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**(1997) 04 DEL CK 0076**

**In the Delhi High Court**

**Case No :** Criminal Miscellaneous (Main) Appeal No. 2367 of 1994

Dharam Pal and Others

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 09-04-1997

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319  
Penal Code, 1860 (IPC) — Section 304B, 498A

**Citation :** (1997) 70 DLT 244

**Hon'ble Judges :** S.K. Mahajan, J

**Bench :** Single Bench

**Advocate :** K.K. Sud, K. Vohra, Mukta Gupta and P.P. Rajpal, for the Appellant;

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## **Judgement**

S.K. Mahajan, J.

(1) Being aggrieved by the order of learned Additional Sessions Judge summoning the petitioners to face trial under Sections 498-A/304-B, Ipc, the petitioners have filed this petition for quashing the order of summoning alleging inter alias that, firstly, there was no evidence before learned Additional Sessions Judge to form an opinion that a prima facie case had been made out against the petitioners and secondly, even assuming such a material was available on the police record, the Additional Sessions Judge could not summon the petitioners by invoking powers u/s 319 of the Code of Criminal Procedure (in short referred to as "the Code") without recording evidence during trial. Before dealing with the contentions of the respective parties, let me first give a few facts which are relevant for deciding this petition.

(2) One Kusum, the deceased, was married to Radhe Shyam on 16/04/1990. The petitioners are the brothers of Radhe Shyam. The petitioners live separately from Radhe Shyam and have their separate business. On 19/03/1994 Kusum died in mysterious circumstances and on post-mortem having been conducted, the cause of death was found to be vaso vagal shock consequent to the pressure on the neck. The Sub-Divisional Magistrate after holding the inquest proceedings on

22/03/1994 recommended a case to be registered against Radhe Shyam and his mother under the relevant provisions of law. The Fir was registered against Radhe Shyam alone for his having committed an offence punishable under sections 498A/304-B/34, IPC. During investigation it appeared to the Investigating Authority that a case u/s 302 was also made out and the mother of Radhe Shyam was also involved in the commission of crime. Charge Sheet was, accordingly, filed in the Court of the Metropolitan Magistrate against Radhe Shyam and his mother for their having allegedly committed an offence punishable under Sections 498-A/302/304-B/34, IPC. None of the petitioners was found to be involved in the commission of crime and their names were not included in the charge sheet. After taking cognizance of the offence, the Metropolitan Magistrate committed the accused to the Court of Sessions. It was at that stage that an application u/s 319 of the Code of Criminal Procedure was filed by the complainant for summoning the petitioners as well for facing trial. By the impugned order, learned Additional Sessions Judge held that he was unable to find anything in the statement of witnesses which could distinguish the case of the accused Radhe Shyam and Ram Pyari from the case of the petitioners and he, Therefore, summoned the petitioners to face trial under Sections 498-A/304-B of the Indian Penal Code.

(3) It is contended by Mr. Sud, learned Counsel for the petitioners, that at the time of summoning a person u/s 319 of the Code, the Court must form an opinion on the basis of the evidence available on record at that stage that a prima facie case was made out against the persons who were going to be summoned. This evidence, according to Mr. Sud, must come before the Court during trial and the Court cannot rely upon the statements of the witnesses recorded by the police before filing the charge sheet for purposes of summoning another person u/s 319 of the Code. It is also the contention of Mr. Sud that even assuming that the Court has the power to summon any person to face trial along with the accused who have already been named in the charge sheet, learned Additional Sessions Judge could not, in the facts and circumstances of this case, summon the petitioners as the material before him was not sufficient to enable him to form an opinion that a prima facie case had been made out against the petitioners.

(4) The Fir in this case was registered on the basis of the statement of Mr. Ghanshyam, brother of the deceased. It is stated by him in his statement that the deceased was married to Radhe Shyam in 1990 when Radhe Shyam was living in District Hisar, that after 4-5 months of marriage he shifted to Delhi; that the deceased was living along with Radhe Shyam and his mother, that one and a half months after the marriage, the petitioners, their mother and the husband of the deceased started harassing her. A sum of Rs. 7,000.00 is stated to have been paid to one of the petitioners Dharam Pal two months after the marriage. After Kusum had given birth to a daughter, the said persons had allegedly started harassing her more and a sum of Rs. 13,000.00 is stated to have been paid at that time which included clothes and other articles. On 19/03/1994 he was

informed that his sister had been killed and immediately on receiving this information, he reached Delhi and the dead body of the deceased was taken into possession by the police. He suspected the involvement of Radhe Shyam, his mother and the petitioners in the killing of his sister. The police, however, registered the FIR only against the husband of the deceased.

(5) To attract the provisions of Sections 498-A and 304B, it must be shown that the husband or the relatives of the husband of the woman has been subjected to cruelty. For purposes of this Section, cruelty has been defined to mean any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. A person will be guilty of an offence punishable u/s 304-B of the IPC where the death of a woman is caused otherwise than in normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. In this case, the only allegation against the petitioners is that after about one and a half months after the marriage, the mother-in-law, husband of the deceased and the petitioners had started harassing the deceased. Nowhere in the statement it has been said that the alleged harassment was on account of any demand of dowry. Though at one place it has been stated that one of the petitioners, namely, Dharam Pal had demanded Rs. 7,000.00 after about two months of marriage which was given to him, however, there is nothing else in the statement to show that on any occasion any of the petitioners had made any demand of dowry or that any alleged harassment of the deceased was on account of the complainant having not met the dowry demand.

(6) To attract the provisions of Section 498-A of the IPC, the allegations made should be specific and not vague. The provision of law requires that the deceased should have been subjected to cruelty and harassment for demand of dowry before her death and not a vague or stray taunt for bringing less dowry. Except one instance of the brother of the husband of the deceased having allegedly demanded a sum of Rs. 7,000.00 two months after the marriage, there is no other allegation in the statement of the brother of the deceased that any demand of dowry was made by any of the petitioners. The deceased had died almost four years after the alleged demand and even assuming this demand to be correct, this cannot be the basis of initiating proceedings against the petitioners. In my view, there was no material before learned Additional Sessions Judge to form an opinion that a prima facie case had been made out against the petitioners about their involvement for having committed an offence punishable u/s 498-A, IPC.

(7) This brings me to the question as to whether the petitioners could be summoned even u/s 304-B of the IPC. To attract the provisions of Section 304-B,

IPC, it must be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. There is not even a single averment made by the complainant or any other witness before the police that soon before her death the deceased was subjected to cruelty for or in connection with the demand of dowry. When learned Additional Public Prosecutor as well as Counsel for the complainant was specifically asked whether there was any evidence before the Court to form an opinion about the involvement of petitioners in the commission of offence u/s 304-B of the IPC, I was informed that Pawan Kumar, another brother of the deceased, had made a statement that soon before her death the deceased had informed him that she was being subjected to cruelty for having not brought sufficient dowry. Having gone through the statement of Pawan Kumar, I do not find any such allegation made by him against any of the petitioners. Pawan was posted at Guwahati and it has been stated by him that in 1993 when he came to Delhi to attend the marriage of his brother, he had paid a sum of Rs. 3,000.00 to Kusum and at that time she had informed him that "her mother-in-law and husband used to harass her and taunt her that she had not brought sufficient dowry". Besides this statement, there is nothing else in the statement of Pawan which could involve the petitioners. In my view, Therefore, there was no material before learned Additional Sessions Judge to form an opinion about the prima facie involvement of the petitioners in the commission of offence punishable u/s 304-B of the IPC.

(8) Though, it has also been argued by Mr. Sud that to attract the provisions of Section 319 of the Code, the petitioners could not be summoned unless some evidence had been brought before the Court during trial of the case and as the trial had not even started, the order of the Additional Sessions Judge was bad. Reliance for this has been placed upon a judgment of the Supreme Court in *Raj Kishore Prasad Vs. State of Bihar and another*, . *Ms. Gupta*, learned Additional Public Prosecutor, however, relied upon another judgment of the Supreme Court reported as *Kishun Singh and Others Vs. State of Bihar*, , where it was held as under :

"WE have already indicated earlier from the ratio of this Court's decisions in the cases of *Raghubans Dubey* and *Hareram* that once the Court takes cognizance of the offence (not the offender) it becomes the Court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the Courts duty to summon them to stand trial along with those already named, since summoning them would only be apart of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes, under the old Code the Court of Session was precluded from taking cognizance of any offence as a Court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by there placement of the words the accused by the words the case. Thus, on a plain reading of Section 193, as it presently stands once the case is

committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a Court of original jurisdiction gets lifted. On the Magistrate committing the case u/s 209 to the Court of Session the bar of Section 193 is lifted there by investing the Court of Session complete and unfettered jurisdiction of the Court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

(9) As I have already held that there was no material before learned Additional Sessions Judge to form an opinion about the prima facie involvement of the petitioners in the commission of offence for which they have been summoned, I need not dwell myself upon the question as to whether the Additional Sessions Judge had the power to summon a person who to not an accused before him u/s 319 of the Code of Criminal Procedure without any evidence having been produced before him during trial.

(10) For the foregoing reasons, I allow this petition and quash the impugned order of the learned Additional Sessions Judge whereby the petitioners were summoned to face trial under Sections 498-A/304-B of the IPC. However, I would like to clarify that this order will not be a bar to the Additional Sessions Judge to summon either the petitioners or any other person whose involvement may come to the notice of the Additional Sessions Judge, after evidence has been recorded by the Court. With these observations, the petition stands disposed of. Petition allowed.