

**(Mubeen Khan & Anr. Vs. Shareef Beg)**

**13.04.2017**

Shri R.K.Shrivastava, counsel for the applicants.

This petition under Section 482 of Cr.P.C. has been filed against the order dated 08.07.2011 passed by the Second Additional Sessions Judge, Ashoknagar in Criminal Case No.21/2011 by which the order dated 14.03.2010 passed by the CJM, Ashoknagar in Criminal Case No.1315/2010 has been affirmed.

The necessary facts for the disposal of the present petition in short are that the applicants were being tried for offence under Section 3/4 of Dowry Prohibition Act before the Court of JMFC, Chanderi, Ashoknagar. By order dated 11.08.2010, the JMFC, Chanderi, Ashoknagar while exercising the power under Section 325 of Cr.P.C. formed an opinion that the applicants are guilty of committing the offence but, since the Magistrate was of the view that they cannot be punished sufficiently severe therefore, the case was forwarded to the CJM, Ashoknagar to whom he was subordinate. An application was filed by the applicants before the CJM alleging that the order dated 11.08.2010 passed by the JMFC, Chanderi, District-Ashoknagar, is not in accordance with law. It was alleged that before forwarding the accused, the Magistrate was under obligation to write the judgment of conviction and only for the purpose of hearing on the question of sentence the Magistrate should have forwarded the case to the Court of CJM, Ashoknagar. The said application was rejected by order dated 14.03.2011 passed by CJM, Ashoknagar on the ground that it was not necessary for

the trial Magistrate to write the judgment of conviction but, he was only required to form an opinion that the accused is guilty which has been done by the JMFC, Chanderi, Ashoknagar. Being aggrieved by the order of the CJM, Ashoknagar filed a Criminal Revision which too suffered dismissal by order dated 8<sup>th</sup> July, 2011.

It is submitted by the counsel for the applicants that before forwarding the accused to the Court of CJM, Ashoknagar, it was mandatory on the part of the Magistrate to record the judgment of conviction and he was only required to forward the accused for hearing on the question of sentence.

Per contra, it is submitted by the State counsel that while exercising the power under Section 325 of Cr.P.C. it was not necessary for the trial Magistrate to pass the judgment of conviction but, he was only required to form an opinion that the accused is guilty.

Heard the learned counsel for the parties.

For proper appreciation of the submissions made by the counsel for the parties, it would be proper to consider the provision under Section 325 of Cr.P.C., which reads as under:-

**“325. Procedure when Magistrate can not pass sentence sufficiently severe.**

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit

his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law."

Thus, it is clear from Section 325(1) of Cr.P.C. that whenever a Magistrate is of opinion, that the accused is guilty, and that he ought to receive a punishment more severe than, that which such Magistrate is empowered to inflict, he may record the opinion and may submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

Thus, it is clear that the Magistrate is only required to form and record an opinion and he is not under obligation to write the judgment of conviction. Section 325(3) of Cr.P.C. further makes the position clear. If the intention of the legislature was that the CJM should merely hear the accused only on the question of sentence, then there was no need to insert Sub-Section 3 of Section 325 of Cr.P.C. which empowers the CJM that he may examine the parties and may recall and examine any witness who has already given his evidence and may take any further evidence. Thus, if the submission made by the

counsel for the applicants is accepted that the Magistrate must record the judgment of conviction and then he should forward the accused only for the purposes of hearing on the question of sentence, then Sub-Section 3 of Section 325 of Cr.P.C. would become redundant. Thus, the contention raised by the applicant is misconceived as is hereby rejected. Under these circumstances, this Court is of the view that the order dated 14.03.2011 passed by CJM, Ashoknagar as well as order dated 8<sup>th</sup> July, 2011 passed by the Revisional Court are in accordance with law. It appears from the record that by order dated 16.11.2011, this Court had stayed the further proceedings pending in the Court of CJM, Ashoknagar in Criminal Case No.1315/2010.

Accordingly, it is directed that the applicants shall appear before the Court of CJM, Ashoknagar on 16<sup>th</sup> May, 2017 and in case if, he fails to appear then, the CJM, Ashoknagar would be free to issue arrest warrant against him. As the matter is old one, therefore, CJM Ashoknagar is directed to complete the proceedings as early as possible preferably within the period of six months from the date of receipt of the copy of this order.

Accordingly, this petition fails and is hereby **dismissed**.

Let copy of this order be sent to the CJM, Ashoknagar for necessary information and compliance.

**(G.S.Ahluwalia)**  
**Judge**