
(2010) 03 MP CK 0005
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 2068 of 2009

Daya Ram

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 397, 401
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B

Citation : (2010) 03 MP CK 0005

Hon'ble Judges : K.S. Chauhan, J

Bench : Single Bench

Advocate : A.D. Mishra, for the Appellant; V.P. Pandey, Deputy Government Advocate for Resopondent No. 1/State and A.K. Chaurasiya for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.—Though the case was listed for orders on admission as well as on I.A. No. 16577/2009, an application for stay, but heard finally.

2. This criminal revision u/s 397 read with section 401 of the Code of Criminal Procedure has been preferred by the complainant/applicant being aggrieved by the order dated 1-9-2009 passed by the 3rd Additional Sessions Judge, Chhattarpur in S.T. No. 125/2008, whereby the application u/s 319, Criminal Procedure Code filed by him has been rejected.

3. The brief facts of the case are that the daughter of applicant namely Santoshi Vishwakarma was married with Surendra Kumar Vishwakarma on 29-6-2006. She had gone to her matrimonial house. Her husband used to demand dowry articles such as golden chain and colour T. V. and used to harass her for not fulfilling such demands, therefore she ablazed herself on fire on 6-7-2007. She was admitted in Masahi Hospital, Chhattarpur for treatment. Thereafter she was referred to the Medical College, Jabalpur where she died on 17-7-2007. Marg

intimation was registered and the enquiry was made. It was found that her husband used to demand dowry articles and subjected her to cruelty, therefore she burnt herself. Crime No. 56/2008 was registered at Police Station Gadimalahra District Chhattarpur u/s 304-B of Indian Penal Code and sections 3/4 of Dowry Prohibition Act against Surendra Kumar Vishwakarma. After completing the usual investigation the charge-sheet was filed in the competent Court and the case was committed to the Sessions Court where Surendra Kumar Vishwakarma is facing the trial.

4. The applicant moved an application u/s 319 of Criminal Procedure Code for impleading respondents Nos. 2 to 4 as accused persons on the ground that they also demanded dowry articles and subjected to cruelty to his daughter on account of which she burnt herself. This application was rejected by the Court below, which is assailed in this revision.

5. Shri A. D. Mishra, learned counsel for the applicant submitted that the incident took place on 6-7-2007 and the applicant came to know on 7-7-2007 that the accused persons have burnt his daughter, but at that time he could not lodge the report because his mental condition was not good. He lodged report after the death of his daughter and subsequently sent letters to the police authorities for taking action against these proposed accused persons. All the witnesses including the applicant have deposed that respondents Nos. 2 to 4 were also used to harass the deceased and subjected her to cruelty for not fulfilling their demands, therefore they should also be impleaded as accused persons in this case. This Court below has committed an illegality in rejecting the application filed u/s 319 of Criminal Procedure Code which deserves to be set aside. In support of his contention, he has placed reliance on the decision rendered in the case of Rakesh and Another Vs. State of Haryana, .

6. On the contrary, Shri V. P. Pandey, learned counsel appearing on behalf of respondent No. 1/State and Shri A. K. Chaurasiya, learned counsel appearing on behalf of the respondents Nos. 2 to 4 supported the impugned order mainly contending that the deceased has not given any statement in this regard during the period of her admission in the hospital. Learned counsel for the respondents Nos. 2 to 4 submitted that applicant made unlawful demand to the respondents and for not fulfilling such demand he is trying to falsely implicate them. According to them, the Court below has not committed any illegality in rejecting the application u/s 319 of Criminal Procedure Code.

7. Considered the rival contentions raised by learned counsel for the parties.

8. The main point for consideration in this revision is that whether the Court below has committed an illegality in rejecting the application u/s 319, Criminal Procedure Code.

9. The provisions of section 319 of Criminal Procedure Code are as follows :

319. Power to proceed against other person appearing to be guilty of offence. -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. (2) Where such person is not attending the Court he may be arrested or summoned, the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

10. Thus the Court is empowered to implead the person as an accused if he appears to have committed the offence. In the present case the Court below has declined to implead respondents Nos. 2 to 4 as accused persons.

11. It is apparent that the incident is of 6-7-2007. According to Dayaram Vishwakarma (PW-1) on the next day he came to know that respondents Nos. 2 to 4 have burnt deceased Santoshi Vishwakarma but he did not make any report on that day. She remained hospitalized in Masahi Hospital, Chhattarrpur from 6-7-2007 upto 13-7-2007. Thereafter she was referred to Medical College, Jabalpur where she remained hospitalized upto 17-7-2007. During this period also no any report was made. He did not even give any statement to the police Jabalpur. Thus if the proposed accused persons have played any role in commission of this offence then certainly he would have made the report against them at that time. The reason that his mental condition was not good at that time, therefore he could not make the report immediately, is not acceptable for the simple reason that the proposed accused persons have alleged that he made unlawful demand, which was not fulfilled, therefore he wants to implead them as accused persons in this case. The contention appears to be sound because there was no any sufficient reason for not making the report against them at the earliest. It is common experience that in dowry death cases the parents of the deceased try to implicate the entire family of the husband and the similar attempt appears to have been made by the applicant in this case also. It is well settled law that section 319 of Criminal Procedure Code should be used very sparingly only when there are compelling reason for acting under the section. The Court below after discussing evidence declined to implead respondents No. 2 to 4 as accused persons. Such finding cannot be said to be perverse, hence does not call for any interference. The cited case is of no help to the applicant. The revision is meritless and deserves to be dismissed.

12. Consequently, the revision fails and is hereby dismissed.