

Neelam Devi v. State of UP, (2023-1)209 PLRIJ 001 (All.)

ALLAHABAD HIGH COURT

Befiore; Justice Syed Aftab Husain Rizvi

NEELAM DEVI And Others – Appellant

versus

STATE OF U.P. And Another – Respondent

Criminal Revision No. 3390 Of 2022

Criminal Procedure Code, 1973, Section 319 - While deciding the application under section 319 Cr.P.C. the trial court has failed to appreciate the entire facts, evidence and other material available on record - Court below has also failed to record the degree of satisfaction which is required to summon an accused under section 319 Cr.P.C. - Degree of satisfaction is not one of prima facie case - Consequently, trial court has failed to exercise its power in accordance with parameters laid down by the Apex Court in a catena of decisions - The impugned order is not sustainable in the eye of law and is liable to be set-aside. (2023-1)209 PLRIJ 001 (All.)

Judgement

Syed Aftab Husain Rizvi, J - (28.01.2023) - Heard learned counsel for the revisionists, learned counsel for the O.P. No. 2 and learned A.G.A. for the State.

2. This criminal revision is directed against the order dated 10.8.2022 passed by Additional Sessions Judge/F.T.C. No. 2, Azamgarh in S.T. No. 126 of 2018 (State Vs. Shashi Kant) Case Crime No. 367 of 2017, P.S. Kotwali, District Azamgarh. By the impugned order the learned trial court on an application of the prosecution, exercising powers under section 319 Cr.P.C. has summoned the revisionists-accused for trial.

3. The O.P. No. 2 lodged an FIR on 18.7.2017 alleging therein that the marriage of his daughter Hemlata was solemnized with Shashikant on 19.5.2015 and on the demand of in-laws Rs. 3 lac cash, one motorcycle, golden ring and various household articles were given in dowry but her husband Shashikant, parents-in-law Ram Asrey Chaudhary, Neelam Chaudhary and Devar Raja Chaudhary were not satisfied with the dowry and used to harass and torture her. They were demanding one golden chain and one lac cash as additional dowry and were threatening to oust her. They ousted her from their house after eight days of delivery. His daughter told him the entire facts on telephone and relative of the complainant kept her and got her treated. Thereafter, the complainant came and took her to Mumbai and got her treatment. After counselling he sent his daughter to her in-laws

house but the accused persons again started to abuse and torture her. Yesterday on 16.7.2017 he came to know that his daughter has been burnt and killed. After investigation charge-sheet was submitted only against Shashikant, husband of the deceased. Investigating Officer exonerated the remaining named accused persons in the FIR on the ground that no evidence is found against them. During course of trial Rambhawati Kannojiya, P.W.1 mother of the deceased and complainant Pancham Kannojiya, P.W. 2 were examined. The prosecution moved an application under section 319 Cr.P.C. to summon the other accused persons named in the FIR namely Ram Asrey Chaudhary, Neelam Chaudhary and Raja Chaudhary. The learned trial court by the impugned order has allowed the aforesaid application and summoned them.

4. Learned counsel for the revisionists contended that revisionists are innocent and have been falsely implicated. The O.P. No. 2 with mala fide intention and ulterior motive moved application under section 319 Cr.P.C. on false and frivolous grounds only to harass them. Learned trial court while passing the impugned order has not considered the established principle of law that the power conferred under section 319 Cr.P.C. is not to be exercised in a routine manner and it should be used very sparingly and only if evidence has come on record which sufficiently establishes that the persons have committed the offence. Mere doubt about the involvement of the other persons on the basis of evidence led before the trial court is not enough to summon them under section 319 Cr.P.C. The power conferred under section 319 Cr.P.C. is an extra-ordinary power and should be used very sparingly. It may be exercised only if compelling reasons exist. Some positive evidence must have to be there and that evidence should point to the specific guilt of the persons to be proceeded against. The learned trial court has failed to exercise its power in a judicious manner and wrongly and illegally summoned the revisionists-accused without cogent and credible evidence. The impugned order has been passed in a mechanical manner. It is further contended that deceased was suffering from mental agony and was under treatment which is clearly established from the medical documents. The revisionist no. 2 was on duty at the time of incident while revisionist no. 3 is Devar of the deceased and he is studying in B.A. final year. He has no concern with the deceased as well as her husband Shashikant in their day-to-day affairs. Learned counsel placed reliance on the following case laws:

1. Ramesh Chandra Srivastava Vs. State of U.P. and another 2021 0 Supreme (SC) 519
2. Sagar Vs. State of U.P. and another 2011 AIR (SC) 1420
3. Smt. Alka Vs. State of U.P. and another in Criminal Revision No. 1482 of 2019 decided on 13.5.2022
5. Learned A.G.A. and learned counsel for the O.P. No. 2 contended that revisionists-accused were named in the FIR. There are allegations against them also regarding harassment and torture for demand of dowry. The I.O. without any sufficient reason has exonerated them in investigation and filed charge-sheet only against the husband of the deceased who is in jail and his bail application has been rejected thrice. The complainant P.W. 2 and Rambhawati, P.W. 1 the parents of the deceased in their testimony before the trial court have fully corroborated the prosecution story as alleged in the FIR which clearly

establishes the complicity of the revisionists-accused. The learned trial court after considering the real facts and circumstances of the case and perusing the evidence available on record has legally summoned the revisionists. It is also contended that deceased was well educated and a graduate. She was not mentally disturbed. At the time of medical treatment as disclosed by the revisionists she was present at Mumbai which is established from the child card prepared at Mumbai. Thus, the medical description of mental care is forged and fabricated. It is further contended that there is sufficient and cogent evidence on record against the revisionists-accused. There is no illegality in the impugned summoned order.

6. It is not disputed that the daughter of the complainant-O.P. No. 2 has died in unnatural circumstances within seven years of her marriage. The FIR was lodged against husband Shashikant, parents-in-law Ram Asrey Chaudhary and Neelam Chaudhary and Devar Raja Chaudhary. In the FIR there are general allegations of demand of dowry and torture against all the accused persons. The I.O. conducted the investigation and submitted charge-sheet only against husband Shashikant. On the basis of evidence collected during course of investigation the I.O. reached to the conclusion that father-in-law Ram Asrey, mother-in-law Neelam Chaudhary and Devar Raja Chaudhary have been falsely implicated and there is no evidence against them. It is true that the complainant Pancham Kannojiya, P.W. 2 father of the deceased and Rambhawati Kannojiya, P.W. 1 mother of the deceased in their testimony before the trial court have reiterated the allegations of the FIR and implicated the revisionists-accused also but even in their statements there are general allegations against the revisionists-accused regarding harassment and torture for demand of additional dowry.

7. The revisionists no. 1 and 2 are parents-in-law while revisionist no. 3 is Devar of the deceased. They were exonerated during investigation as their complicity was not found. The evidence recorded during trial is nothing more than the statement recorded under section 161 Cr.P.C. There is no additional evidence. During investigation the I.O. has collected the evidence that one year before the incident the deceased was living separately with her husband on the first floor of the house. She was also suffering from mental depression. She has tried to commit suicide on two occasions earlier. Her husband got her treated for her mental disease.

8. A Constitution Bench of Apex Court in Hardeep Singh v. State of Punjab and others 2014 PLRonlinre 0201 , AIR (2014) Supreme Court 1400 has settled scope and ambit of Section 319 Cr.P.C. The relevant paras 98 and 99 are quoted below:

"98. Power under Section 319, Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima face case is to be established from the evidence led before the court not necessarily tested on the anvil of cross-examination, it requires

much stronger evidence than mere probability of his complicity, The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319, Cr. P.C. In Section 319, Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319, Cr.P.C, to form any opinion as to the guilt of the accused."

9. The Apex Court in the case of Brijendra Singh Vs. State of Rajasthan (2017) 7 SCC 706 in para no. 13 has observed as follows:

"In order to answer the question, some of the principles enunciated in Hardeep Singh case may be recapitulated: power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "evidence" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The "evidence" herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

10. Considering the entire facts, evidence and material on record it appears that there is no strong and cogent reason to summon the revisionists-accused to face trial in exercise of powers under section 319 Cr.P.C. While deciding the application under section 319 Cr.P.C. the learned trial court has failed to appreciate the entire facts, evidence and other material available on record. The court below has also failed to record the degree of satisfaction which is required to summon an accused under section 319 Cr.P.C. The degree of satisfaction is not one of prima facie case as recorded to the court below. Consequently, trial court has failed to exercise its power in accordance with parameters laid down by the Apex Court in a catena of decisions. The impugned order is not sustainable in the eye of law and is liable to be set-aside.

11. The criminal revision is allowed. The impugned order dated 10.8.2022 passed by

Additional Sessions Judge/F.T.C. No. 2, Azamgarh in S.T. No. 126 of 2018 whereby the application under section 319 Cr.P.C. has been allowed and the revisionists have been summoned to face trial is hereby set-aside.

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