
(2002) 12 JH CK 0053

In the Jharkhand High Court

Case No : Criminal M.P. No. 597 of 2002

Maqbool Mian @ Maqbool Ansari and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 398, 482
Penal Code, 1860 (IPC) — Section 498A

Citation : (2003) 2 JCR 298 : (2003) 1 DMC 651

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : Kailash Prasad Deo, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the order dated 2.3.2002 passed by the Session Judge, Deoghar in Criminal Revision No. 44 of 1999, whereby the learned Sessions Judge affirmed the order of the trial Court dated 6.4.1999 summoning the accused u/s 319 of the Code of Criminal Procedure in connection with T.R. No. 440 of 1999 arising out of PCR No. 233 of 1997.

2. A complaint case was filed in the Court of Sub-Divisional Judicial Magistrate, Madhupur at Deoghar alleging therein that the complainant is the legally married wife of accused/petitioner No. 1 and the marriage took place in the year 1991. Accused persons after some time started demanding dowry of Rs. 10,000/- and due to non-fulfillment of the said demand, the accused persons started torturing the complainant and later on she was driven away from the house. Hence, a complaint case was filed.

3. The learned Court below held enquire u/s 202, Cr PC witnesses were examined and after being satisfied that the prima facie case is made out, cognizance was taken u/s 498-A, IPC against the accused persons/ petitioners.

The trial begun in the case. Evidence of witnesses before charge was also adduced. Thereafter, the complainant filed a petition u/s 319, Cr PC for summoning the accused persons. After hearing both parties, the trial Court passed order dated 6.4.1999 allowing the petition u/s 319, Cr PC, against which the petitioners preferred revision before the Sessions Judge. The learned Sessions Judge passed the order impugned dated 2.3.2002 affirming the order of the trial Court allowing the petition u/s 319, Cr PC. Hence this application.

4. The learned Counsel appearing on behalf of the petitioners submitted that the Court below committed error in passing the order without appreciating the legal position. It is further submitted that the case was initiated on the basis of the complaint case as well as the petitioners had been accused at the early stage and, therefore, they cannot be summoned u/s 319, Cr PC which provides that any person not being the accused is to be summoned but the petitioners had been the accused at the early stage. The counsel for the petitioners also relied upon the case of Uma Shankar Sahay v. State of Bihar and Anr. 1998 (2) ECC 423 (Pat) and Kansraj v. State of Punjab, 2002 CriLJ 2993.

5. On the other hand, the learned A.P.P. contended before me that the learned Magistrate as well as the Revisional Court passed the order legally and there is no illegality or impropriety in the order impugned. It is further submitted that the witnesses examined before charge have specifically named the petitioners for being involved directly in the crime and as such the Court below rightly passed the order summoning the petitioners u/s 319 Cr PC.

6. Section 319 of the Code of Criminal Procedure reads as under :

"Power to proceed against other persons 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, as 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 the witness re-heard ;

(b) subject to the provisions of clause (a), the case may proceed as if person had been an accused person when the Court took cognizance of the offence upon

which the inquiry or trial was commenced".

7. The expression "any person not being the accused" occurring in Section 319 clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the expression (vide *Joginder Singh and Anr. v. State of Punjab and Anr.* reported in AIR 1979 SC 399).

8. It is also settled that cognizance is taken against the offence and not against the person. So, even if the cognizance was taken by the Magistrate in the instant case, it was taken against the offence. The persons involved in the crime would only be looked into or considered in course of trial for which provisions u/s 319, Cr PC has been given and it is the duty of the Court to find out who the offenders really are involved in the case, provisions of Section 319, Cr PC have to be read in consonance with the provisions of Section 398 of the Code of Criminal Procedure. Therefore, if the prosecution/complainant, at any stage, produces evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence, the Court can take cognizance against them and try them alongwith other accused.

9. There appears that the trial Court as well as Revisional Court gave out a detailed discussions of the matter and passed the order Impugned which does not require to be interfered. There appears no illegality in the order impugned which does not require to be interfered. There appears no illegality In the order impugned as both the Courts are concurrent in the decision.

10. Having regard to the above facts and circumstances, there appears no merit in this applications, which is dismissed.