be seen from a fine prism. “Cause of action”, as interpreted by the Hon’ble Supreme Court, is seen and explained from the perspective of initiation of a proceeding and the same has to be distinguished from a “case of defence”. Lord Watson had thus interpreted “cause of action” in the judgment in case of ***Chand Kaur (Supra)*** that it has no relation with the defence that may be set up or upon the character of relief prayed for. It is thus required to be judicially examined as to whether the nature of the proceeding brought before it is initiation of an action against a cause or it is seeking to enforce/initiate a proceeding as a defence against the cause. The line of demarcation may be fine but is real and distinct. Where a case is filed, essentially as a proceeding of defence or is pre-emptory and in anticipation, the same would still be construed as a proceeding of defence and would not divest jurisdiction of the Court where the substantive action is brought against the cause.

12. The Hon’ble Supreme Court has further laid a rule of caution for maintaining judicial discipline and sanctity of judicial proceeding, that the High Courts should not transgress into the jurisdiction of other High

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Courts merely on ground of certain insignificant events connected with the cause of action that also took place within the territorial limits of that High Court, to which a litigant approaches at his own choice or convenience, in the case of *Oil and Natural Gas Commission (Supra)*.

13. Blurring the demarcation would transpose every possible defence as a separate cause to each individual (when there are more defendants/accused, who are located across different territorial jurisdiction). The construction of “cause of action” as proposed, if accepted, is likely to open gates for greater potential of mischief rather than remedy the cause. In today's world order, when country is getting smaller in terms of People's movement, migration and settlements and people having footprints in different States, a mischievous defendant/accused would be highly tempted to blur the demarcation and claim jurisdiction to be vested in Court of his (their) choice or even multiple jurisdiction (when more defendants or accused reside in different territories) by insisting and hammering a plea of defence as a “cause of action” and claim vesting of jurisdiction with such Court on an alleged breach/violation of right.

14. In matrimonial disputes, the task becomes even more sensitive and it is also required to be kept in mind that the process may not become a tool of oppression and justice seem to become a lost cause. Sacrificing justice in the name of justice or purported portrayal of advancement of justice has to be avoided.

15. The interpretation as is being suggested by the petitioners may be true for a situation where a proceeding is sought to be instituted by a person aggrieved for registration of a criminal case. To elucidate, if in the

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present case, the wife-respondent No.4 who is a domicile of Dehradun would have approached the police authorities in Gurugram and if they would have refused to register the FIR for any reason, she could have invoked the jurisdiction of this Court for seeking registration of a case since part of cause of action i.e. the offences had also occurred within the territorial jurisdiction of this Court. The petitioner are, however, seeking quashing of the FIR that has been registered on various grounds. The cause of action for seeking quashing of the FIR is thus the incident of registration of the FIR. The petitioners being domicile of the territorial jurisdiction of this Court are merely alleging a hardship that has been caused as a result of the registration of the FIR and have raised their defence for seeking quashing of the said FIR. The effect or impact/knowledge of cause of action cannot masquerade as a cause of action.

16. The circumstances narrated by the petitioner for seeking quashing of the FIR are their response and defense to an action that has occurred.

17. In the said background, the other judgments relied by the petitioners are also being examined. The facts of the case in ***“Y.Abraham Ajith (Supra)”*** are to the effect that the complainant filed a complaint at Chennai even though it was the case that she had left Nagercoil and the allegations per se did not show that any event took place that would amount to commission of offence in Chennai. The said judgment would not be applicable to the facts of the present case inasmuch as Nagercoil and Chennai, both fall within the territorial jurisdiction of the same High Court and as such the question of inter High Court territorial jurisdiction did not

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arise in the said case. In the matter ***“Bhura Ram & Others versus State of Rajasthan & Another”*** reported as ***2008 (11) SCC 103***, the issue in question pertained to the incidents that took place while the bride was living in Punjab and later she started residing in Rajasthan. It was held that Rajasthan Court had no jurisdiction as no part of the offence was committed within the territorial jurisdiction of Rajasthan. The petitioners therein had approached the High Court of Rajasthan raising their defence and it was in the said background that judgment of Rajasthan High Court and also the proceedings undertaken by the Subordinate Courts therein were considered. The issue was thus before the High Court in whose’s territorial jurisdiction FIR had been registered.

18. The judgment of ***“Kunal Tyagi and another versus State of Uttarakhand and another”*** reported as ***2010 (19) RCR (Criminal) 14*** are again in relation to the incident that took place within territorial jurisdiction of the same High Court i.e. High Court of Uttarakhand. Insofar as the judgment of the Uttarakhand High Court in the matter ***“Rajesh Kumar versus State of Uttarakhand and others”*** dated 14.05.2015 in ***Criminal Misc. Application No. 438 of 2018*** is concerned. The FIR in question was registered at Haldwani, District Nanital whereas the defense of the petitioner was that the allegations/offences in question took place at Delhi. The petitioner in the said case had filed the above said quashing petition challenging the proceedings at Haldwani before the Uttarakhand High Court and the judgment in question had not been passed by the Delhi High Court. In both these cases, petitioners had been prejudiced before the High Court exercising territorial jurisdiction where FIR was registered.

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19. Reference has also been made to the judgment of *Delhi High Court in “Niraj Trivedi versus State of Bihar and others”* reported as **2008 (8) R.C.R. (Criminal) 80** as per which the quashing of the FIR registered was sought by the petitioner, the Delhi High Court passed an order, directing transfer of the FIR within territorial jurisdiction of Delhi. On the facts of the said case which such facts could not be applicable in the present scenario and also in light of the subsequent judgment of the Hon’ble the Supreme Court in the matter of ***Rupali Devi (Supra)***.

20. In the judgment of ***Rupali Devi (Supra)*** has, however, held that the emotional distress or psychological effect of cruelty 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 parental home. Even though acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at parental home, it was held that there can be no doubt that mental trauma and the psychological distress caused by the acts of husband including verbal exchanges, if any, that had compel the wife to leave the matrimonial house and take shelter with her parents would continue to be possessed at the parental home as well. It was rather held that the Courts at the place where the wife takes shelter after leaving or is driven away from her matrimonial home would also have jurisdiction to entertain the complaint alleging commission of offences. The same thus may not be much help to the petitioners.

21. In the judgment of ***“A Balaji and others versus State of A.P. and another”*** reported as **2006 (2) Andh .L.D. (Criminal) 498**. The FIR in question was registered at Hyderabad against the husband who was

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permanent resident of Madras. The matter had been agitated before the Andhra Pradesh High Court exercising territorial jurisdiction over Hyderabad after considering the judgment of “*Y.Abraham Ajith (Supra)*” itself. Hence, the person had approached the High Court which exercised territorial jurisdiction in FIR.

22. All the aforesaid cases, except in the matter of *Niraj Trivedi (Supra)*, the question of territorial jurisdiction was examined by the High Court exercising territorial jurisdiction over the place where the FIR in question had been registered and none of the petitions had been preferred at the place where the husband claimed to be residing/or resided alongwith his wife.

23. Having observed as above, the allegations leveled in the FIR are also being noticed. The relevant extract of the said FIR are as under:

*"To, The S.H.O., Police Station Dalanwala, Dehradun.
Sir, Applicant Neha Sharma wife of Shaurya Gupta, daughter of Sh. Ashok Sharma, presently residing at # 209, D.L. Road, Dehradun, do hereby respectfully submits:*

Xx xxx xxx xxx xxx xxx xxx xxx xxx

Then on 26.12.2020, at about 2.30 A.M., my husband asked me to leave the home and also asked to call my parents, so that he may discuss them to get divorce in proper manner.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

On this, the applicant had no option but to narrate the matter to her parents.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

My husband started leveling allegation on my character even before having the Pregnancy Test report by saying as whose issue you are carrying.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

Then on 29.1.2021 at about 7.00 P.M., after office hours, I told my husband that I am going to Mandir and will come back by 8.30 P.M., on which, he resisted in inappropriate manner. On the asking of my husband, I shared my phone location also. I reached at home by the time told by me, but despite that, my husband & father- in-law made a phone call at my parental house and leveled false allegations on my character.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

My father in law made phone call to my parents, misbehaved with them and also leveled false allegations on my character. Thereafter I, having mental tension, talked with my parents over phone. Then on 30.1.2021, having no other option, my parents came to Gurgaon and brought me to Dehradun. Thereafter, my husband gave a number of assurances to improve himself and made a number of promises, hence after about two months, my husband & dewar came to my parental house at Dehradun and brought me along.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

I told my parents that my husband, parents in law are demanding cash amount & Jeep Compass and are causing mental & physical harassment due to non- fulfillment of their demand, and also causing me inferiority complex and this way, are provoking me to commit suicide, and that they have made my life a Hell.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

I told my husband that I will approach the Police, on which, he want to say that S.H.O. of this area is known to him

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and warned me not to give him phone call. On this other hand, when my parents contacted my parents in law, my father in law used filthy language for my father & his profession, by saying that I will see you in Court,

Xx xxx xxx xxx xxx xxx xxx xxx xxx

24. Since this Court has already expressed its opinion as regards the maintainability of the present case, it would refrain from commenting on the merits of the case or to record any finding qua the same. However, as counsel for the petitioner had laid much emphasis on the territorial jurisdiction, hence, reference was made to the above extracts of the FIR and Section 177 of Cr.P.C. as well as its exceptions as enshrined under Section 178 & 179 of Cr.P.C. and effect of the judgment of the Hon’ble Supreme Court in the matter of ***Rupali Devi (Supra)*** and not as an expression on the merits of his submission. The petitioners would, however, be at liberty to raise all such issues before the competent Court exercising territorial jurisdiction.

25. The present petition is accordingly dismissed for reason mentioned with liberty as above to the petitioners.

(VINOD S. BHARDWAJ)
JUDGE

MAY 11, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No