

HIGH COURT OF MADHYA PRADESH**Hon'ble Shri Justice Raj Mohan Singh****Date of Decision: 5th March 2024**

WRIT PETITION NO. 12997 OF 2019

SMT. JAHNAVI TRIPATHI (DUBEY) ...PETITIONER**VERSUS****STATE OF MADHYA PRADESH & OTHERS ...RESPONDENTS****Legislation and Rules:**

Sections 498-A, 323/34 of IPC,

Sections 3/4 of Dowry Prohibition Act, 1961,

Section 12 of Protection of Women from Domestic Violence Act, 2005,

Section 125, 179 of Code of Criminal Procedure, 1973

Section 9, 19 of the Hindu Marriage Act, 1955,

Section 21(1) of CPC

Subject:

Transfer of investigation and trial regarding FIR alleging dowry-related offences from Bhopal to Jabalpur, focusing on the jurisdictional aspect in cases of mental cruelty continuing at the petitioner's parental home.

Headnotes:

FIR for Offences under IPC and Dowry Prohibition Act – Allegations of dowry demands, physical abuse, and mental cruelty by husband and in-laws – FIR lodged in Jabalpur, transferred to Bhopal for investigation, trial pending at Bhopal – Petitioner seeks transfer back to Jabalpur [Paras 1-2, 12].

Mental Cruelty and Jurisdiction – Continuation of mental cruelty in petitioner's parental home in Jabalpur – Application of law in cases where psychological impact persists – Reliance on judgments of Ruhi Vs. Anees Ahmed and Rupali Devi Vs. State of Uttar Pradesh [Paras 7-10, 13-14].

Legal Interpretation – Section 179 of Cr.P.C. applied – Offence triable where act done or consequence ensues – Physical abuse in matrimonial home, mental cruelty in parental home – Jurisdiction lies with the court in parental home's location [Paras 10, 13-14].

Maintainability of Writ Petition – Challenged on grounds of alternative remedy under Section 407 of Cr.P.C. – Held, writ petition maintainable as there was no trial when filed, and police investigation transfer was without jurisdiction [Para 14].

Decision – Writ petition accepted – Transfer of investigation and trial from Bhopal to Jabalpur held legal and appropriate, considering the mental cruelty borne by the petitioner at her parental home in Jabalpur [Paras 15-17].

Referred Cases:

- Ruhi Vs. Anees Ahmed, Criminal Appeal No.7 of 2020
- Rupali Devi Vs. State of Uttar Pradesh, Criminal Appeal No.71/2012.

Representing Advocates:

Petitioner: Shri Prabhakant Shukla, Shri Rajesh Kumar Tiwari

Respondents: Shri Ved Prakash Tiwari (Govt. Advocate)

ORDER

The petitioner has preferred this writ petition for the transfer of investigation of FIR No.0/2018 dated 26.5.2018 under Sections 498-A, 323/34 of IPC and Sections 3/4 of Dowry Prohibition Act, 1961 (now the trial after filing of the report under Section 173 of Cr.P.C. from the Court at Bhopal to the competent Court at Jabalpur).

2.Zero FIR was lodged in Police Station Adhartal District Jabalpur at the instance of the petitioner with the allegations that the marriage of the petitioner was solemnized on 20.2.2017 with respondent No.7-Anuj Tripathi, resident of Bhopal according to the Hindu rites and ceremonies. The father of the petitioner namely Shri Ram Kishore Dubey spent according to his capacity towards the cash, clothes, utensils, and gold & silver ornaments, but the in-laws family i.e. husband-Anuj Tripathi, mother-in-law-Munni Tripathi and father-in-law-A.N.Tripathi were not satisfied with the dowry and kept on demanding from the complainant/petitioner to bring dowry from her parental house. On refusal by the complainant/petitioner, they used to beat the complainant. The complainant told all these things to her family members i.e. mother Meena Dubey, father Ram Kishore Dubey and Mama. Mama and others visited the in-laws family and made them to understand, but the in-laws family i.e. husband and parents-in-law again started saying that in the cancer treatment of father-in-law A.N.Tripathi, an amount of Rs.10 lakhs had been spent and that amount be brought by the complainant from her parents. When the complainant refused to do it, then husband Anuj Tripathi gave beatings to the complainant and the parents-in-law kept standing there and at their instance the beatings were given to the complainant. With these allegations, the FIR in question was registered. *Prima facie* offences under Sections 498-A, 323/34 of IPC and Sections 3/4 of Dowry Prohibition Act were found to have been committed by husband Anuj Tripathi, father-in-law A.N.Tripathi and mother-in-law Munni Tripathi residents of House No.273, Rohit Nagar, Phase-I, Babadiya Kalan, Bhopal and the FIR No.0/2018 for the offence under Sections 498-A, 323/34 of IPC and Sections 3/4 of Dowry Prohibition Act was registered on 26.5.2018 in Police Station Adhartal District Jabalpur. After registration of the aforesaid FIR, the Police Station, Adhartal transferred the investigation of the FIR in question to the Police Station

Shahpura District Bhopal. The present writ petition came to be filed on 8.7.2019. During the pendency of present writ petition, the investigation in the FIR in question the investigation has been completed by the Bhopal police and the challan has been submitted to the Court. The charges have also been framed by the Court at Bhopal, but the trial has not been commenced so far.

3. Learned counsel for the petitioner submitted that the marriage of the petitioner was solemnized with the respondent No.7-Anuj Tripathi at Jabalpur. The private respondents had been demanding dowry of Rs.25 lakhs in the ceremonies held at Jabalpur. The petitioner stayed with her husband, who was working as Senior Engineer in Ericsson India Global Services, Bengaluru (Karnataka). On 6.4.2017, the husband of the petitioner demanded Rs.10 lakhs as dowry for treatment of his father and at the instance of in-laws gave beatings to the petitioner on 16.8.2017, 17.1.2018, 15.5.2018, 23.5.2018 and also forced the petitioner for abortion on 29.5.2017. The petitioner was physically assaulted on 15.5.2018 and her life was in danger due to non-fulfillment of dowry demand. The petitioner tried to Dial No.100 and received treatment from Dr. Sumant Kumar for the injuries sustained by her. On 23.5.2018 she came to Jabalpur to her parental house and took shelter in the parental house. She lodged a complaint on 26.5.2018 in Police Station Adhartal District Jabalpur under Sections 498-A, 323/34 of IPC and Sections 3/4 of Dowry Prohibition Act. The investigation of the case was illegally and arbitrarily transferred to the Police Station Shahpura District Bhopal. The petitioner promptly filed the present writ petition. Evidently, the miseries and cruelty meted to the petitioner continued in the mind of the complainant.
4. At the time of filing of present writ petition, only investigation was pending in Police Station Shahpura, Bhopal after being transferred from Police Station Adhartal, Jabalpur. At the relevant time, the petitioner by way of present writ petition sought transfer of FIR from Police Station Shahpura, Bhopal to Police Station Adhartal, Jabalpur on the ground that the cause of action accrued to the complainant for lodging the FIR at Jabalpur. The police station at Bhopal and on filing of challan and framing of charges, the Court at Bhopal has no jurisdiction to try the offence in question.
5. Learned counsel for the petitioner further submitted that the petitioner had no option to save her life, as the behavior of the private respondents had put the petitioner's life in danger on account of demand of dowry and non-fulfillment of the same. The petitioner came from Bengaluru to Jabalpur and lodged the present FIR. The petitioner had suffered immense abuse, physical and mental

agony inflicted by the private respondents, but still wanted to save her matrimonial life, but her husband did not discharge his marital obligations. The petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 to seek emergency relief at Jabalpur. The husband of the petitioner through his counsel has already entered appearance in the aforesaid case i.e. MJC(R) No.1470/2018 before the Judicial Magistrate First Class, Jabalpur. The petitioner also filed an application under Section 125 of Cr.P.C. before the Principal Judge, Family Court, Jabalpur where the respondent/husband on appearance has also engaged his counsel. The aforesaid application is also pending before the Family Court at Jabalpur.

Later on, the petitioner came to know that the respondent/husband had also filed an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights to harass the humiliate the petitioner and to create evidence, whereas the respondent/husband had inflicted cruelty for demand of dowry to such an extent that the petitioner's life was in danger. The said petition was filed at Bhopal and is still pending.

6. The petitioner has already filed objections under Section 21(1) of CPC read with Section 19 of the Hindu Marriage Act, 1955 before the Principal Judge, Family Court, Bhopal on the ground that in view of Section 19 of the Hindu Marriage Act, the Court at Bhopal has no jurisdiction to entertain that petition and the Court lacks jurisdiction to proceed under Section 9 of the Hindu Marriage Act. The Court at Jabalpur alone shall have jurisdiction to take cognizance and proceed in accordance with law under Section 9 of the Hindu Marriage Act, if at all the same is maintainable on merits. The petitioner prayed by way of aforesaid objections that the copy of the petition be supplied to her so that she may take recourse to the remedy available to her under the law. The present FIR was initially lodged in Police Station Adhartal, Jabalpur and on transferred of investigation, the Police Station Shahpura took cognizance and investigated the same. On filing the report under Section 173 of Cr.P.C., the Court at Bhopal has framed charges during the pendency of present writ petition.

7. Learned counsel for the petitioner submitted that initially the Police Station Shahpura, Bhopal had no jurisdiction and on filing of the challan and framing of charges, the Court at Bhopal has no jurisdiction to try the offence. The petitioner has suffered physical as well as mental cruelty. The physical cruelty

was committed in the matrimonial house at Bengaluru and even if the physical cruelty has ceased to occur in the parental house, but mental trauma and psychological distress caused by the acts of husband and in-laws family still continued. That mental trauma and psychological distress had compelled the petitioner to leave the matrimonial house at Bengaluru and take shelter with her parents. Mental cruelty borne out of physical cruelty and abuse would continue in the parental house, even though there may not be any overt-act of physical cruelty at parental house. Offence under Section 498-A of IPC undoubtedly covers both mental as well as physical cruelty to the petitioner, as mental and physical well being of the petitioner was in issue. In this context, learned counsel for the petitioner has relied upon the law laid down in **Ruhi Vs. Anees Ahmed and others, Criminal Appeal No.7 of 2020 arising out of SLP (Criminal) No.106/2017** decided by the Hon'ble Supreme Court on 6.1.2020. The paras No.14, 15 and 16 of the aforesaid judgment are produced here as under:-

"14. ...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 provisions. contained in Section498-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 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."

In the aforesaid case of **Ruhi Vs. Anees Ahmed (supra)**, the Hon'ble Apex Court relied upon the view earlier expressed in **Rupali Devi Vs. State of Uttar Pradesh and others, Criminal Appeal No.71/2012, decided on 9.4.2019**. The ratio of **Rupali Devi's case (supra)** has been consistently followed by the Courts.

8. Evidently the Hon'ble Supreme Court has appreciated the mental cruelty, which is still continuing in the mind of the petitioner/wife after her coming to the parental house. Even the silence of the wife/petitioner may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental house 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 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 amount to commission of cruelty within the meaning of Section 498-A of IPC.
9. Now the point in respect of jurisdiction in terms of Section 179 of the Code of Criminal Procedure, 1973 is no more *res integra* and is covered by the judgment of the Hon'ble Apex Court in **Rupali Devi's case (supra)** followed in **Ruhi Vs. Anees Ahmed (supra)**.

10. Bare perusal of Section 178 of Cr.P.C. would show that when it is uncertain in which of several local areas an offence was committed or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing offence, and continues to be committed in more local areas than one, or 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. In the instant case, the mental cruelty is still continuing in the mind of the petitioner/wife in the parental house due to the acts of her husband in the matrimonial house. In view of ratio of both judgments in **Rupali Devi's case (supra)** and **Ruhi Vs. Anees Ahmed (supra)**, such mental cruelty falls under the definition of cruelty under Section 498-A of IPC, as the same is the consequence of physical torture inflicted upon the petitioner in matrimonial house. Section 179 of Cr.P.C. is necessary to be quoted in this regard. Section 179 of Cr.P.C. reads as under:-

“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.”

11. In my considered opinion, the case falls under the provisions of Section 179 of Cr.P.C. Initially the Police Station at Jabalpur and after filing of challan and framing of charges, the Court at Jabalpur had jurisdiction to carry out investigation and proceed with the trial. Since the cruelty has been done to the petitioner at Jabalpur, therefore the trial, which is pending at Bhopal needs to be transferred to the competent Court at Jabalpur.

12. *Per contra*, learned State Counsel referred to para No.4 of the reply, wherein stand has been taken by the respondents No.1 to 6 that initially the complaint was filed by the petitioner before the Police Station Adhartal, Jabalpur against her husband and in-laws with the allegations that the incident took place at Bhopal. Some altercations took place and beatings were also given by the in-laws family at Bhopal. For ready reference, the entire paragraph No.4 is reproduced as under:-

“4. The answering respondents most respectfully submit that, the petitioner has filed a complaint before the Police Station Adhartal Jabalpur against her husband and in laws with regard to demand of dowry and she also alleges that they regular voluntarily causing hurt to the petitioner. It is pertinent to mention here that in the copy of the

compliant i.e. filed with the writ petition at page 21 to 23 in which she categorically stated and alleges the entire incident against the respondent No. 8 to 10 takes place at Bhopal. In the same compliant She also alleges that there was some altercation and she was also beaten by her in laws and they also make demanded of Rs. 10 lakhs after going through the compliant dated 26.05.2018 the entire incident at Bhopal there was no part of the incident shown in the complaint that ever has taken place in the concern described jurisdiction of Police Station Adhartal Jabalpur. Soon upon after lodging the complaint concerned P.S. registered her complaint U/s 154 and the registration was done. Copy of the FIR/ Form No. 154 is marked as Annexure P/4 at page 24 for kind perusal, in which at coloum No. 5 (B) the place of the incident has categorically stated "in laws house of the complainant". Thereafter, the complaint was registered at zero and after due investigation the matter was transferred to the concerned Police Station i.e. Shahpura Bhopal. Copy of the document of Police Station Adhartal 8 dated 28.05.2018 is filed herewith as ANNEXURE R/1."

On the strength of the aforesaid stand, the learned counsel for the respondents No.1 to 6 submitted that the police at Bhopal had the jurisdiction and on filing of challan and framing of charges, the Court at Bhopal has jurisdiction to try the offence in question.

13. *Dehors* the factual matrix on record, admittedly after coming from the matrimonial house, the petitioner is living at Jabalpur in her parental house. The trauma of physical torture is still persisting in the mind of the petitioner as a mental torture while living in her parental house at Jabalpur. In view of the law laid down by the Hon'ble Apex Court in **Rupali Devi's case (supra)** and **Ruhi Vs. Anees Ahmed (supra)**, the issue is no more *res integra* and initially the Police Station at Jabalpur had the jurisdiction to investigate the case and only the competent Court at Jabalpur has the jurisdiction to try the offence in question arising out of complaint made by the petitioner.
14. The objection as regards the maintainability of writ petition cannot be entertained in view of the fact that even if writ petition is filed for the relief in question, Section 407 of Cr.P.C. could have been resorted to for transfer of

the trial. At the time of filing of present writ petition, only the investigation was pending, therefore the present writ petition was maintainable at that time. During the pendency of the present writ petition, report under Section 173 of Cr.P.C. was submitted to the Court and on framing of charges, the case is pending at the Court at Bhopal. Even otherwise the issue of alternative remedy in view of Section 407 of Cr.P.C. would not be attracted in the present case, as no trial was pending when the present writ petition was filed in this Court. Since the transferred investigation was unilaterally done by the police at Jabalpur, therefore the transfer of the investigation was wholly without jurisdiction. Firstly, there was no alternative remedy available to the petitioner at the time of filing of present writ petition and secondly even if Section 407 of Cr.P.C. was to be pressed into service, the same would not have diluted the ratio of the Hon'ble Apex Court in **Rupali Devi's case (supra)**, wherein the Hon'ble Apex Court has categorically submitted that the wife can lodge FIR on the basis of cause of action accrued to her. The mental cruelty suffered by the wife is also included under the ambit of cruelty under Section 498-A of IPC, therefore a right has been created in favour of the petitioner to enforce her right at Jabalpur. The rule of exhaustion of statutory remedy is a rule of policy, convenience and discretion. The availability of remedy in terms of Section 407 of Cr.P.C. cannot be held to be an efficacious remedy in the facts and circumstances of the case. Firstly, at the time of filing of present writ petition, there was no trial pending before the Court at Bhopal and secondly after filing of the present writ petition, the police at Bhopal submitted the report under Section 173 of Cr.P.C. and the Court at Bhopal proceeded to frame charge. The issue of jurisdiction goes to the very roots of the case. Firstly the police at Bhopal had no jurisdiction to investigate the offence and secondly the Court at Bhopal has no jurisdiction to try the offence in question.

15. For the reasons recorded hereinabove, this writ petition is accepted. The impugned transfer of investigation of Zero FIR dated 26.5.2018 lodged at Police Station Adhartal, Jabalpur to Police Station Shahpura, Bhopal is held to be illegal and as a consequence of submission of report under Section 173 of Cr.P.C. and framing of charge the proceedings need to be remitted now by transferring the trial from the Court at Bhopal to the competent Court at Jabalpur.
16. Let the copy of this order be sent to the concerned Court at Bhopal so as to ensure that the record of the case be sent to the competent Court at Jabalpur at the earliest.

17. Accordingly, with the aforesaid directions, this writ petition stands **allowed**.

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