

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL MISC.APPLICATION No. 7771 of 2007**  
**With**  
**CRIMINAL MISC.APPLICATION No. 7775 of 2007**  
**With**  
**CRIMINAL MISC.APPLICATION No. 7782 of 2007**  
**With**  
**CRIMINAL MISC.APPLICATION No. 7784 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be  
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the  
fair copy of the judgment ?
- 4 Whether this case involves a substantial  
question of law as to the interpretation  
of the constitution of India, 1950 or any  
order made thereunder ?
- 5 Whether it is to be circulated to the  
Civil Judge?

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**PUSHPABEN UDAYPRAKASH SHUKLA - Applicant(s)**  
**Versus**  
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR.B K.RAJ for Applicant(s) : 1,  
MR M.R.MENGDEY, A.P.P.for Respondent(s) : 1 - 2.  
NOTICE SERVED BY DS for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/07/2007**

**ORAL JUDGMENT**

1. As common question of law and facts arise in all these four applications, and arising out of common FIR, they are being disposed of by this common judgment and order.

2. All these applications have been filed by the respective petitioners original accused under Section 482 of the Criminal Procedure Code, for an appropriate order to quash and set aside the complaint / FIR being No.49/2007 registered at Makarpura Police Station, filed by respondent No.3 – wife. A complaint / FIR has been registered at Makarpura Police Station, Vadodara against the petitioners – original accused for the offences punishable under Sections 406, 498A, 506, 114 of Indian Penal Code read with Section 3 and 7 of the Dowry Prohibition Act. The said complaint has been filed on 06.02.2007 for the offences alleged to have happened from January, 2002 till date. It is alleged in the complaint that her marriage solemnised with one Abhishek Shukla at Kanpur and after marriage since January, 2002 she was residing at Lucknow with her in laws and husband. She delivered the baby child

who was not liked by the in laws, they started harassing the complainant and subsequently, her husband asked to get Rs. 10 lacs from her parents, and as the complainant was not in a position to get Rs.10 lacs they were ill-treating the complainant and have started giving physical and mental torture. As it was not possible for the complainant to bear the same at last she left the house of in-laws at Lucknow and came to reside at Vadodara at her parent's house. It is averred in the complaint that they were giving threats on telephone, therefore, it is submitted that the petitioners have committed the offence punishable under Sections 406, 498A, 506, 114 of Indian Penal Code read with Section 3 and 7 of the Dowry Prohibition Act. Being aggrieved and dissatisfied with the same, the petitioners have preferred present application under Section 482 of the Cr.P.C.

3. Mr.B.K.Raj, learned Advocate appearing on behalf of the petitioners has submitted that on bare reading of the complaint, no cause of action has arisen at Makarpura Police Station, Vadodara and alleged offence even if considered to be true, then

also cause of action has arisen at Lucknow where the complainant was residing with the petitioners. It is further submitted that with a view to harass the petitioners, FIR has been filed and registered at Makarpura Police Station, Vadodara which had no territorial jurisdiction. It is submitted that so far as accused No.4 is concerned, she has married in the year 1995 with one Uday Dixit and is residing with her husband at Kanpur and accused No.4 is daughter of Father in law of the complainant who is serving as teacher and she has nothing to do with marriage life of her brother, despite that she has been arrayed as an accused. Therefore, it is submitted that to continue the criminal proceedings by way of FIR at Makarpura Police Station, Vadodara against the petitioners is nothing but abuse of process of law and therefore, it is requested to quash the aforesaid complaint registered at Makarpura Police Station, Vadodara who has territorial jurisdiction and/or within whose jurisdiction no cause of action has arisen. Mr.Raj, learned Advocate appearing on behalf of the petitioners has relied upon the following decisions :

- (1) Narumal V/s. State of Bombay reported in AIR 1960 SC 1329;
- (2) Trisuns Chemicals Industry v/s. Rajesh Agarwal and Ors. reported in (1999) 8 SCC 686;
- (3) Satvinder Kaur V/s. State (Govt. of NCT of Delhi) reported in (1999) 8 SCC 728;
- (4) Y. Abraham Ajith and Ors. V/s. Inspector of Police, Chennai and Anr. reported in 2004 (8) SCC 100;
- (5) 2005 Cri.L.J. 1732 (SC); and
- (6) Manish Ratan and Ors. V/s. State of M.P. & Anr. reported in 2007 (1) SCC 262

Relying upon the said decisions, the learned Advocate appearing on behalf of the petitioner – original accused has requested to quash the impugned FIR.

4. On the other hand Mr.Vakil, learned Advocate appearing on behalf of HL Patel Advocates, has submitted that considering the averments in the FIR, it cannot be said that Makarpura Police Station has no territorial jurisdiction and/or no cause of action as arisen at Vadodara. It is submitted that considering the averments and allegations in the FIR case under Section 506(2) of the Cr.P.C. is made out

and therefore, part cause of action has arisen at Vadodara, and therefore, impugned complaint is not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C. It is further submitted by him that even considering various provisions and scheme of the Cr.P.C., FIR can be registered and/or filed at any Police Station and same can be investigated by any Police Officer and thereafter, if the concerned I.O. is of the opinion that territorial jurisdiction vested in other J.M.F.C., he may transfer / send the report to the concerned Magistrate having territorial jurisdiction. However, at this stage the question with regard to territorial jurisdiction is not required to be considered. Mr.Vakil, learned Advocate has relied upon decision of the Hon'ble Supreme Court in the case of **Trisuns Chemical Industry (supra)** in support of his submission and requested to dismiss the present application. Mr.Mengdey, learned APP appearing on behalf of the State while adopting the submission made on behalf of the learned Advocate appearing on behalf of the original complainant has further submitted FIR can be registered / filed at

any Police Station and the question with regard to territorial jurisdiction is not required to be considered at this stage. Therefore, it is requested to dismiss the present applications.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. All these applications are filed by the accused persons to quash the impugned complainants / FIRs registered with Makarpura Police Station mainly raising objections with regard to territorial jurisdiction. It is also required to be noted that impugned FIR is filed before the Makarpura Police Station, Vadodara. It is contention of behalf of the applicants that concerned Police Officer of Makarpura has no territorial jurisdiction to investigate the said FIRs as cause of action of filing the complaint under Sections 406, 506 and 114 of the IPC read with Sections 3 and 7 of the Dowry Prohibition Act can be said to have arisen at Lucknow. It is required to be noted at this stage that at present the impugned FIR is at the stage of investigation by the concerned

Investigating Officer / Police Officer, Makarpura Police Station, Vadodara and at that stage the petitioner has approached before this Court under Section 482 of the Criminal Procedure Code.

7. Learned Advocate appearing on behalf of the petitioner has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Y.Abraham Ajith and Ors. v/s. Inspector of Police, Chennai and Anr. reported in (2004) 8 SCC 100; Sujata Mukherjee (Smt.) v/s. Prashant Kumar Mukherjee reported in (1997) 5 SCC 30 and Satvinder Kaur V/s. State (Govt. of NCT of Delhi) and Anr. reported in (1999) 8 SCC 728.** On the other hand, it is the contention on behalf of the respondents that apart from the fact, even the allegations in the complaint do constitute offences and part cause of action has arisen within the local limit of Makarpura Police Station. Even otherwise, FIR is not required to be quashed at this stage in exercise of powers under Section 482 of the Cr.P.C. and to restrain the Police Officer from investigating cognizable offences. Learned Advocate appearing on behalf of the respondent – original



complainant has relied upon the decision of the Hon'ble Supreme Court in the case of Satvinder Kaur (supra). Therefore, the crucial question is whether at what stage the question with regard to territorial jurisdiction is required to be considered and whether FIR / complaint is required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C., when the same is at the stage of investigation by the concerned Investigating Officer. Identical question came to be considered by the Hon'ble Supreme Court in the case of Satvinder Kaur (supra) and after considering the scheme of Code of Criminal Procedure the Hon'ble Supreme Court has set aside the order passed by the Delhi High Court quashing the FIR under Section 482 of the Cr.P.C. on the ground that Delhi Police Station had no territorial jurisdiction to investigate the offences. The Hon'ble Supreme Court in the said decision has observed and held that any Police Officer has statutory authority under Section 156 of the Cr.P.C. to investigate any cognizable case for which FIR is lodged and at the stage of investigation, there is no question of interference under Section 482 of the

Cr.P.C. on the ground that the investigating officer has no territorial jurisdiction. It is also observed by the Hon'ble Supreme Court that after investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of Cr.P.C. and to forward the case to the Magistrate empowered to take cognizance of the offence. In Para 10 of the said decision, the Hon'ble Supreme Court has observed as under:

*"10. It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that 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 to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer-in-charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, 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 for trial. Further, if the Investigating Officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then F.I.R. can be forwarded to the police station having jurisdiction over the area in which crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it."

In another decision in the case of Trisuns Chemicals Industry (supra) the Hon'ble Supreme Court in para Nos. 11 to 14 has observed and held as under :

"11. It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal Courts "in enquiries and trials." That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." But Section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a Court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. The power of the Court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) and

(2) read thus :

"(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-sec. (2), may take cognizance of any offence -

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-sec. (1) of such offences as are within his competence to inquire into or try."

12. Section 193 imposes a restriction on the Court of Session to take cognizance of any offence as a Court of original jurisdiction. But "any" Magistrate of the first class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not.

13. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this Chapter." There are 9 Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these : "Except as hereinafter provided...." Those words are now replaced by "Subject to the provisions of this chapter...." Therefore, when there is nothing in chapter XIV of the Code to impair the power of a judicial magistrate of first class taking cognizance of the offence on the strength of any territorial

*reason it is impermissible to deprive such a magistrate of the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Any way that is a different matter.*

*14. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.*

8. Now considering aforesaid two decisions, the contention on behalf of the petitioner to quash the complaint / FIR at the threshold on the ground that Makarpura Police Station has no territorial jurisdiction cannot be accepted. To quash the complaint at this stage would be restraining the Police Officer from investigating and taking cognizance of the offence which is not permissible and would be contrary to the scheme of Code of Criminal Procedure.

9. So far as the decision relied upon on behalf of the petitioner in the case of Y.Abraham Ajith (supra) is concerned, it is required to be noted that in the said case after investigation, charge-sheet was filed by the Police and learned Magistrate took cognizance and it was found that as even no part cause of action arose at Chennai, therefore, concerned Magistrate had no jurisdiction to deal with the matter and the proceedings were quashed. The complaint was returned to the complainant so as to enable her to file same in the appropriate Court having jurisdiction. Therefore, in the said case proceeding were at post cognizance stage and after the charge-sheet was filed.

10. Considering above, the impugned FIR lodged before the Makarpura Police Station is not required to be quashed in exercise of powers under Section 482 of the Criminal Procedure Code. However, it is observed that if after investigation, the concerned Investigating Officer is of the opinion that no cause of action much less part cause of action has arisen within his territorial jurisdiction, he will take

appropriate steps in accordance with law and under the provisions of Cr.P.C., either by submitting appropriate report before the concerned Magistrate or sending the report before the Magistrate having jurisdiction.

11. Under the circumstances, all these petitions are accordingly allowed in part with above directions. Rule is made absolute in part to the aforesaid extent in each of the petitions.

[M.R.Shah, J.]

*satisfy*