

## Alok and Another Vs State of M.P.

**Court:** Madhya Pradesh High Court

**Date of Decision:** April 5, 2005

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 177, 178, 482, 77

Dowry Prohibition Act, 1961 â€” Section 3, 4

Penal Code, 1860 (IPC) â€” Section 406, 498A

**Citation:** (2006) 1 DMC 123 : (2006) 1 MPLJ 205

**Hon'ble Judges:** S.L. Kochar, J

**Bench:** Single Bench

**Advocate:** Sunil Yadav and Manoj Saxena, for the Appellant; G. Desai, Dy. A.G., for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

S.L. Kochar, J.

This petition u/s 482, Cr.P.C. has been filed by the applicants for quashing the proceedings pending before learned JMFC, Shajapur vide Criminal

Case No. 198/2003 for the offences punishable u/s 498A of 1PC and Sections 3/4 of Dowry Prohibition Act.

In nutshell the prosecution case against the applicants is that the complainant Smt. Garima Soni was married with co-accused Yogesh Soni on

18.4.2000. Prior to marriage, her father had given Rs. 50,000 to her mother-in-law Munnidevi for purchasing jewellery and cloths and in marriage

L.G. Fridge, T.V., Washing Machine, Usha Cooler, Splendor Motor Cycle, Gas Stove, Godrej Almirah, Dressing Table etc. were given. Despite

of satisfactory dowry or/gift given in marriage, the mother-in-law, brother-in-law, husband, sister-in-law; the applicant No. 2 Smt. Babita and her

husband, brother-in-law; applicant No. 1 Alok were not satisfied and after reaching Bhopal she was ill-treated by them. They were beating her for

bringing Rs. 1,03,000 as dowry. This amount was paid, even thereafter they did not satisfy and started demanding Maruti Car, Double Door

Fridge, T.V. of 72 C.M. screen, T.V. Almirah, etc. and salary of the complainant Garima Soni who was at that time serving as Shikshakarmi

Class-II. For fulfillment of their demand, they were giving her physical torture and threatened to eliminate her. The brother-in-law, Dr. Dharmesh

was always threatened her to kill by giving slow poison. She was not provided sufficient food. On her body, some sort of chemical was applied by

them and when she fell ill, no medical facility was provided. She was not allowed to have sufficient air and light. The acts of the accused persons

were intimated by her to her parents through letters which have been seized by the police. Lastly her parents were called at Bhopal and the

complainant was compelled to go to Shajapur along with her parents. She left her all belongings and gifts were given to her at the time of marriage

and after marriage by her parents. Along with the complaint to police, she has also annexed relevant bills and documents. After coming to

Shajapur, she lodged the written complaint in Shajapur Police Station, District Shajapur on 23.9.2002. On the basis of this complaint, the offences

as mentioned hereinabove were registered by the Shajapur police against the applicants and three other persons and after investigation, charge-

sheet was filed.

The applicants and other co-accused persons pleaded for their discharge on the ground that false complaint was lodged by the complainant and no

prima facie case worth for framing charge was made out. They have also raised the question of jurisdiction to try the case by the learned JMFC,

Shajapur. According to the accused persons the acts of cruelty as alleged by the complainant in her written report and the statements of the

witnesses were committed at Bhopal, therefore, in view of the provision u/s 177 of Cr. P.C., the jurisdiction would lie with the Bhopal Court.

The learned Magistrate, after hearing the accused persons/applicants and the prosecution, held that offence of cruelty in the facts and

circumstances of the present case is a continuing offence. Therefore, Bhopal Court as well as Shajapur Court both are having jurisdiction in view of

the provision u/s 178 Sub-section (c) of Cr. P.C. and framed the charges against the applicants and other three accused persons on 19.11.2002.

The prosecution has placed reliance on the judgment passed by this High Court in case of Bhaghsingh and Ors. v. Sunita and Anr. 1995 JLJ 596.

Against the order of learned Magistrate, the applicant went up in revision and the Revisional Court by its order dated 6th November, 2004 passed

in Criminal Revision No. 22/2004 dismissed the revision and upheld the order passed by the learned Trial Court whereupon this petition for

quashing both the orders passed by the Courts below and for quashing the proceeding against the applicants has been filed before this High Court

by the applicants.

The learned Counsel for applicants has raised only question of jurisdiction of the Shajapur Court for taking cognizance and trying the case.

According to the learned Counsel, all the events of demand of dowry, ill-treatment and cruelty as per written FIR lodged by the Complainant and

statements of the prosecution witnesses had occurred at Bhopal, therefore, as per provision u/s 177 of the Cr. P.C., the jurisdiction for trying the

case lies with the Bhopal Court. The learned Counsel in support of his contention, has placed reliance on Supreme Court judgment passed in Y.

Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, and Mohan Lal and Others Vs. State, and submitted that in the case of

Y. Abraham Ajith (supra), the Supreme Court has specifically ruled that the offence punishable u/s 498A IPC is not a continuing offence by its

own implication.

On the other hand, the learned Counsel for respondent has submitted that the offence u/s 498A of IPC is a continuing offence and cruelty is

defined in explanation to Section 498A of IPC. According to him, the act of the applicants and other co-accused persons have caused mental and

physical cruelty to the complainant and even after leaving her matrimonial home at Bhopal, while living with her parents at Shajapur she is suffering

from mental cruelty. The learned Counsel has submitted that the complainant was married with co-accused Yogesh to live happy married life. But

by demand of dowry and ill-treatment by beating and torture (torture mentally and physically both) she was compelled to leave her matrimonial

house situated at Bhopal and while living with the parents at Shajapur, though there is no event of further demand of dowry and ill-treatment but

because of the previous acts of the applicants and co-accused persons as detailed in FIR as well as in statements of the prosecution witnesses, still

the complainant is suffering from mental cruelty. Therefore, the offence would be continuing one and Shajapur Court has jurisdiction as per

provision u/s 178(c) of the Cr. P.C. to try the case. The learned Counsel has placed reliance on judgment passed by M.P. High Court, Bench,

Indore, in case of Bhagsingh and Ors. v. Sunita and Ors. (supra), as well as Vijay Ratan Sharma and Ors. v. State of U.P and Anr. 1988 Cr. LJ

1581.

Having heard the learned Counsel for parties and after perusing the entire record, this Court is of clear view that in the judgment rendered by

Supreme Court in case of 7. Abraham Ajith (supra), the Supreme Court has specifically considered in reference to the offence under Sections

498A and 406 of IPC whether these offences are continuing offences or not and held in the light of earlier Supreme Court judgment passed in case

of State of Bihar Vs. Deokaran Nenshi and Another, that :

Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one

of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till

compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

The Supreme Court has also considered and distinguished the judgment passed in the case of Smt. Sujata Mukherjee Vs. Prashant Kumar

Mukherjee, wherein the Supreme Court has held in the factual background of that case, the Clause (c) of Section 178 was attracted. In that case,

the husband after demand of dowry at his residence also went to the place where complainant was residing and has assaulted her. These events

had given jurisdiction to the Court where the complainant was residing and Clause (c) of Section 178 was attracted.

In the case in hand, there is absolutely no iota of allegation/allegations that any act of demand of dowry, ill-treatment directly or indirectly was done

by the applicants and other co-accused persons with the complainant at Shajapur which may constitute offences much less at Shajapur. Therefore,

the logic of Section 178(c) of the Code relating to continuance of the offences cannot be applied.

The Supreme Court also considered in detail the interpretation and real prospect of Section 77 of Cr. P.C. which says that every offence was

ordinarily be enquired into and tried by Court within whose local jurisdiction it was committed. The Supreme Court equated the word "cause of

action" used in civil cases with the word "local jurisdiction" used in criminal cases and said that these variations in etymological expression do not

really make the position different. The expression "cause of action", therefore, not a stranger to criminal cases.

In the opinion of this Court, the judgments rendered by learned Single Judge of this High Court in Bhagsingh (supra) and Vijay Ratan Sharma

(supra) carry no weight in the light of judgment of Supreme Court passed in Y. Abraham's case (supra). Judgments of both the High Courts are

impliedly over-ruled by Supreme Court judgment.

In consequence of aforesaid legal and factual position, for the acts committed for demand of dowry and ill-treatment or causing cruelty to

complainant alleged against the applicants and other co-accused persons in the complete charge-sheet filed by the non-applicant police of P.S.

Shajapur, District Shajapur, the learned JMFC, Shajapur has no jurisdiction to try the case and, therefore, proceeding pending before him in

Criminal Case No. 198/2003 is hereby quashed and the learned Magistrate is directed to return the charge-sheet to non-applicant police of P.S.

Shajapur to file the same in the appropriate Court at Bhopal to be dealt with in accordance with law.

The petition is accordingly allowed in the terms as indicated hereinabove.