



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL WRIT PETITION NO. 1766 OF 2024

Sohail Laikhoddin Kazi

Age : 34 Years, Occ : Service,

R/o : Shani Chowk, Ashti,

Tq. Ashti, Dist. Beed.

... PETITIONERS

VERSUS

1. The State of Maharashtra.
Through Ashti Police Station,
Tq. Ashti, Dist. Beed.

2. The Superintendent of Police,
Beed, Tq. & Dist. Beed

3. The Inspector General of Police Mumbai

4. Ketki Vitthalrao Jagtap,
Age : 39 years, Occ : Service,
R/o : Plot No. 64, Near Shiv Mandir,
Zingabai Takli, Nagpur,
Tq. & Dist. Nagpur.

...RESPONDENTS

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Adv G R Syed, Advocate for the Petitioner

Ms. R. P. Gour, APP for Respondent Nos. 1 to 3

Adv. Fazil Chowdhary h/f. Adv. Manju Dixit, Advocate for Respondent No.
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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 7th MAY, 2025

ORDER :

1. Petitioner challenges action of transferring the First
Information Report (for short, "**FIR**") bearing CR No. 319 of 2024 dated

03.08.2024 registered with Police Station Ashti, Tq. Ashti, Dist. Beed for the offence punishable under Sections 498A, 494, 323, 504, 506, 507 read with Section 34 of Indian Penal Code, 1860 (for short, “**IPC**”) to Police Station Mankapur, Nagpur, where it is registered as FIR vide CR No.373 of 2024.

2. Heard, Mr. G. R. Syed, learned counsel for the petitioner, learned APP for respondent nos. 1 to 3 and Mr. Fazil Chowdhary for respondent no. 4.

3. The learned advocate appearing for the petitioner has taken us through the FIR, which has been filed by respondent no. 2 at Police Station Ashti, wherein it is stated that she and her husband i.e. present petitioner no. 1 are now residing separately and the reason for separate residence is stated to be harassment that has been given by petitioner no. 1 and his relatives who are residents of Ashti, Tq. & Dist. Beed. It is also stated that her husband / petitioner no. 1 is serving in Gujarat State and as there was some enquiry against him, respondent no. 2 joined the company of her husband at Gujarat. Thereafter, they have been blessed with son. She also states that other accused persons had joined them in Gujarat from Ashti and they had harassed her at that place. Respondent no. 2 is serving in Police Department. She has also stated that by giving a WhatsApp message in 2022, the husband had asked her to join his

company at Ashti. Accordingly, she went there, but at that place also it is stated that she was harassed. Thus, in her said FIR she has tried to say that part of offence had taken place within the jurisdiction of Ashti Police Station. However, thereafter, she has given an application to Senior Police Inspector, Police Station, Ashti, Dist. Beed on 07.08.2024 for transfer of the FIR on the ground that since she is serving in Nagpur city and for her domestic problems, she will not be able to come to Beed and transfer should be at the nearest police station of her residence. Thereafter, the said Police Inspector, Police Station, Ashti had made communication to the District Superintendent of Police, Beed, who in turn had made the communication to Commissioner of Police, Nagpur City and the reliance was placed on the circular dated 01.07.2019 issued by Commissioner of Police, Aurangabad for transfer of the FIR. After the transfer of the said FIR from Police Station, Ashti, it was registered with Mankapur Police Station, Nagpur on 21.08.2024. The procedure that has been adopted by the Police Authorities is illegal and therefore, FIR at Mankapur Police Station deserves to be quashed and set aside.

4. Per contra, learned APP relies on the affidavit-in-reply of Mr. Namdeo Yadavrao Dhanwade, Grade Police Sub-Inspector, Ashti Police Station, Dist. Beed, giving the details as aforesaid, those have taken place

and he also states that in view of the said circular issued by the Commissioner of Police, Aurangabad, the FIR has been transferred. In the circular reliance has been placed on the decisions of Hon'ble Supreme Court in respect of territorial jurisdiction regarding offence under Section 498A of IPC.

5. Learned Advocate Mr. Fazil Chowdhary holding for Advocate Manju Dixit for respondent no. 4 tried to seek accommodation for the non-availability of the Advocate, however, he has not given the reasons of non-availability of the Advocate on record. Then, he also reiterate the contents of the affidavit-in-reply filed on behalf of respondent nos. 1 to 3. The informant had suffered a lot and she has been subjected to cruelty at various places and now she is serving at Nagpur, and therefore, it is her ordinary place of residence. In view of the same as held in ***Rupali Devi Vs. State of Uttar Pradesh and Others*** reported in ***2019 AIR SC 1790*** by the Hon'ble Supreme Court, Police Station Mankapur has jurisdiction to investigate the matter further.

5. At the outset taking into consideration, the FIR that was lodged with Police Station Ashti, Dist. Beed on 03.08.2024, it can be gathered that though at that time also, respondent no. 2/informant was

serving in Nagpur, she preferred to lodge the report at Ashti. Respondent nos. 1 to 3 have not come with the case that the PSO and Police Inspector, Police Station Ashti had no knowledge about the decision in ***Rupali Devi (supra)*** on 03.08.2024. In fact, when the informant herself is also serving in Police Department, she should have knowledge about the legal position and the territorial jurisdiction wherein the FIR can be lodged in respect of offence punishable under Section 498A of IPC. When the FIR has been registered not under zero number but by giving regular number impressing that Police Station Ashti has jurisdiction and the informant has chosen that jurisdiction to lodge the FIR then police authorities have no jurisdiction to transfer the FIR by taking recourse to the decision of Hon'ble Supreme Court. In fact in ***Rupali Devi (supra)***, Hon'ble Supreme Court has clarified that such FIR in respect of cruelty to the married woman can be lodged at a place where she has taken shelter, that means its additional jurisdiction made available than the jurisdiction i.e. already provided under law under Section 177 of the Code of Criminal Procedure, 1977 (for short, "**Cr.PC.**"), which prescribes that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it has been committed and of course for the investigation purposes, the said local jurisdiction will have to be then inferred. Section 178 of Cr.PC. also deals with a place of inquiry or trial.

Four jurisdictions are then available, first is, when it is uncertain in which local areas offence was committed, second is, where an offence is committed partly in one local area and partly in another, third is where an offence is continuing one and continuous to be committed in more local areas than one, forth is where it consists of several acts done in different local areas then it may be inquired into or tried by a Court having jurisdiction over any of such local areas. In fact in the present case, taking into consideration the contents of the FIR, Section 178 of Cr.P.C. is applicable and even the Police Station Ashti had the jurisdiction to inquire into and investigate the offence.

6. The communication dated 09.08.2024 by in-charge DSP Beed to Police Commissioner, Nagpur, which has been annexed along with the affidavit on behalf of respondent nos. 1 to 3 refers to the application that was given by respondent no. 2 and then interestingly it is stated that the offence has been committed within the jurisdiction of Police Station Mankapur. It appears that in-charge DSP, Beed had not even gone into the contents of the FIR. If he would have gone into, then he could not have restricted the offence only to Police Station Mankapur jurisdiction. What was the reply to Police Commissioner, Nagpur City has not been filed nor there is reference to the reply in the affidavit-in-reply of Mr. Namdeo

Dhanwade and thereafter, ultimately the reliance has been placed on the circular that has been issued on 01.07.2019 by Commissioner of Police, Aurangabad. At the first place and at the cost of repetition we would say that the Police Station Ashti which registered the offence is presumed to have had knowledge of this circular dated 01.07.2019 when the FIR was registered on 03.08.2024. Still the registration has been done. Now, in the circular reference is made to two decisions i.e. *Sunita Kumari Kashyap Vs. State of Bihar and Ors*, reported in *2011 AIR SC 1674* decided by the Hon'ble Supreme Court and *Rupali Devi (supra)* wherein it is stated as to what Hon'ble Supreme Court has held and then it is stated that the police stations wherein place of offence is situated should not go ahead with the investigation but should transfer the same to the police station where the informant is residing. Though the petitioner has not challenged this circular, but still we find that this circular is illegal and it is in consonance with the decision in *Sunita Kashyap(supra)* and *Rupali Devi (supra)*. We reiterate that by these decisions one more jurisdiction is made available and the jurisdiction where the offence has been committed has not been taken away, the place of offence i.e. where the matrimonial house is situated or the husband and wife were residing together, where allegedly she was subjected to cruelty. Those places still have the jurisdiction to investigate and try the offence and therefore, the

said transfer and registration of offence at Police Station Mankapur cannot be allowed to sustain in the eyes of law. It deserves to be quashed and set aside in its entirety. So also the circular dated 01.07.2019 cannot be allowed to sustain and required to be set aside with direction to Commissioner of Police, Aurangabad, if at all he wants to issue circular, it should be in consonance with the decision referred in this circular dated 01.07.2019.

7. With these observations, we proceed to pass following order

ORDER

- i. The petition stands allowed.
- ii. The action of transferring FIR vide CR. No. 319 of 2024, dated 03.08.2024 registered with Police Station Ashti, Tq. Ashti, Dist. Beed to Police Station Mankapur, Nagpur, where it is registered as FIR vide CR. No. 373 of 2024 stands quashed and set aside.
- iii. In consequence thereof, the FIR vide CR. No. 373 of 2024 registered with Police Station Mankapur, Nagpur stands quashed and set aside.
- iv. We clarify that the FIR vide CR. No. 319 of 2024, dated 03.08.2024 registered with Police Station Ashti, Dist. Beed stands restored.

- v. If Police Station Mankapur has carried out the investigation further then the investigation papers be handed over by the concerned Investigating Officer to Investigating Officer from Police Station, Ashti within a period of 15 days from today.
- vi. If charge-sheet is filed by Police Station Mankapur, Nagpur before the concerned Judicial Magistrate First Class, Nagpur then the said case stands transferred to Judicial Magistrate First Class, Ashti.
- vii. Circular dated 01.07.2019 issued by Commissioner of Police, Aurangabad in respect of transfer of investigation of offences under Section 498A of IPC stands quashed and set aside.
- viii. Liberty is granted to Commissioner of Police, Aurangabad to issue a clarificatory circular giving clear understanding of the decisions in *Sunita Kumari Kashyap (supra) and Rupali Devi (supra)*.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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