

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Miscellaneous Criminal Case No.4708/2014****Ram Baran****-Vs-****State of M.P. & ors.**

Shri H.K.Shukla, counsel for the applicant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent no.1/State.

J U D G M E N T
(12/01/2017)

This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.306/2014 registered by Police Station-Hazira, District-Gwalior for offence under Section 498-A of IPC and the charge-sheet filed on the basis of the said FIR.

The facts necessary for the disposal of this case are that the applicant was married to respondent no.2 on 06/05/2002 as per Hindu Rights and Rituals. A female child namely Astha was born out of the wedlock.

A FIR was lodged on 06/05/2014 by respondent no.2 alleging that she was married to the applicant on 06th May,2002. Till the year 2007, her husband was treating her with cruelty and he used to beat her for demand of dowry as a result of which, she was not in a position to live peacefully. The baby child, who was born out of the wedlock, is now aged about 9 years. In the year 2013, her husband had filed an application for grant of divorce. As her husband had forced

her, therefore, now she is residing in her father's house. After coming back to her parents' house, she narrated the entire incident to her father that her husband is constantly causing mental torture to her. On this FIR, the police registered the case for offence punishable under Section 498-A of IPC.

It is submitted by the counsel for the applicant that the applicant and the respondent no.2 had filed a petition for divorce by mutual consent and in those proceedings, her statement was recorded. In divorce proceedings, respondent no.2 had stated that she is residing separately from the applicant from the year 2007 and Kumari Astha who is aged about 8 years would continue to reside with respondent no.2. However, subsequently, she withdrew her consent for divorce by mutual consent and lodged the FIR. It is submitted by the counsel for the applicant that in view of the specific admission made by respondent no.2 in divorce petition to the effect that she is residing separately from the applicant from the year 2007 and since the FIR was lodged in the year 2014, it would be clear that the FIR is barred by limitation. It is further submitted that the admission of respondent no.2 that she is residing separately would clearly mean that no cruelty was done by the applicant after 2007 and, therefore, the period of limitation would be three years from the year 2007.

Per contra, the counsel for the respondent no.1/State submitted that it is apparent from the statements of the witnesses that even after 2007, the applicant is causing mental cruelty to the respondent no.2 continuously. Thus, it cannot be said that the complaint is barred by limitation.

Heard the learned counsel for the parties.

From the documents produced by the applicant alongwith this petition, it is clear that a petition for grant of divorce by mutual consent was filed on 22/08/2013. The statement of the applicant as well as respondent no.2 was recorded on

22/08/2013 itself. On 05/05/2014, the respondent no.2 withdrew her consent and accordingly, the petition for grant of divorce by mutual consent was dismissed.

The contention of the counsel for the applicant that while deciding this petition under Section 482 of CrPC, the statement made by the respondent in the divorce petition can be read, is misconceived and cannot be accepted. Any statement made by a witness in other proceeding may be relevant fact but in view of the fact that she subsequently withdrew her consent for grant of divorce by mutual consent would mean that any statement made by her in the divorce petition has also lost its effect. Thus, by reading these statement of the respondent no.2 (which was subsequently withdrawn by her) in the divorce petition, it cannot be held that the FIR lodged by respondent no.2 on 06/05/2014 is barred by limitation.

From the case-diary statement of the witnesses as well as from the FIR, it is apparent that the witnesses have specifically stated that even after 2007, the applicant, by visiting the house of the father of the respondent no.2, created such a situation which resulted in mental cruelty. Thus, it is apparent that leaving her matrimonial house in the year 2007 was not the last date when the act of cruelty is said to have committed. Cruelty may be physical as well as mental. Once there is an allegation in the FIR as well as in the case-diary statement that mental cruelty is being committed by the applicant even after the year 2007, it cannot be said that the FIR lodged in the year 2014 is barred by limitation. Furthermore, a co-ordinate Bench of this Court, in the case of **Bhag Singh and Others Vs. Sunita and Others** reported in **(1995) 4 Crimes 735** has held as under:-

"10. I am of the view that the wife having been left at her parents' place by the accused persons either with the object to meet the demand of

dowry or because of wife's failure to meet the said demand, in both the cases the act of the accused person comes within the mischief of cruelty and in both the situation harassment continues.

11. Once it is held that the harassment continues at the place of residence of her father where the complainant is residing at the time of filing of the complaint, I am firmly of the view that the offence is a continuing one and in view of Section 178(c) of the Code of Criminal Procedure which *inter alia* provides that where an offence is a continuing one, and continues to be committed in more local areas than one, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

12. I am fortified in my view by the judgment of Allahabad High Court in *Vijai Ratan Sharma and others. v. State of U.P. and another*, wherein the learned judge has held as follows:-

"Rather, this harassment seems to be continued one. It started when demand of dowry was made outside Ghaziabad and it has continued when she is not being called from Ghaziabad and she has been left there in order to get the dowry. So the offence continues to be committed or it may be possible to say that the offence was partly committed outside Ghaziabad when she was mal-treated and it continues to be at Ghaziabad where she has been left and is not being called. So it seems that the Courts at Ghaziabad should have jurisdiction to try the offence of cruelty.""

Thus, it is clear that forcing the married women to leave her matrimonial house and to live in her parents' house because of non-fulfillment of demand of dowry also amounts to cruelty. Thus, viewed from the above mentioned angle, it can not be said that the FIR which was lodged in the year 2014 was barred by limitation.

Accordingly, this petition fails and is hereby dismissed.

(G.S. AHLUWALIA)
Judge
(12.01.2017)

AKS