

(2012) 04 RAJ CK 0142

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 174 of 2012

Mahendra Singh and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 482
Penal Code, 1860 (IPC) — Section 304B

Citation : (2013) 1 RLW 59

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Anurag Sharma, for the Appellant; Piyush Kumar, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mahesh Chandra Sharma, J.—This petition has been filed u/s 482 Cr.P.C., against the order dated 17.1.2012 passed by Additional Sessions Judge (Fast Track) No. 2, Bharatpur in Sessions Case No. 21/2008, whereby he has summoned the accused petitioners. Brief facts of the case are as under:-

That in an incident which took place on 22.3.2008 a First Information Report was lodged which was registered at Police Station Mathura Gate as FIR No. 179/2008 for the offence u/s 304B IPC. After investigation challan was filed for the offence u/s 304-B IPC. Thereafter the case was committed to the Court of Sessions whereby charge was framed only against Vinod Kumar u/s 304-B IPC which he has pleaded not guilty and claimed for trial. During the course of evidence trial, the prosecution examined witnesses Chauhal Singh (PW/1), Heeraman (PW/2), Puran Singh (PW/3), Pratap Singh (PW/4), Uday Singh (PW/5), Bhagwandai (PW/6) and Hardev (PW. 13). After examination of the above-named witnesses, the complainant/respondent preferred an application u/s 319 Cr.P.C., before the learned trial Court. Previously also, application u/s 319 Cr.P.C. was filed by the complainant after recording the statements of Chauhal Singh (PW/1), Heeraman

(PW/2), Puran Singh (PW/3), and Pratap Singh (PW/4) but the same was rejected by the trial Court vide order dated 29.4.2009. After that the complainant has challenged the order dated 28.4.2009 and on 13.9.2011, this Court has passed the following order:

This Misc. Petition has been filed u/s 482 Cr.P.C., against the order dated 28.4.2009 passed by Addl. Sessions Judge (Fast Track) No. 2, Bharatpur whereby the application u/s 319 Cr.P.C., filed by the complainant was dismissed.

The learned counsel for the petitioner only prays to this Court that while rejecting the application u/s 319 Cr.P.C., the judgment of the Apex Court in Hardeep Singh Vs. State of Punjab and Others, was not considered. The learned counsel in these circumstances states that this court may direct the trial court to consider the above mentioned judgment of the Apex Court. If the petitioner moves an application u/s 319 Cr.P.C., the same should be decided in the light of the judgment of the Apex Court in Hardeep Singh vs. State of Punjab & Ors. (supra).

For these reasons, the misc. petition is disposed of with the above directions. The stay application also stands disposed of.

2. After the evidence was concluded, the complainant has moved an application before the learned trial Court. The learned trial Court after hearing both sides decided the said application and summoned the petitioner by the order impugned on 17.1.2012. Thereafter, the petitioner has moved this revision petition for quashing of the order dated 17.1.2012 by which he was summoned for the aforesaid offence.

3. The learned counsel Mr. Anurag Sharma has contended that the order passed by the court below is patently illegal, improper and unjust. He has further submitted that the court below has acted illegally and with material irregularity by which he has allowed the application u/s 319 Cr.P.C., filed by the complainant. He has further submitted that it is apparent from the FIR as well as the statements of Chauhal Singh (PW. 1), Heeraman (PW. 2) and Pratap Singh (PW. 4) that they have given the improved version vis-?-vis their statements recorded before the police u/s 161 Cr.P.C. wherein demand of dowry by current petitioners was not made, hence they have implicated the petitioners falsely. He has further submitted that while the court below is considering the evidence of the witnesses from PW. 1 to PW. 15, it has failed to consider the judgment cited by the petitioners before it in Kailash Vs. State of Rajasthan and Another, He has further contended that the court below while allowing the application of the prosecution u/s 319 Cr.P.C., has acted in a mechanical manner by not considering nor appreciating the evidence of the witnesses available on record.

4. On the other hand, the learned Public Prosecutor has contended that the trial Court while deciding the application filed by the complainant u/s 319 Cr.P.C. has appreciated all the prosecution witnesses and thereafter he has passed an order u/s 319 Cr.P.C. He has drawn the attention of the Court on the judgment

delivered by the trial Court in Para 7 of the judgment wherein the court below has appreciated the evidence Chauhal Singh (PW. 1), Heeraman (PW. 2), Uday Singh (PW. 5), Bhagwandai (PW/6) and Hardev (PW/13). Further, he has drawn the attention of the Court on the statements which were appreciated by the trial Court particularly that of Puran Singh (PW. 3), Mukesh Kumar (PW/7), Randhirsingh (PW/10), Daujiram (PW/12), Ramdas (PW/15) and thereafter Daurilal (PW. 8). Further, he has drawn the attention of the Court on the statement of Dr. Banai Singh (PW. 11) who has prepared the post mortem report and also on the statement of Ratanlal Bhargava (PW. 14). He has further brought to the notice of the Court that the trial Court has properly considered the statements of the prosecution witnesses while passing order on the application filed by the complainant u/s 319 Cr.P.C., and has also drawn the attention of the Court to the statement of Ramsingh (DW/1), and contended that after considering all the statements, the learned trial Court has passed the order impugned which does not require any interference by this Court at this stage. I have heard the learned counsel for the parties and on perusal of the record made available to me, it is clear that prima facie the trial Court has appreciated all the prosecution witnesses including the defence witness and thereafter he has passed the impugned order. I am in agreement with the finding recorded by the trial Court, specially in Para 8 of the impugned order which is reproduced as under:

In view of the above, I do not think it proper to interfere in the order passed by the trial Court dated 17.1.2012.

The petition is accordingly dismissed.