.....RESPONDENTS

(BY SHRI AMAY BAJAJ – P.L./G.A. FOR RESPONDENT NO.1/STATE AND SHRI PARAS CHANDRA VAYA – ADVOCATE FOR RESPONENT NO.2)

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioners under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing the FIR lodged at Crime No.0524/2022, at police station Anjad dated 30.09.2022, under Sections 498A, 341, 323, 506 and 34 of the IPC read with Section 3/4 of the Dowry Prohibition Act, 1961 as also the charge-sheet dated 24.10.2022, and other subsequent proceedings before the Trial Court arising out of the aforesaid crime number.

3] In brief, the facts of the case are that the marriage of petitioner No.1 Rajendra Panwar was solemnized with the respondent No.2 Durga Panwar on 24.04.2011, at Kukshi, District Dhar. Subsequently, out of this wedlock, a daughter was also born after around 7-8 years, however, as a matrimonial dispute arose between the parties, the aforesaid FIR was lodged at Police Station, Anjad, against the petitioner No.1 as also his parents, petitioner Nos.2 and 3, who are the father-in-law and the mother-in-law of the complainant/ respondent No.2.

4] Counsel for the petitioners has submitted that even on perusal of the FIR, it is apparent that although it has been lodged at Police

Station Anjad, however, none of the cause of actions has taken place at Anjad as admittedly, the marriage took place at Kukshi and the other incident which the complainant has referred to regarding assault by her husband, has taken place outside the Barwani Court premises.

5] Counsel has submitted that apart from the fact that the petitioner is a resident of Anjad, there is no other fact mentioned in the FIR which would give rise to lodging of the aforesaid offences/FIR at Anjad. Counsel has submitted that the Police Station Anjad had no territorial jurisdiction to lodge the FIR and consequently, the Criminal Court at Anjad also had no jurisdiction to try the aforesaid offence as none of the incidents have taken place at Anjad.

6] In support of his submissions, counsel has also relied upon the decision rendered by the Supreme Court in the case of ***Amarendu Jyoti Vs. State of Chhattisgarh*** reported as ***2014(3) ACR 2740 (SC)*** as also the decision rendered by the co-ordinate Bench of this Court in the case of ***Jay Prakash and Ors. Vs. State of M.P. and Ors.*** Thus, it is submitted that the petition be allowed and the FIR as also the consequential criminal proceedings be quashed.

7] Counsel for the respondent No.2, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as the trial is at an advance stage and five witnesses have already been examined, thus no purpose would be served to quash the proceedings at this juncture. It is also submitted that otherwise also, since the complainant herself is a resident of Anjad she was well within her right to lodge the FIR at Anjad only.

8] Counsel for the respondent No.1/State, has also opposed the prayer and it is submitted that the petition itself is not maintainable as the petitioners have bypassed the remedy available to them under Section 482 of Cr.P.C.

9] In support of his submissions, counsel has also relied upon the decision rendered by the Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others*** reported as ***2021 SCC OnLine SC 315.***

10] In rebuttal, counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of ***Kapil Agrawal and Others Vs. Sanjay Sharma and Others*** reported as ***(2021) 5 SCC 524,*** in which the Supreme Court has held that criminal proceedings may be quashed while exercising jurisdiction under Article 226 of the Constitution of India where it is found to be an abuse of the process of law.

11] Heard counsel for the parties and perused the record. So far as the decision rendered by the Supreme Court in the case of ***Amarendu Jyoti v. State of Chhattisgarh,*** reported as ***(2014) 12 SCC 362*** is concerned, it would be apt to refer to the relevant paras 2, 11 and 12 of the same as in this case also the issue of territorial jurisdiction was involved.

> "**2.** The marriage of Appellant 1 to Respondent 2 took place on 21-4-2003 at Patna. The couple resided at Delhi from 27-4-2003 to 22-5-2003 when Respondent 2, wife left Delhi for her parents' place at Ambikapur. After about 2½ years, her father, Madhusudan Sinha, Respondent 3 filed an FIR at Ambikapur alleging that Respondent 2, Kiran Sinha has been subjected to cruelty by her husband, Appellant 1, elder brother-in-law, Appellant 2 and elder sister-in-law, Appellant 3, who are therefore to be punished under Section 498-A IPC.

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> **11.** We find that the offence of cruelty cannot be said to be a continuing one as contemplated by Sections 178 and 179 of the Code. We do not agree with the High Court that in this case the mental cruelty inflicted upon Respondent 2 "*continued unabated*" on account of no effort having been made by the appellants to take her back to her matrimonial home, and the threats given by the appellants over the telephone. It might be noted incidentally that the High Court does not make reference to any particular piece of evidence regarding the threats said to have been given by the appellants over the telephone. Thus, going by the complaint, we are of the view that it cannot be held that the Court at Ambikapur has jurisdiction to try the offence since the appropriate Court at Delhi would have jurisdiction to try the said offence. Accordingly, the appeal is allowed.
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> **12.** However, we consider it appropriate, in the interest of justice to permit the Court at Ambikapur to proceed with the trial of criminal case arising out of FIR No. 798 of 2005 dated 31-12-2005, in exercise of powers conferred on this Court by Article 142 of the Constitution of India."
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> ***(Emphasis Supplied)***

12] In this regard, reference may also be had to a decision rendered by the Delhi High Court in the case of ***Malkiat Singh v. State, 2005 SCC OnLine Del 644 : (2005) 121 DLT 668*** wherein the report was lodged in the Delhi police station whereas cause of action took place at Tanda and part of cause of action had arisen at Punjab, thus, it has been held as under:-

> **"6.** The first question named above is whether the police or the Courts in Delhi have jurisdiction in the matter. Here again, the allegations in the complaint have to be seen to ascertain the territorial jurisdiction. Clearly, there is no allegation anywhere saying that any torture of any kind was caused to the petitioner in Delhi after the first FIR was quashed on 9.3.99. She was all through in the place of the residence of the petitioners at Tanda. Some part of the offence allegedly took place at the residence of the grand father of the respondent No. 2. Even that was at Punjab. Only thing which took place in Delhi is collection of Rs. 50,000/- from the father of the respondent No. 2. This allegation is not sufficient to give rise to a cause of action in Delhi. The cruelty was suffered by the respondent No. 2 and it

is the place where the sufferance was caused is the place where the jurisdiction will lie. The respondent No. 2 suffered cruelty at the place where she was residing and that place was Tanda.

7. So far as the offence under Section 406 of the Penal Code, 1860 is concerned, the entrustment as well as breach of trust both took place at Tanda or at some place in Punjab. Admittedly the marriage did not take place in Delhi. Entrustment could have been made at the place of marriage or at the matrimonial home neither of which was in Delhi. On the allegations, the jurisdiction will lie with the police station having jurisdiction over the matrimonial home in Tanda or some other place where the respondent No. 2 had lived along with her husband during the period in question which was admittedly not Delhi.

8. In *Y. Abraham Ajith* v. *Inspector of Police, Chennai*, (2004) 8 SCC 100, the Supreme Court held in a case under Section 498-A/406 of the Penal Code, 1860 that when the complainant and her husband resided at Nagercoil and the complainant subsequently shifted to Chennai, the Court in Chennai had no jurisdiction because no part of cause of action had arisen in Chennai. Obviously, it is the place of residence of the complainant where the cause of action of cruelty can arise. In the present case, all the cruelty was done before the complainant/respondent No. 2 left the matrimonial home which was in Punjab.

9. Police Station Rohini has completed the investigation and has filed the charge-sheet in Court. Should the FIR be quashed for want of jurisdiction? Should the investigation be scrapped? Should the prosecution be quashed? The answer to all the three questions has to be 'No' when examined in the light of the two recent Supreme Court judgments in the case of *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)*, 1999 (6) SCALE 323 and *Y. Abraham Ajith* (supra). In the judgment of the *Satvinder Kaur* (supra) all the provisions of Criminal Procedure Code relating to the duty of a police officer who is informed of commission of an offene have been examined. In a very similar situation this Court quashed the FIR on the ground that the Delhi police station did not have territorial jurisdiction to investigate the offence. The Supreme Court found the judgment of this Court erroneous because:

> "(1) The S.H.O. has statutory authority under Section 156 of the Criminal Procedure Code to investigate any cognizable case for which an F.I.R. is lodged.
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> (2) At the stage of investigation, there is no question of interference under Section 482 of the Criminal

> Procedure Code on the ground that the investigating officer has no territorial jurisdiction.
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> (3) After investigation is over, if the Investigating Officer arrives at the conclusion that the cause of action for lodging the F.I.R. has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly, under Section 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence."

10. For arriving at the three principles mentioned above, the Supreme Court referred to Sub-sections (1) and (2) of Section 156 of Cr. P.C., which read as under:

> "156. *Police officer's power to investigate cognizable cases.*—(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 enquire into or try under the provisions of Chapter XIII.
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> (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."

11. The Supreme Court found that while Sub-section (1) of Section 156 prescribed the territorial jurisdiction of the officer in charge of a police station. Sub-section (2) clearly prescribes that no proceedings before a police officer shall be called in question on the ground that the case was one which such officer was not empowered to investigate. The Supreme Court proceeded to say that on completion of investigation the officer in charge of police station was required by Section 170 of Cr. P.C. to forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report. Further if the investigating officer arrived at the conclusion that the offence was not committed within the territorial jurisdiction of the police station, the FIR could be forwarded to the police station having jurisdiction over the area in which the crime was committed. Section 170(1), Cr. P.C. is extracted below for a ready reference:

> "170. *Cases to be sent to Magistrate when evidence is sufficient.*—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall

> forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day-to-day before such Magistrate until otherwise directed."

12. The Supreme Court observed that the police officer in charge of the police station on conclusion of his investigation was required to submit his report to the Magistrate empowered to take cognizance and that in case the territorial jurisdiction lay with a Magistrate other than the Magistrate within whose jurisdiction the police station would fall, no fresh investigation was required to be carried out. Referring to the provisions of Chapter XII, Sections 177 and 178, Cr. P.C., the Supreme Court said that there was no absolute prohibition that the offence committed beyond the local territorial jurisdiction could not be investigated, inquired into or tried. Section 177 prescribes only the ordinary place of inquiry and trial. Although Section 178 prescribed that the trial would be conducted by the Court having territorial jurisdiction it did not put any embargo on the SHO of a police station to conduct an investigation into an offence reported to him not falling within his area.

13. In view of the judgment of the Supreme Court there is little scope to doubt that the report of the officer in charge of police station in this case cannot be thrown into a waste paper basket. The question, therefore, is what should be done with his report which he has already presented to a Magistrate and, as it is submitted by the Counsel at the time of arguments, of which the Magistrate has already taken cognizance. In a similar case of *Y. Abraham Ajith* (supra) in a complaint case under Sections 498A/406, IPC the Supreme Court directed the complaint to be returned to the complainant so that she could file the same in the appropriate Court. Section 201 of Cr. P.C. provides for return of a complaint by the Court if the Court did not have jurisdiction to deal with the matter. The present case is instituted on a police report and is not a complaint case. Section 170, Cr. P.C. requires the officer in charge of a police station to forward the accused to a Magistrate empowered to take cognizance of an offence upon a police report. <u>There is no specific provision as to how the Magistrate not having territorial jurisdiction over the subject matter of the offence should deal with a police report which is presented to him. The only option for the Magistrate is to return the report to the officer in charge of the police station so that he could comply with the provisions of Section 170, Cr.</u>

> P.C. Although for trial of a case instituted on a police report no provision parallel to Section 201 has been prescribed, there is no difficulty in borrowing the remedy provided in Section 201 for curing the defect which has crept into this case which is entirely curable. The irregularity is not one which vitiates the entire proceedings, when seen in the light of the provisions of Sections 460(e) and 462 of the Cr. P.C. Section 462 goes to the extent of providing that even the order of the Criminal Court cannot be set aside on the ground that the inquiry, trial or other proceedings took place in an area over which he did not have the jurisdiction.
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> **14.** In a recent judgment in the case of Crl.M.C. No. 1681/2000 titled *R.K. Jain* v. *State (NCT of Delhi)* decided on 21.5.2005, the same practice has been adopted by this Court and the M.M. has been directed to return the police report to the investigating officer so that the same could be presented to the appropriate Court. I, therefore, direct that the police report in this case be returned by the M.M. to the officer incharge of P.S. Rohini who may thereafter present the charge-sheet in the appropriate Court in compliance with the provisions of Section 170, Cr. P.C."
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> ***(Emphasis Supplied)***

13] When the facts of the case at hand are tested on the anvil of the aforesaid case of ***Malkiat Singh (supra)***, it is apparent that the marriage of petitioner No.1 Rajendra Panwar was solemnized with the respondent No.2 Durga Panwar on 24.04.2011 at Kukshi, District Dhar, and due to matrimonial discord, and the other incident which the complainant has referred to, regarding assault on her by her husband, which took place outside the Barwani Court premises, whereas, the FIR has been lodged at Police Station Anjad, District Barwani however, none of the causes of actions has taken place at Anjad. In such circumstances, it was not open for the P.S. Anjad to proceed further and investigate the case, and similarly, it was the duty of the Court at Anjad to proceed further only after ensuring that it has the territorial jurisdiction to try the case.

14] In such circumstances, the proceedings pending in the Court of Anjad in Criminal case No.377/2022 are hereby quashed, however, agreeing with the Delhi High Court in the case of ***Malkiat Singh (supra)*** the charge-sheet itself cannot be quashed, and thus, the J.M.F.C. Anjad is directed to handover the charge-sheet back to SHO, P.S. Anjad, who is directed to present the charge-sheet in the appropriate Court.

15] With the aforesaid, the petition stands ***disposed of***.

(SUBODH ABHYANKAR)
JUDGE

Bahar