

(2015) 02 GAU CK 0041

In the Gauhati High Court

Case No : Writ Petition (Criminal) No. 21(K) of 2004

Anant Fogat

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 162, 173(2), 177, 220

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 34

Citation : (2015) 1 GLT 638

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : Z. Zhimomi, for the Appellant; Taka Masa,, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Prasanta Kumar Saikia, J.—This proceeding under Article 226 of the Constitution of India, has been initiated seeking quashment of the FIR dated 04.09.2014 filed with the Officer-in-charge, Sub-Urban Police Station, Dimapur which gave rise to Dimapur Sub-Urban Police Station P.S. Case No. 35/2014 U/s. 498A/354/307/500/506/34 IPC. I have heard Ms. Z. Zhimomi, learned counsel for the petitioner and Mr. Taka Masa, learned Senior Counsel appearing for the respondents.

2. The petitioner has come up with the present proceeding seeking quashment of the FIR dated 04.09.2014 filed with the Officer-in-charge, Sub-Urban Police Station, Dimapur which gave rise to Dimapur Sub-Urban Police Station P.S. Case No. 35/2014 U/s. 498A/354/307/500/506/34 IPC and such quashment was sought on the ground that the FIR in Dimapur Sub-Urban Police Station P.S. Case No. 35/2014 is the second FIR in respect of an incident which gave rise to Tirharpur P.S. Case No. 457/2014 U/s. 406/498A/34 IPC.

3. Before going further, let me have a look at the FIR which was lodged before

the O/C, Timarpur Police Station and which is alleged to be the 1ST FIR. The relevant part is reproduced below--

"Sir, I, It is submitted that I got married to Major Anant Fogat on 14th Jan 2008 as per Hindu rites in Delhi/NCR. That out of the legal wed lock we were blessed with a daughter by the name Aanya on 10th Nov. 2011. 2.1 was posted in CFL Unit located in Timarpur, North Delhi from May 2009 to May 2012 and during this period Anant Fogat was posted in COD, Delhi Cantt. It is during this period when Anant Fogat and his relatives tortured me the maximum,. He used to often turn up at my duty station (Timarpur) While I was moving from my unit location and to my designated place of temporary duty where I had to go in performance of my official duty and resorted to use of criminal force besides raising unending dowry demands. Few of my staff people are witness to his misdeeds. Some of the time he was accompanied by his mother/sister/brother in law who actively supported him in performing these uncivilised acts. Though during this period I was allotted married accommodation in Delhi Cantt but I hardly stayed there and used to stay either in my lady officers married officer's accommodation at Timarpur or at my relative's residences at Model Town/Janakpuri/Gurgaon/Dwarka/Rohini. Since whenever I came down to my residence at Delhi Cantt. I was beaten up mercilessly under influence of liquor by Anant Fogat and actively assisted by his mother, his sister, his brother in law and his uncle. Due to this kind of worst domestic violence and dowry harassment which was perpetuated on me that often I had to leave my residence, sometimes at dead of night to take shelter either in my relative residences or in my officers mess at Timarpur (My place of duty). I kept tolerating all this worst kind of torture under the fear of threat to my life, life of my one year old daughter and life of my parents and also with a ray of hope that Anant Fogat and his relatives may mend their ways one day but this was not to happen, rather their atrocities on me increased day by day. 3. Since the very first month of my marriage, my husband, his mother, his sister, his brother in law and his uncle as named above are subjecting me to Dowry harassment, intense cruelty, terrible domestic violence, manhandling and using criminal force without provocation against me and my two year old daughter besides attempting to kill me by throttling and making frequent threat of dire consequences in case I report the matter to my parents/senior officers. Further, he gets over drunk every day and resorts to violent action besides damaging the house property owned by me. 4. The above mentioned incident occurred frequently at Udampur (J&K), Bangalore (Karnataka), Timarpur (North Delhi), Delhi Cantt. Rohtak and Gurgaon (Haryana) and Dimapur (Nagaland). The most serious incidents occurred at Timarpur (North Delhi) where I was posted from May 2009 to May 2012 and in Nagaland, which was my next posting station. Some of the serious incidents of violence, demand of dowry and dowry harassment those took place which I now recollect are listed below:- (a) I was assaulted in March 2008 at 9 Dogra officers mess by Anant Fogat (Udampur) witness is Maj. R. Rathore and the officers Mess staff, (b) In Dec/Jan 2009, I was assaulted by Anant Fogat in officers mess Pune, witness is Maj. A.D. Singh and

the officers mess staff (c) On 13 Dec,2008, I was assaulted by Anant Fogat at ASC centre and College, Bangalore, Witnesses are Mitku Mehra and Sachin Mehra (d) I was assaulted by Anant Fogat, his mother and his sister in Aug 2009 at my residence in Delhi Cantt. witness is Ms. Sharda, maid servant (c) I was assaulted by Anant Fogat, his mother, his sister and his brother in law on different dates in Nov 2009, Jan 2010, Mar 2010, Dec 2010, Feb 2011 etc. etc. unit location/while I was out inspecting the godown in an around Delhi. The witness is Mr. Ajay Jain (f) In oct. 2009, on Diwali day I along with Anant Fogat went to my in laws house in Rohtak (Haryana). In the evening both Anant Fogat and his mother consumed alcohol and started demanding items like T.C., AC, Fridge and gold items from my parents for her on the occasion on Diwali. When I refused to get anything from my parents for her, on hearing this Anant Fogat pushed me against the wall and started slapping me repeatedly, my mother in law also started slapping and kicking me, I was mercilessly up by both of them. Show how I managed to run to the terrace, locked myself and gave a call to my father and requested him to rescue me from their clutches. On hearing this, Anant Fogat allowed me to go out of the house, on being released by them I hired a Taxi and returned to Gurgaon (my parents house), (g) During the launch of lounge/bar by name Vapour in Gurgaon on 13 Feb 2010, my sister in law at about 0010 hrs instigated Anant Fogat who was drunk against me. Anant Fogat on being instigated by my sister in law slapped me thrice and tried choking me in full public view. While he was hitting me, my sister in law kept telling Anant to hit me more harder. After hitting me, Anant left the place, leaving me behind, (h) On the eve of Karvachauth in the year 2010, My mother in law, my sister in law and my brother in law visited me at my Govt. allotted accommodation in Delhi Cantt. In the evening all three of them started taunting me for not giving any jewellery items to them on that occasion. Even though I had gifted a sari each to the two ladies and a suit cloth to my brother in law and some sweets. Anant Fogat did not stop them from taunting me but rebuked and slapped me and then locked me up in my room. There after they all left for dinner in a hotel in Connaught place. My maid Ms Sharda came to my rescue and I some how managed to go to my parents house, (i) In oct. 2010, Anant took me to his sisters place for wishing them happy Diwali. When I offered sweets to Anant's sister and to his brother in law, Anant's sister threw the sweet box down on the floor and rebuked me for not getting some jewellery items on this auspicious occasion and started abusing my parents. When I objected to this, all three of them i.e. Anant, Sonali and Vikram Sachdeva pulled my hair, hit me all over my body and pushed me out of their house. I got up and returned to my parents house by auto rickshaw. (i) In Sept 2011, I was assaulted by Anant Fogat and his mother in Rohtak on my refusal to ask my parents to meet their dowry demand of Rs. two lacs in cash which they said was needed for renovation of their Rohtak house (k) In Dec. 2011, along with my one month old daughter and Anant Fogat had gone to my in laws place in Rohtak for the first time with my newly born baby girl. But to my horror, I was very very badly treated by my mother in law, my husband, my sister in law and my brother in law. They cursed me that I did

not give birth to a male child. They were not at all happy on the birth of a girl child. They started taunting me for giving birth to a girl child. Both my mother in law and my sister in law started demanding for a car and pestered me to give a call to my parents and ask them for a new car. The situation became so bad that all four of them i.e. Anant, my mother in law, sister in law and brother in law started abusing me and in heat of the moment they pushed me, kicked and slapped me repeatedly. Further to create fear in me, they involved in pulling my hair and winding my arm (1) On 08 Apr. 2012 in Corps Officers Mess (Nagaland) where Anant Fogat assaulted me and men fell down under the influence of liquor resulting in fracture of his leg and later his admission to 165 Military Hospital for treatment (m) In Apr. 2013 at 3 Corp OMC Mess (Nagaland), I was assaulted by Anant Fogat. The witnesses are Maj Gen. G.R. Singh & Brig. B.K. Repswal. (n) On 19 Jan 2014 in Nagaland Anant tried to kill me by throttling. The MLC done by the Army Hospital and the affidavit given by Anant Fogat and his mother and signed as a witness by his uncle in this regard is attached to this document. S. After marriage, my husband and I went to the border areas of Rajasthan on 18th of Jan 2008. Before leaving for my honeymoon, my mother in law and my sister in law took custody of all my gold, diamond and precious jewellery including numerous valuable items and my ISTRIDHAN. These items have not been returned to me despite my and my parents repeated pleas. My husband Anant Fogat, who later noticed to be a very clever and miserly man, started showing his true mischievous colours, wilful negligence, and disrespectful acts soon after the marriage during the honeymoon period. I was shocked, surprised, and felt very disgusting when my husband suddenly left me alone in the tentage accommodation at Jaisalmer (Oasis Resort). knowing that I did not have any money with me at the time. With great difficulties, I reached BSF officers mess and I was disturbed to see my husband's condition to be in a acute drunken state of alcohol. Upon questioning his rude and disgusting condition the next morning; my husband stated that he was very angry with me since I had not brought a Honda Civic car and enough jewellery for his mother and sister in Dowry as per to their expectations and desire. Hence, his family members were not happy and satisfied of my marriage dowry. 6. ISTRIDHAN. The gift items given by my parents/my relatives and my in laws to me in the marriage have all been retained by Anant Fogat and his family members and they have refused to hand over the same to me despite my and my parents repeated pleas. The list and receipts of my valuable items its attached as under:- (a) List of jewellery/miscellaneous items given by the parents of Major Ritu Solanki to Major Ritu Solanki during the marriage and have been retained by Anant Fogat and his relatives. (APPENDIX A) (b) List of jewellery/miscellaneous items given by the in laws of Major Ritu Solanki to Major Ritu Solanki during the marriage and have been retained by Anant Fogat and his relatives. (APPENDIX B) (C) list of gifts given by parents of Major Ritu Solanki to the relatives of Anant Fogat. (APPENDIX C) (d) List of miscellaneous expenditure incurred by the parents of Major Ritu Solanki during the marriage. (APPENDIX D) 7. That on a number of occasions in the past Anant Fogat, has resorted to use of criminal force without

any provocation from my side and also demanded dowry from me and my parents and mere by caused tremendous harassment to me. Anant Fogat has physically assaulted me umpteen number of times in Delhi and in my mother in laws place in Rohtak and in his sister house in Gurgaon. I was also criminally assaulted on several occasion jointly by Anant Fogat, my mother in law, sister in law and brother in law in Rohtak, Gurgaon and in Delhi. Anant Fogat confessed the same in writing to my father on 14th Feb. 2010 Colonel T.S. Solanki with a promise that he won't repeat it again. The confessional statement is attached please. Again in Apr 2013 in Nagaland, he physically assaulted me for refusing to met their dowry demands. Once I reported the incident of dowry harassment and domestic violence to my seniors. This time too, Anant Fogat confessed for committing dowry harassment and beating me mercilessly me to Brig B.K. Repswal posted with Hq. 3 Corps and Brig (Now Maj Gen) GR. Singh, now posted to HQ Eastern Comd. both these top officers took serious cognizance of the offence committed by Anant Fogat and were contemplating taking severe disciplinary action against him. They spared him once he promised in writing that he will neither use criminal force nor cause dowry harassment against me in future. 8. One of the most serious incident besides many other incidents of domestic violence dowry harassment use of criminal force and attempt to murder took place on 19th Jan 2014 at Dimapur (Nagaland). At about 13.30 hrs Anant Fogat told me to give a ring to my parents asking them to pay Rs. 7 lacs for buying a new car for himself and for paying up the balance instalment for the flat in Gurgaon (Haryana) that he had booked and for meeting the miscellaneous expenses of gifting jewellery to his mother and sister on the occasion to me having been blessed with a daughter. I told Anant Fogat that he, his mother, his sister and his brother in law have extracted enough dowry from my parents and I won't ask them to pay any more money to him or his mother/sister in law. On hearing this he started beating me up and continued beating me uninterrupted for about 10 minutes and finally he tried throttle me till I fell unconscious with the result I sustained cramps all over my body. On regaining my senses I reported the matter to Brig B.K. Repswal Col S.R. Nair, Major Vipin Srivastav and Major Swati Shekhawat, who visited my house in the evening to investigate the matter. When Anant Fogat had no plausible answer for beating me up and committing assault by throttling, the investigating officers obtained the confessional statement from Anant Fogat and they there after left my residence. The very same day I got My medico legal case examination done in 165 Military Hospital, Dimapur, which was conducted by Captain Manisha Jindal of the Army Medical Corp and Major Ashwath K.G. A photo copy of the MLC is attached please. The mother of Anant Fogat, his uncle and Anant Fogat himself accepted the grave offence committed by Anant Fogat and they gave an affidavit which was signed by all three of them (i.e. Anant Fogat, his mother and his uncle in this regard). But there was no improvement in the conduct of Anant Fogat and he continued to repeat the very same offenses repeatedly. 9. In view of the above, You are kindly requested to register a FIR against Anant Fogat, his mother, his sister, his brother in law and his uncle under relevant section of IPC,

C.P.C. and Cr.P.C. for causing intense dowry harassment, raising illegal dowry demands, breach of trust, maltreatment, mental and physical cruelty being perpetuated, use of criminal force without provocation on numerous occasion, unabated domestic violence, attempt to murder by throttling, threatening to kill, making threat of dire consequences, getting drunk regularly and there after getting violent, committing and other kinds of physical torture being perpetuated against me and my two years old daughter. Sd/- English (Major Ritu Solanki) C/O. 568, Sector 39, Gurgaon 122003, Mob 9899036116,08860545453 Sir, Duty Officer P.S. Timarpur may be case registered U/s. 498A/406/34 IPC and investigation handed over to me pl. Sd/- English, ASIVIKRAM SINGH No. 5389-D PIS No. 28800886 P.S. Timarpur 11/7/14".

4. In this context, I have also found it necessary to reproduce the FIR lodged before the Officer-in-charge, Dimapur Sub-urban Police Station which gave rise to Dimapur P.S. Case No. 35/2014. The relevant part is reproduced below:--

"Sir,

1. It is intimated that my husband used criminal force against me and my two years old daughter on 19th Jan 2014. On commission of the offence by Anant Fogal, the Army authorities based at Dimapur (Nagaland) had initiated the proceedings to take severe disciplinary action against Anant Fogat (which could have been the court martial) Oh charges of using criminal force without provocation against another of Ecer(in this case was Major Ritu Solanki i.e. myself).

2. On visualising the gravity of the situation, Ms. Chandra Kanta M/O Anant Fogat accompanied by her brother in law Mr. D.S. Mathur reached Dimapur on 25th Jan 2014 to rescue the assailant.

3. At Dimapur Anant Fogat, his Mother and his Uncle admitted to authorities the grave offence committed by Anant Fogat (on 19th January, 2014)&pleaded for leniency with a solemn pledge that he would not resort to use of criminal force against Major Ritu Solanki or her two years old daughter in future. They indicated their willingness to give this under taking in the form of an affidavit on a Indian Non Judicial Stamp Paper. Thereafter the document was prepared and was signed by Anant Fogat and his Mother as deponent and by Ms D.S. Mathur and Colonal T.S. Solanki (F/o. Major Ritu Solanki) as witnesses on 25th Jan 2014 at about 2100 hrs. Thereafter Anant Forgat, his Mother and his Uncle left my residence and went to 3 Corps, OMC Officers mess for the night

6. The learned counsel for the petitioner submits that the story which gave rise to Timarpur P.S. Case No. 457/2014 U/s. 406/498A/34 IPC and the story which gave rise to Dimapur P.S. Case No. 35/2014 are constitutionally and fundamentally same. In that connection, it has been stated by learned counsel for the petitioner that the parties in such criminal cases got married in 2008 and in course of time, they were blessed with a child as well. However, their marriage did not proceed on smooth rail for long since they soon found themselves to be

mismatched to one another.

7. Unfortunately, depicting such an incident to be an incident of domestic violence of enormous proportion, the wife respondent herein filed an FIR with O/C Timarpur Police Station. The learned counsel for the petitioner further submits that on the basis of same facts with minor modifications here and there, the petitioner had filed another FIR before the O/C, Police Station at Dimapur which gave rise to Dimapur P.S. Case No. 35/2014. Since the subject matters in both the FIRs are essentially same, the 2nd FIR, as held by the Apex Court in Anju Chaudhary Vs. State of U.P. and Another, (2013) CriLJ 776 : (2013) 1 CTC 714 : (2012) 12 JT 582 : (2013) 1 RCR(Criminal) 686 : (2012) 12 SCALE 619 : (2013) 6 SCC 384 : (2013) AIRSCW 245 . is required to be quashed and set aside.

5. In support of such contention, the learned counsel for the petitioner has relied on the following decisions:--

"1. T.T. Antony Vs. State of Kerala and Others, AIR 2001 SC 2637 : (2001) CriLJ 3329 : (2001) 3 Crimes 276 : (2001) 5 JT 440 : (2001) 4 SCALE 348 : (2001) 6 SCC 181 : (2001) 3 SCR 942 : (2001) AIRSCW 2571 : (2001) 5 Supreme 131

2. Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528

3. Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896

4. Surender Kaushik and Others Vs. State of Uttar Pradesh and Others, (2013) 2 AD 520 : AIR 2013 SC 3614 : (2013) CriLJ 1570 : (2013) 3 JT 472 : (2013) 2 RCR(Criminal) 861 : (2013) 2 SCALE 491 : (2013) 5 SCC 148 : (2013) AIRSCW 1140

5. Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, (2013) 3 ABR 1116 : (2013) 4 AD 449 : AIR 2013 SC 3794 : (2013) CriLJ 2313 : (2013) 2 Crimes 171 : (2013) 4 JT 333 : (2013) 2 RCR(Criminal) 819 : (2013) 5 SCALE 407 : (2013) 6 SCC 348 : (2013) AIRSCW 2353 : (2013) 2 Supreme 705

6. Kunju Muhammed @ Khumani and Another Vs. State of Kerala, (2003) 7 JT 114 : (2003) 6 SCALE 254 : (2004) 9 SCC 193

6. Such contentions were, however, opposed to by Mr. Taka Masa, learned counsel for the wife/respondent stating that the present proceeding is liable to be dismissed on the grounds more than one. An FIR cannot be quashed, according to learned counsel for the respondent, unless it is found that 1st FIR and 2nd FIR are premised basically on the same set(s) of facts. In other words, sameness of two FIRs is the guiding factor in deciding if the subsequent FIR came within mischief of the term "2nd FIR".

7. Another test, which determines if two FIRs are premised on the same facts,

according to learned counsel for the respondent/wife, is whether the consequences flowing from two different FIRs are one and same. If the consequences of the both the FIRs are found to be same, the subsequent FIR is the 2nd FIR in respect of the incidents), incorporated in the 1st FIR. In that connection, my attention has been drawn to the decision of Hon''ble Apex Court in Anju Chaudhury (supra).

8. According to the learned counsel for the respondent, when one considers the FIR before the O/C, Dimapur Police Station and the FTR before the O/C, Timarpur Police Station on the touchtone of aforesaid principles, it would be found that aforesaid cases are fundamentally different To bolster up his argument, it has been stated that the stuff in those FIRs clearly project to the fore two stories which are not similar in contents and consequences although there are some apparent similarities between the stories narrated in those two FIRs.

9. In that connection, it has been stated that while on the basis of the FIR lodged with O/C, Timarpur Police Station, Timarpur P.S. Case No. 457/2014 U/s. 406/498A/34 IPC was registered, the FIR lodged with the O/C, Dimapur Police Station gave rise to Dimapur P.S. Case No. 35/2014 U/s. 498A/354/307/500/506/34 IPC. Since both the cases are registered under different provisions of law, it needs to be concluded that those two FIRs take care of different prosecution stories.

10. Referring to the fact that the victims in the aforesaid cases are also different, it has again been contended that the victim in Timarpur PS Case No. 457/2014 U/s. 406/498A/34 was wife of the accused person alone whereas the victim in Dimapur P.S. Case No. 35/2014 was not only the wife of the petitioner/husband but her minor daughter as well who was threatened to be killed by the petitioner. The victims in those cases being different are another testimony of aforesaid cases being not similar or identical.

11. In the FIR before the O/C, Dimapur Police Station, the informant/wife alleged that the accused/husband threatened to kill his wife, and then, he threatened to shoot himself as well. However, no such allegations were incorporated in the 1st FIR. This further shows that in substance, both the FIRs are different which alone is sufficient to require this court to dismiss the present proceeding.

12. The further case of the respondent is that though the offence U/s. 498(A) IPC is a continuing offence, yet, other offences, such as, offences U/s. 307/354/500/506 are not continuing offences. Quite contrary to it, such offences are independent offences and they were not committed within the territorial jurisdiction of Delhi Court but were committed beyond its territorial jurisdiction.

13. According to learned counsel for the respondents/wife, Section 177 Cr.P.C. requires that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Since all the offences in Dimapur P.S. Case No. 35/2014 except the offence U/s 498(A) IPC are not continuing offences and since all those offences were not committed in places

within the territorial jurisdiction of the Delhi Court, in terms of Section 177 Cr.P.C., all those offences are to be inquired and tried by courts at Dimapur, and, nowhere else.

14. He, therefore, submits that incidentally, such revelations further show that stories in those two FIRs are totally different. Being so, the FIR before the O/C, Dimapur Police Station cannot be treated as second FIR in respect of incident which gave rise to rimarpur P.S. Case No. 457/2014. Otherwise, despite there being clear allegations against the accused/petitioner's constituting offences of independent nature, committed within the territorial jurisdiction of the court at Dimapur, there would be no FIR against the accused person and consequently no subsequent investigation and trial.

15. However, such an eventuality would undoubtedly be mismatched with the arrangements of the things, so made in the Code and as such, the contention of the accused/petitioner that the FIR in Dimapur PS Case No. 35/2014 is the 2nd FIR in respect of incident which gave rise Timarpur PS Case No. 457/2014 is without any substance. Being so, the present proceeding is liable to be quashed on all those aforementioned grounds-----contends learned counsel for the wife/ Respondent.

16. The learned counsel for the accused/petitioner, however, tries to refute above contentions, advanced from the side of the wife/respondent contending that several incidents, committed in the course of same transactions, gave rise to the cases aforesaid where the allegations that the petitioner has been in the habit of ill treating his wife (respondent) with object of forcing her to meet his unlawful demand for dowry occupy the centre stage.

17. Therefore, the alleged torture on the respondent/wife to force her to meet his illegal demand for dowry runs through the length and breadth of both those cases and it provides bases for both the cases. Other alleged offences were reportedly committed in prosecuting such demand for dowry. Since the allegation of offence U/s 498(A) IPC is in the centre stages of both those cases, since the offence U/s 498(A) IPC is a continuing offence and since other offences were committed in realising the demand for dowry, it needs to be concluded that all those offences were committed in the course of the same transaction -contends learned counsel for the petitioner.

18. In that context, it has been argued that since a series of offences were committed in the course of same transactions, since the offence U/s 498(A) IPC, which is evidently a continuing offence, is in the centre stage thereof and since there is continuity of action and sameness of purpose, therefore, in terms of Section 220(1) of Cr.P.C., all those offences, even if committed beyond the territorial jurisdiction Delhi courts, can be inquired into or tried by court at Delhi. Being so, for all those subsequent occurrences, 2nd or subsequent FIR is not only unnecessary but not permissible in law as well.

19. The learned counsel for the petitioner contends that though the allegations in

the FIR before the O/C, Dimapur Police Station and allegations in the FIR before the O/C, Timarpur Police Station are basically same in tone and tenor, the O/C Dimapur PS chose to register the case U/s. 498A/354/307/500/506/34 IPC whereas on very similar allegations, the O/C, Timarpur PS chose to register the case U/s. 406/498A/34 IPC only.

20. However, such different approaches of O/C, Dimapur Police Station and O/C, Timarpur Police Station to the allegations, made in the FIR before them do not change the nature and feature of the cases despite their registering the cases under different provisions of law some of which are common to both the cases. In other words, registration of those cases under different provisions of law no way demolishes the sameness of the allegations in those two FIRs.

21. I have considered the rival submissions having regard to the law laid down on the point. In this context, it needs to be known if the test of sameness could be applied to the FIRs aforementioned. In that connection, one can peruse the decision of the Apex Court in *Anju Chaudhury (supra)*. In *Anju Chaudhury (supra)*, it has been held that sameness of two transactions could be gathered from the fact if the two FIRs are similar in purpose or cause and effect, or as principal and subsidiary, so as to result in one continuous action.

22. Thus, where there is a commonality of purpose or commonality of design or where there is a continuity of action, then, the person found committing those offences can be enquired into and tried by any of the courts within whose territorial jurisdiction any of those offences/offences were committed since in the event, it needs to be concluded that all those offences were committed in the course of the "same transaction". The relevant part of the judgment is reproduced below:--

"Para - 43. It is true that law recognises common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any strait jackel formula, but this question has to be answered on the facts of each case. This court in *Mohan Baitha v. State of Bihar* (SCC pp. 354-55, para-4) held that the expression "same transaction" from its very nature is incapable of extract definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction".

"Para- 44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action. Commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction

and therefore there could be a common FIR or subsequent FIR could not be permitted to be registered of there could be common trial".

23. Similar view was rendered in *Surender Kaushik and Others Vs. State of Uttar Pradesh and Others*, (2013) 2 AD 520 : AIR 2013 SC 3614 : (2013) CriLJ 1570 : (2013) 3 JT 472 : (2013) 2 RCR(Criminal) 861 : (2013) 2 SCALE 491 : (2013) 5 SCC 148 : (2013) AIRSCW 1140 . The relevant part is reproduced below:--

"20. In *Upkar Singh Vs. Ved Prakash and Others*, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 a three-Judge Bench was addressing the issue pertaining to the correctness of law laid down in *T.T. Antony* . The larger Bench took note of the fact that a complaint was lodged by the first respondent therein with Sikhera Police Station in Village Fahimpur Kalan at 10.00 a.m. on 20-5-1995 making certain allegations against the appellant had registered a crime under Sections 452 and 307 IPC. The appellant had lodged a complaint in regard to the very same incident against the respondents therein for having committed offences punishable under Sections 506 and 307 IPC as against him and his family members. As the said complaint was not entertained by the police concerned, he, under compelling circumstances, filed a petition under Section 156(3) of the Code before the Judicial Magistrate, who having found a prima facie case, directed the police station concerned to register a crime against the accused persons in the said complaint and to investigate a crime against the accused persons in the said complaint and to investigate the same and submit a report. On the basis of the said direction, Crime No. 48-A of 1995 was registered for offences punishable under Sections 147, 148, 149 and 307 IPC. (*Upkar Singh case*, SCC p. 296, para 11)

"11. This observation of the Supreme Court in *T.T. Antony* is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from the same incident It is on that basis and relying on the said judgment in *T.T. Antony* case an argument is addressed before us that once an FIR is registered on the complaint of one party, a second FIR in the nature of a counter-case is not register able and no investigation based on the said second complaint could be carried out"

18. After so observing, the Court held that me judgment in *T.T. Antony* really does not lay down such a proposition of law as has been understood by the learned Counsel for the respondent therein. The Bench referred to the factual score of *Upkar Singh Vs. Ved Prakash and Others*, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528

"16. Having carefully gone through the above judgment, we do not think that this Court in *T.T. Antony v. State of Kerala* has precluded an aggrieved person from filing a counter-case as in the present case".

To arrive at such conclusion, the Bench in *Upkar Singh Vs. Ved Prakash and*

Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 referred to para 27 of the decision in T.T. Antony wherein it has been stated that: (Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 , SCC p. 297, para 16)

"16. "27.a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 [of the Code] or under Articles 226/227 of the Constitution." (T.T. Antony case, SCC p. 200)"

(Emphasis in original)

Thereafter, the three-Judges Bench⁹ ruled thus: (Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 , SCC p. 297-98, para 17)

"17. ...In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident"

19. Be it noted, in the said verdict in (Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 , SCC , reference was made to Kari Choudhury v. Sita Devi wherein it has been opined that: (Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 , SCC p. 298, para 18)

"18.11. ...there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried [out] under both of them by the same investigating agency."(Kari Choudhary case 12, SCC p. 717, para 11)"

(emphasis in original)

Reference was made to the pronouncement in State of Bihar v. J.A.C. Saldanhal³ wherein it has been highlighted that the power of the Magistrate under Section

156(3) of the Code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out under Section 3 of the Police Act.

"Para 24. From the aforesaid decisions, it is quite luminous that the lodgement of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR. relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shape and in that event, lodgement of two FIRs is permissible".

34. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating 1,0 the same or connected cognizable offence. What is prohibited is nay further complaint by the same registration of the case under the code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh Vs. Ved Prakash and Others, AIR 2004 SC 4320 : (2004) CriLJ 4219 : (2004) 7 JT 488 : (2004) 7 SCALE 563 : (2004) 13 SCC 292 : (2004) AIRSCW 5017 : (2004) 6 Supreme 528 . the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident Thus. rival versions in respect of the same incident do take different shapes and in that event, lodgement of two FIRs is permissible."

24. It is worth noting here that another test to ascertain if two FIRs are in respect of same incident or not is to see the consequences/effects flowing from stories in such FIRs. If consequences/effects of the two FIRs are found to be similar, the subsequent FIR may the 2nd FIR in respect of the incident in the 1st FIR. In that connection, we may peruse the decision of the Apex Court in the Case of in Anju Chaudhury (supra). The relevant part is reproduced below:--

"Para -45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

25. Coming back to the case, I have found that the allegation that soon after her marriage with the accused/petitioner, the respondent/wife was subjected to harassment and ill treatment occupies the centre stage of both the FIRs aforesaid. It also appears to me that in order to materialise such illegal demand for dowry, the accused/petitioner had allegedly subjected his wife to tortures of various norms and forms.

26. A perusal of the FIR in Dimapur P.S. Case No. 35/2014 as well as the FIR in Timarpur P.S. Case No. 457/2014 makes such a position very clear. Above being the position, since the commonality of purpose or commonality of design as well as continuity of action(s) are found well apparent in the story in FIR in Timarpur PS case No. 457/2014 as well as in the story in Dimapur PS Case No. 35/2014, it needs to be held that the FIR before O/C, Dimapur PS is the 2nd FIR in respect of incidents narrated in the FIR before the O/C, Timarpur PS.

27. The learned counsel for the petitioner submits that the FIR lodged before the O/C. Timarpur Police Station, Delhi clearly states that the informant was subjected to physical torture at very many places such as Nagpur, Pune, New Delhi, Dimapur, Haryana etc. He further submits that in all those places, the informant was subjected to assault of various natures and features. In other words, the accused petitioner herein allegedly committed various offences of independent nature at different places which fall within the territorial jurisdiction of different courts.

28. If one is to accept the contention of the respondent-wife that all the independent offences are to be inquired and tried by the courts within whose jurisdiction such offences took place, then, the petitioner is to file FIRs in various police stations within whose jurisdiction such offences had allegedly taken place. But then, the petitioner had filed an FIR with the O/C. Timarpur Police Station in respect of those allegations.

29. Such revelations, according to the learned counsel for the petitioner, further show that the offences allegedly committed at various places were committed in the course of same transaction and courts within whose jurisdiction any of such offences were committed are entitled to take cognizance of offence(s) in terms of law laid down in Section 220 (1) of the Cr.P.C.. On considering the materials on record, I find it necessary to accept such a contention, advanced from the side of the petitioner.

30. One may note here that in the memo to the O/C, Dimapur PS, the i/C, Woman Cell, Dimapur PS states that on 11.06.2014, she received the FIR from the informant in Dimapur P.S. case No. 35/14 but she was requested to take up the case " as and when the FIR that she lodged at Delhi is registered". The relevant part is reproduced below:--

"Sir,

With refer to the above mentioned subject, I have the honour to submit herewith

my inquiry report.

That Sir, on 11.06.14 a written FIR was redirected from SBN P.S. which was submitted by Major Ritu Solanki, 5003 ASC BN corps C/o. 99 APO. Rangapahar stating that her husband Major Anant Fagot, mother-in-law Smt. Chandrakanta Fagot and his uncle Mr. D.S. Mathur had attempted to murder her and her two year old daughter on 26.01.14. The complainant had also submitted an FIR at Delhi against her husband and in-laws. She has suggested me to take up the case as and when the FIR that she had lodged at Delhi is registered. So, accordingly I have taken up the same from 27.08.14 onwards".

31. It is found from the memo of the officer aforesaid that such an FIR was lodged with police 11.06.2014 but as requested by the informant, the case on such FIR was registered on 05.09.2014 although in the meantime, as it appears from the note dated 04.09.2014 that said officer conducted preliminary investigation to ascertain the veracity of the allegations in the FIR.

32. This is one more emphatic testimony to the fact that the FIR before the O/C. Timarpur Police Station, New Delhi and FIR before the Dimapur Police Station basically took care of incidents which occurred in the course of same transaction. That being the position, it needs to be held that the FIR before the O/C. Dimapur Police Station is the 2nd FIR in respect of allegations made in the FIR lodged before the Timarpur Police Station, New Delhi on 27.08.14.

33. It needs to be stated here that though the proximity of time of incidents may not always be crucial test in deciding whether or not two FIRs take care of same incident which demolishes the subsequent one, yet, the proximity of time of incidents, on occasions, may play a decisive role in deciding if a subsequent FIR comes within the mischief of 2nd FIR. A bare perusal of the FIRs, aforesaid reveals that the incidents, narrated in those two FIRs occurred around the same time.

34. Since the offence u/s. 498(A) IPC occupies the core of the FIR before the O/C, Timarpur police station as well as the FIR before the O/C, Dimapur police station, since offence u/S. 498(A) IPC is a continuing offence and since the offences in the FIRs aforesaid are committed in the course of same transaction, I am of the view that the FIR before the O/C, Dimapur police station is the second FIR, first one being FIR before the before the O/C, Timapur P.S.

35. In view of what I have discussed herein before and what have emerged therefrom, it is found that the FIR before the O/C, Dimapur police station being the second FIR is liable to be quashed and set aside.

36. Resultantly, this proceeding is allowed and the FIR before the O/C, Dimapur police station being the second FIR is accordingly quashed and set aside. This proceeding is accordingly disposed of.