

(2018) 02 RAJ CK 0019
In the Rajasthan High Court
Case No : 732 of 2016

Bhawani Shankar Gahlot

APPELLANT

Vs

State of Rajasthan & Ors

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 190](#), [Section 319](#) - Cognizance of offences by Magistrates - Power to proceed against other persons appearing to be guilty of offence
[176](#)

Citation : (2018) 02 RAJ CK 0019

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : S.K. Verma., O.P. Rathi, Vineet Jain.

Judgement

1. By way of this revision, the petitioner complainant Bhawani Shankar Gahlot has approached this Court for challenging the order dated 6.6.2016

passed by the learned Sessions Judge (Woman Atrocities Cases), Bikaner in Sessions Case No.14/2014 arising out of F.I.R. No.233/2013, P.S.

Mahila Thana Bikaner whereby the application preferred by the prosecution under Section 319 Cr.P.C. for summoning the respondents No.2, 3

and 4 to face trial as co-accused for the offences under Sections 498A, 304B and 34 I.P.C. was rejected.

2. Prosecution allegations in brief are that Monika daughter of the petitioner herein was married to Nirmal Kumar Tanwar (the charge-sheeted

accused) on 6.5.2013. It is alleged that wholesome dowry was given in the marriage but right from inception, all the matrimonial relatives including

the husband were torturing Smt.Monika on account of dowry demands. On 1.12.2013, petitioner Bhawani Shanker's younger sister-in-law

received a call from Monika's sister-in-law Rakhi that Monika was seriously ill. On this, the first informant and other family members rushed to the hospital and came to know that Monika had passed away. The first informant Bhawani Shankar (Monika's father) lodged a report on the very same day at 5.30 PM at the Police Station Mahila Thana Bikaner alleging therein that Nirmal Kumar, husband of Monika, Jeth Pawan Kumar, Jethani Rekha and Nanad Rakhi were indulged in harassing and humiliating Smt. Monika for demand of dowry. Monika was pregnant at the time of her death and all the matrimonial relatives including the respondents herein and her husband were responsible for her unnatural death within one year of her marriage with Nirmal Kumar. On the basis of this report, an F.I.R. No.233/2013 was registered and investigation commenced. The Investigating Officer, after conducting thorough investigation filed a charge-sheet only against Nirmal Kumar and Pawan Kumar with the conclusion that only these two persons were responsible for instigating the deceased to commit suicide. The case was committed to the court of Sessions from where it was transferred to the court of the learned Special Judge (Woman Atrocities Cases), Bikaner for trial. 9 witnesses were examined by the prosecution whereafter, the application for summoning additional accused came to be moved under Section 319 Cr.P.C. before the trial court and was rejected by order dated 6.6.2016 which is under challenge in the instant revision. Notice of the revision was served on the respondents, who are represented by learned counsel Shri Vineet Jain.

3. Shri S.K.Verma learned counsel representing the petitioner complainant vehemently urged that the learned trial court committed grave error in facts as well as law while rejecting the application moved on behalf of the prosecution under Section 319 Cr.P.C. to summon the respondents herein as additional accused in the case. He contended that the petitioner first informant and numerous other witnesses have made specific allegations against the respondents regarding the harassment and humiliation meted out to the deceased on account of demand of dowry. The cruel behaviour of the accused was to such grave extent that Monika committed suicide while carrying a child in her womb within a year of her marriage with the principal accused Nirmal Kumar. He relied upon the Hon'ble Supreme Court Judgment in the case of Hardeep Singh Vs. State of Punjab

& Ors. reported in 2014 Cr.L.R. (SC) 310 and urged that the reasons assigned by the learned trial Judge in the impugned order for turning down

the prayer of the prosecution to summon the respondents as additional accused in the case is absolutely flimsy and farfetched. As per him, the trial

Judge committed grave error while attaching significance to the rejection of the earlier application preferred by the prosecution under Section 190

Cr.P.C. He contended that the said application was rejected by the committing Magistrate whereas the present application was moved under

Section 319 Cr.P.C. after evidence had been recorded at the trial. The evidence so recorded gives ample inferences so as to establish involvement

of the left out matrimonial relatives in the crime. As per Shri Verma, the facts and ratio of Hardeep Singh's judgment (supra) clearly apply to the

present case at all fours and hence, the impugned order should be set aside and the respondents be summoned to face trial in the case for the

offences mentioned above.

4. Per contra, Shri Vineet Jain, learned counsel representing the respondents No.2, 3 and 4 who were left out by the Police from the array of

accused after investigation vehemently opposed the submissions advanced by Shri Verma and contended that the learned trial Judge considered

and appreciated the entire evidence available on record and assigned detailed and sound reasons for turning down the prosecution's prayer to

summon the respondents as additional accused in this case. He contended that while considering an application under Section 319 Cr.P.C., the

degree of satisfaction required to be recorded for summoning the left out persons as additional accused in the case has to be on a higher pedestal

than what is required at initial stage of taking cognizance on the basis of the Police report or the complaint as the case may be. He contended that

the evidence of the prosecution witnesses examined at the trial does not instil confidence that the respondents herein who were not charge-sheeted

by the Police should be put up for trial alongwith the two charge-sheeted accused. He drew the Court's attention towards the statements of the

witnesses Kamal Tanwar, Bhawani Shankar Gahlot (the petitioner herein), Shivshankar, Kishan Pyari as well as Raj Kumar Gahlot recorded at the

trial and urged that it is virtually an admitted position reflected from record that the pertinent and specific allegation of these material prosecution

witnesses regarding the so-called harassment meted out to the deceased was in relation to the demand of a car. However, these witnesses

admitted in cross-examination that the accused Nirmal Kumar (husband) was already having a car from before the marriage. The allegation

regarding so-called demand of car is missing in the written First Information Report. The witness Kishan Pyari (mother of the deceased) admitted

in her cross-examination that the accused had been given a cheque in the marriage but they returned the same. He urged that it is clearly a case

wherein, the deceased Smt.Monika did not commit suicide because of the so-called harassment meted out to her in relation to demand of dowry

and that the prosecution has deliberately concealed the true genesis of the incident. He contended that even if the highest allegations of prosecution

are accepted on the face of the record then too, there is no material so as to justify summoning of the respondents as additional accused in this

case and craved rejection of the revision.

5. I have given my thoughtful consideration to the arguments advanced at the bar and have gone through the material available on record.

6. The principles guiding the concept of summoning of additional accused at the stage of 319 Cr.P.C. are now settled beyond the pale of doubt

with the authoritative pronouncement made by the Constitution Bench of Supreme Court i.e. Hardeep Singh's case (supra). A few relevant

observations from the said Supreme Court Judgment require reference at this stage and are quoted hereinbelow:-

98. Power under Section 319 Code of Criminal Procedure 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 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 Code of Criminal Procedure In Section 319 Code of Criminal Procedure 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 Code of Criminal Procedure to form any opinion as to the guilt of the accused.

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

110. We accordingly sum up our conclusions as follows:

Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Code of Criminal Procedure can be exercised?

AND

Q. III Whether the word ""evidence"" used in Section 319(1) Code of Criminal Procedure has been used in a comprehensive sense

and includes the evidence collected during investigation or the word ""evidence"" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against

a person not named as an accused but against whom materials are available from the papers filed by the police after completion of

investigation. Such cognizance can be taken under Section 193 Code of Criminal Procedure and the Sessions Judge need not wait till

"evidence" under Section 319 Code of Criminal Procedure becomes available for summoning an additional accused.

Section 319 Code of Criminal Procedure, significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial.

As a trial commences after framing of charge, an inquiry can only be understood to be a pretrial inquiry. Inquiries under Sections 200,

201, 202 Code of Criminal Procedure; and under Section 398 Code of Criminal Procedure are species of the inquiry contemplated

by Section 319 Code of Criminal Procedure Materials coming before the Court in course of such enquiries can be used for

corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Code of

Criminal Procedure, and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word "evidence" in Section 319 Code of Criminal Procedure has to be broadly understood and not

literally i.e. as evidence brought during a trial.

Question No. II

Q. II Whether the word "evidence" used in Section 319(1) Code of Criminal Procedure could only mean evidence tested by cross-

examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-

in-chief of the witness concerned?

A. Considering the fact that under Section 319 Code of Criminal Procedure a person against whom material is disclosed is only

summoned to face the trial and in such an event under Section 319(4) Code of Criminal Procedure the proceeding against such

person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused

proposed to be summoned to be tested by cross-examination.

Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Code of Criminal Procedure to arraign

an accused? Whether the power under Section 319(1) Code of Criminal Procedure can be exercised only if the court is satisfied that

the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Code of Criminal Procedure 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 Code of Criminal Procedure 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.

Question No. V

Q. V Does the power under Section 319 Code of Criminal Procedure extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

7. Thus, it is now well settled that for the prosecution evidence to be considered sufficient so as to direct addition of left out accused to face trial by exercising powers under Section 319 Cr.P.C., the evidence recorded at trial should indicate circumstances stronger than grave suspicion. The test that has to be applied is that the evidence led at trial should indicate far stronger circumstances against the left out persons rather than simply presenting a prima-facie case. The satisfaction should meet the standard of

evidence graver than that sufficient to frame charge but not extending to the threshold that the evidence if goes un rebutted, would lead to conviction of such accused. In absence of evidence sufficient to draw such inference, the Court should refrain from exercising power under Section 319 Cr.P.C. Thus, in order to impeach the impugned order, the same would have to be tested in light of the above observations made by Hon''ble Apex Court in Hardeep Singh's case (supra) and the Court would have to sift the evidence to find out whether the same touches the anvil of something beyond prima-facie case or grave suspicion or not. It is not in doubt that Smt.Monika committed suicide by hanging herself in the matrimonial home within a short duration of one year of her marriage with the charge-sheeted accused Nirmal Kumar. The F.I.R. was lodged on the very day of the incident i.e. on 1.12.2013 by Bhawani Shankar the petitioner herein being the father of the deceased. In the F.I.R., vague and general allegations were levelled that all the matrimonial relatives were making demands from the deceased and were harassing her to satisfy the same. However, it is manifest from perusal of the written report (Ex.P6) that no pertinent allegation was made in the report regarding the particular item of dowry being demanded by the accused. The first informant did not even mention in the report that he ever conveyed his reluctance to accede the socalled demands of the accused. It cannot be gainsaid that an allegation of demand of dowry would gain significance and would be construed as harassment only if the same is not accepted by the recipient. In case, a demand is made casually and is satisfied without a demur then obviously, there would be no occasion for the recipient of the demand to feel harassed or humiliated. This kind of demand may of course be covered by the offences under the Dowry Prohibition Act and would cover both the parties in its umbrella. The Investigating Officer concluded in the charge-sheet that on the very day of the incident, Vidhansabha elections were being polled. Previously, Monika used to cast her vote from her father's house but after her marriage with Nirmal Kumar, her name had been added in the voter list of the ward where, her matrimonial home was located. Her father came to the matrimonial home and wanted to take Monika to cast her vote as per his desire. Hot words were exchanged between Nirmal Kumar and the petitioner on this issue and Monika was not allowed

to accompany her father. She became extremely perturbed by her father's insult in the matrimonial home and committed suicide. The first informant

mentioned in the F.I.R. that he went to Monika's matrimonial home at 1 O'clock on 1.12.2013 so as to take her for casting the vote but the in-

laws did not allow her to accompany him. At that time, Monika was looking hale and hearty. Thus obviously, the witness did not notice anything

amiss when he met Monika on 1.12.2013 i.e. on the very day of the incident. What transpired between them and the incident of suicide would be

within the exclusive knowledge of her husband Nirmal Kumar, who stands charge-sheeted by the Police. The principal prosecution witnesses

including the petitioner Bhawani Shankar (P.W.5), Shivshankar (P.W.6) the uncle of the deceased, Kishan Pyari (P.W.8) mother of the deceased

categorically denied demand of a car was being made from Monika. Thus apparently, the evidence of the material prosecution witnesses regarding

the so-called demand of car being made from Monika is highly contradictory. Rajkumar Gahlot, the brother of the deceased, has restricted the

allegations of demand and harassment meted out to the deceased against Jeth Pawan Kumar, mother in law Shubhlaxmi and the husband Nirmal

Kumar. The mother in law Shubhlaxmi was admittedly bedridden for the previous four years because she had met with an accident. The learned

trial court discussed all these significant circumstances emanating from the statements of the prosecution witnesses and concluded that the evidence

available on record did not instill confidence in the mind of the court so as to form an opinion regarding existence of material beyond mere

preponderance of probabilities so as to summon the respondents for facing trial in this case as additional accused.

8. As an upshot of the above discussion, I find no infirmity or shortcoming either factual or legal in the impugned order dated 6.6.2016 so as to

interfere therein.

Consequently, the instant revision preferred by the petitioner complainant Bhawani Shankar is hereby rejected as being devoid of merit. The trial

court shall try and expedite the proceedings.