
(2022) 11 UK CK 0008
In the Uttarakhand High Court
Case No : Criminal Revision No. 329 Of 2017

Akbar And Others

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 319, 319(4)(b)
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2022) 11 UK CK 0008

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Siddharth Sah, Lalit Miglani, Kurban Ali

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The challenge in this revision is made to the order dated 26.09.2017, passed in Sessions Trial No. 199 of 2013, State Vs. Muslim and others, by the court of 1st Additional Sessions Judge, Roorkee, District Haridwar ("the case"). By it, an application under Section 319 of the Code of Criminal Procedure, 1973 ("the Code") filed by the respondent no.3 Smt. Sitara ("the informant") has been allowed and the revisionists have been summoned to face the trial for the offences 498A, 323, 324, 504, 506, 307, 120B IPC and Section 3/4 of the Dowry Prohibition Act, 1961 alongwith existing accused.

2. Heard learned counsel for the parties and perused the record.

3. The case has its origin in an FIR lodged on 26.03.2013 by the informant. According to it, the informant and Muslim were married about eight years prior to lodging of the FIR. The in-laws of the informant were not happy with the dowry given. The informant was tortured, harassed for and in connection with the demand of dowry. The revisionist and others harassed and demanded additional dowry. The husband of the informant had extra marital relations. The

FIR is quite in detail. It also records that on 25.03.2013, in the morning about 6:00, the informant was tried to be killed by her husband by pouring kerosene oil on her. In fact, the FIR records that the husband of the informant had tried to set her ablaze. The revisionists also attacked her. It is this FIR, in which, initially, after investigation, charge sheet was submitted against three persons, namely, Muslim, Mumtaz and Intelab, but subsequently, charge sheet was also submitted against Anwari, Farzana and Gulshan. They were facing trial in the case.

4. It may be noted that although, FIR was also lodged against the revisionists, but they were not charge-sheeted.

5. At the stage of taking cognizance, the informant filed an application before the court with the prayer that the revisionists may also be summoned and cognizance be also taken against them, as well. This application of the informant was rejected on 24.08.2013 by the court of Judicial Magistrate 2nd, Roorkee, District Haridwar in Criminal Case No. 3629 of 2013, State Vs. Anwari and others. This order dated 24.08.2013 was further challenged by the informant in Criminal Revision No. 395 of 2013, which was rejected on 15.03.2014, by the court of 2nd Additional District and Sessions Judge, Roorkee, District Haridwar. That chapter had then closed.

6. In the case, the statement of PW1 Smt. Sitara, the informant was recorded on 24.11.2016. Thereafter, an application under Section 319 of the Code was filed by the informant, which was objected to by the existing accused. By the impugned order, the revisionists have been summoned. This order is impugned herein.

7. Learned counsel for the revisionists would submit that the revisionists were named in the FIR, but the Investigating Officer did not find sufficient material to charge sheet them. It is argued that the revisionist no.2 Smt. Farmani is sister-in-law of the informant Smt. Sitara; revisionist no. 2 Smt. Farmani is married and she stays in an another village with her husband Samoon, who is the revisionist no.3. The revisionist No.1 Akbar is father-in-law of Smt. Farmani, the revisionist no.2. It is argued that they have been implicated just for harassment. Learned counsel would submit that merely on the basis of the statement of PW1 Smt. Sitara, there are less reason to summon the revisionists to face trial with the existing accused.

8. In support of his contention, learned counsel has placed reliance on the principles of law, as laid down in the case of Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92.

9. In the case of Hardeep Singh (supra), in fact, various questions were formulated by the Hon'ble Supreme Court with regard to the application of Section 319 of the Code. Question No. (iv) reads "what is a degree of satisfaction required for invoking power under Section 319 of the Code" and in paragraph 106, the Hon'ble Supreme Court observed as hereunder:-

"106. Thus, we hold that though only a prima facie 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

(emphasis supplied)

10. It may be noted that in paragraph 117.5 also this issue has been answered by the Hon'ble Supreme Court as hereunder:-

"117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

(emphasis supplied)

11. On the other hand, learned counsel appearing for the informant would submit that the revisionists also harassed and tortured the informant in her in-law's house. The Investigating Officer did not file charge sheet against the revisionists, but PW1 Smt. Sitara has stated against the revisionists. The statement of PW1 Smt. Sitara is sufficient to summon the revisionists under Section 319 of the Code. It is also argued that at this stage, the Court should not interpret or discuss the evidence. A prima facie case has to be seen.

12. Learned counsel for the informant would submit that the revision is not maintainable because the impugned order is an interlocutory order.

13. Learned State counsel would also argue that the revision against the impugned order is not maintainable.

14. In the case of Om Kumar Dhankar Vs. State of Haryana and another (2012) 11 SCC 252, the Hon'ble Supreme Court, inter alia, observed that "this being the

position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under subsection (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same."

15. In view of the above law laid down by the Hon'ble Supreme Court, the revision is maintainable. The question is as to whether there is material to summon the revisionists under Section 319 of the Code?

16. Different degree of satisfaction is required at different stages of a criminal case. At the stage of initial summoning, the standard of satisfaction is "prima facie case". But, when charges are framed, the level of satisfaction required is little more than prima facie case. Needless to say, at final stage, the prosecution has to prove the case beyond reasonable doubt.

17. Under Section 319 of the Code, a person is summoned to face trial with the existing accused. Therefore, in the case of Hardeep Singh (supra), the Hon'ble Supreme Court has held that at the satisfaction of summoning a person under Section 319 evidence should be much stronger than mere probability of the complicity of the person. The test is more than prima facie case, as exercised at the time of framing of charge, but sort of satisfaction to an extent that evidence, if goes un rebutted would lead to conviction.

18. In the case of Hardeep Singh (supra), the Hon'ble Supreme Court in para 117.5 as quoted hereinabove, has given reasons for the difference in the degree of satisfaction for summoning the original accused and a subsequent accused and according to the judgment the difference is "on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

19. The summoning of a person is not a routine. It is not that some person may bring two witnesses to summon someone. Somehow probability of the statements is to be seen.

20. In the case of Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749, the Hon'ble Supreme Court, inter alia, observed that "summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.....It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record"

21. In the case of K. Subba Rao and others Vs.State of Telangana, (2018) 14 SCC 452, the Hon'ble Supreme Court observed that "the courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

22. In the case of Ramesh and others Vs. State of Tamil Naidu, (2005) 3 SCC 507, it was held that "the bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible."

23. In the case Gita Melhrotra and another Vs. State of Uttar Pradesh and another, (2012) 10 SCC 741, the Hon'ble Supreme Court while discussing the law on the point observed that "but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding."

24. The informant was married to Muslim resident of village Mahmoodpur. As stated, the revisionist no.2 Smt. Farmani is married sister of Muslim. The revisionist no.1 Akbar is her father-in-law and the revisionist no.3 Samoon is her husband. They are residents of a different village Makarabpur. The allegations in the FIR insofar as the revisionists are concerned are general and vague. There is nothing specific. The Investigating Officer did not find the involvement of the revisionists. In her statement before the court, PW1 Smt. Sitara has leveled allegations against the revisionists also, but they are also general in nature and vague.

25. The revisionists are resident of different village. It appears that out of anxiety to rope in the married sister of her husband, the informant has named Smt. Farmani, her husband and her father-in-law. They all are the revisionists. Reading of the statement of PW1 Smt. Sitara even does not make out a prima facie case against the revisionists. The degree of satisfaction should be more than that. It should be the satisfaction, which is expected at the stage of framing of charge. But, it is lacking even in the instant case. Therefore, this Court is of the view that there is no reason to summon the revisionists. The application under Section 319 of the Code filed by the informant ought to have been rejected, but the court below committed an error by allowing the application. Therefore, the revision deserves to be allowed.

26. The revision is allowed.

27. Impugned order dated 26.09.2017 is set aside. The application filed under Section 319 of the Code by the informant is rejected.