

**Rajeev Vs. Vimlesh Yadav****1.9.2014**

Shri Rajiv Jain, Advocate for the petitioners.  
Shri S.K.Tiwari, Advocate for the respondent No.1.  
Shri Mukund Bharadwaj, PP for the respondent/State.

Heard.

This petition filed under Section 482 of Cr.P.C. has been preferred for quashing the order passed by JMFC, Guna in Cri.Case No.871/2008, whereby the application filed by the petitioners under Section 300(8) of Cr.P.C. and Rule 2 of sub-Rule 1 to 4 of Dowry Prohibition Act and application under Section 179 of Cr.P.C. has been dismissed and the entire proceedings initiated against the petitioner.

2. Briefly stated the facts are that marriage of the respondent No.1/complainant was solemnized with petitioner No.1 Rajeev on 18.5.2003. The cash of Rs.2,26,000/- alongwith golden chain weighing 20 gms. ring weighing 5 gms. colour TV, CD player, Cooler, Sofa Set, Almirah, double bed and utensils were given. After marriage petitioners started demanding cash of Rs.One lac. When the demand was not fulfilled the complainant was beaten. The report was lodged by the respondent No.1/complainant. Upon which Crime No.182/2005 under Section 498-A of IPC has been registered. After due investigation charge sheet was filed the case was registered as Cri.Case No.1136/2005 before the JMFC, Ashoknagar and charges were framed. Learned JMFC

convicted the petitioners vide judgment dated 29.6.007. Against the conviction petitioners preferred Cri.Appeal No.395/2007, which was allowed vide judgment dated 10.8.2007 and the petitioners were acquitted of the charge under Section 498-A of IPCV. The aforesaid judgment was challenged by respondent No.1/complainant before this Court by preferring Cri.Revision No.382/2008, which was dismissed vide order dated 16.1.2009. It is further stated that during pendency of the trial respondent No.1/complainant filed a private complaint under Section 4 & 6 of Dowry Prohibition Act. The learned trial Court has taken cognizance. The petitioners appeared before the Court and filed an application under Section 300(8) of Cr.P.C. and sub-Rule 1 to 4 of Rule 2 of Dowry Prohibition Act alongwith the application under Section 179 of Cr.P.C., which have been dismissed by the learned Court below.

**3.** It is submitted that the learned trial Court has erred in passing the impugned order and has not considered the fact that the petitioners have already been tried by the competent Court and had been acquitted, therefore, they should not be prosecuted for the said crime again. It is further submitted that the respondent No.1/complainant wants to harass the petitioners. No plea has been raised in the pending Cri.Case No.1136/2005. It is further submitted that the learned trial Court has also erred in considering its jurisdiction ignoring the fact that in the criminal case the incident was alleged to have been taken place within the

jurisdiction of Ashoknagar, but the private complaint has been filed at Guna. It is prayed that the impugned order be set aside and the entire proceedings pending before the trial Court be quashed.

4. Learned counsel appearing for the respondent No.1/complainant submitted that the learned trial Court has not committed any error. The petitioners were tried in criminal case for the charges under Section 498-A of IPC, while the present complaint has been filed under Section 4/6 of the Dowry Prohibition Act. Similarly, the respondent No.1/complainant was residing at village Kushmouda with her elder sister, hence the Court at Guna has the jurisdiction.

5. I have perused the record in view of the submissions of the learned counsel for the parties. From perusal of the copy of the judgment passed in Cri.Case No.1136/2005 dated 29.6.2007, it appears that petitioners were tried for the charges under Sections 498-A and 323 of IPC and they were convicted. There were no allegation in the report regarding offence under Section 4/6 of the Dowry Prohibition Act. It is true that the petitioners have challenged their conviction by preferring Cri.Appeal No.395/2007, which was allowed vide judgment dated 10.8.2007 and conviction and sentence has been set aside. The respondent No.1/complainant preferred a criminal revision before this Court, which was registered as Cri.Revision No.382/2008. The

judgment of the appellate Court was affirmed vide order dated 16.1.2009.

6. From perusal of the copy of the complaint filed under Section 4/6 of the Dowry Prohibition Act, it appears that the dowry given at the time of marriage has not been returned to the respondent No.1/complainant, hence this complaint was filed. The offence punishable under Sections 498-A and 323 of IPC is a separate offence and offence under Section 4/6 of the Dowry Prohibition Act is a different offence. Considering that no allegations were made and also charges were not framed for the offence punishable under Sections 4/6 of the Dowry Prohibition Act in Cri.Case No.1136/2005, hence it cannot be said that the private complaint filed under Sections 4/6 of the Dowry Prohibition Act is barred by the principle of double jeopardy.

7. Learned counsel has placed reliance on the order passed by this Court in M.Cr.C.No.1917/2010 on 16.8.2013 in the matter of Santosh Tyagi and others Vs. State of M.P.& Another. The facts of the case of Santosh Tyagi are different from the facts of the present case. In Santosh Tyagi's case the petitioners were tried for the offence for the charge under Section 498-A of IPC read with Section 4 of the Dowry Prohibition Act, while in the present case no allegation has been made under Sections 4/6 of the Dowry Prohibition Act nor any charge was framed, hence the submission of the learned counsel for the petitioners is bereft of any merits.

**8.** Learned counsel for the petitioners submitted that no list of dowry alleged to have been given, has been filed alongwith the complaint as required under Rule 2 of the Dowry Prohibition Act (Maintenance of Presents To The Bride and Bridegroom) Rules, 1985, hence no cognizance can be taken.

**9.** Rule 2 of The Dowry Prohibition (Maintenance of Lists of Presents To The Bride And Bridegroom) Rules, 1985 provides as under. :-

**2. Rules in accordance with which lists of presents are to be maintained.-**

(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in sub-rule (1) or sub-rule (2) -

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage,

(b) shall be in writing,

(c) shall contain,-

(i) a brief description of each present;

(ii) the approximate value of the present;

(iii) the name of the person who has given the present; and

(iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;

(d) shall be signed by both the bride and bridegroom.

*Explanation 1.-* Where the bride is unable to sign, she may affix her thumb-impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

*Explanation 2.-* Where the bridegroom is unable to sign, he may affix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature, on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any other person or persons present at the time of the marriage.

**10.** Thus, in absence of such list as required under sub-Rule (3) of Rule 2 of The Dowry Prohibition (Maintenance of Lists of

Presents To The Bride And Bridegroom) Rules, 1985, prima facie it cannot be said that the dowry was given as per the list annexed with the application.

**11.** In view of above the prosecution of petitioners would amount to abuse of process of court. Therefore, the petition deserves to be allowed.

**12.** Consequently, the order passed by the trial court and entire proceedings of Cri.Case No.871/2008 pending in the court of J.M.F,C, Guna is hereby quashed.

**(D.K.Paliwal)**  
**Judge**

Patil