
(2014) 11 AHC CK 0149

In the Allahabad High Court

Case No : Criminal Misc. Application No. 44604 of 2012

Meena and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482 — Dowry Prohibition Act, 1961 - Section 4, 6 — Penal Code, 1860 (IPC) - Section 323, 498-A, 504, 506

Citation : (2015) 89 ALLCC 80

Hon'ble Judges : Arvind Kumar Mishra, J.

Bench : Single Bench

Advocate : Piyush Dubey, for the Appellant

Final Decision : Dismissed

Judgement

Arvind Kumar Mishra-I, J.?Heard learned Counsel for the applicants and the learned AGA in opposition. By means of this application the applicants have challenged the order impugned dated 16.4.2012, whereby applicants have been summoned under Sections 319 Cr.P.C. in Case No. 2084 of 1998, under sections 498-A, 323, 504 and 506 I.P.C. and 4/6 D.P. Act, Police Station Mahila Thana, Agra.

2. The brief facts of this case are that respondent No. 2 Smt. Kiran Devi lodged a First Information Report, which was registered as Case Crime No. 50 of 1995, under sections 498-A, 323, 504 and 506 I.P.C. and 4/6 D.P. Act, police station Mahila Thana, Agra, wherein, after investigation charge-sheet was submitted against husband, father-in-law and mother-in-law of the complainant respondent No. 2. As the concerned case proceeded in the Trial Court, the complainant Smt. Kiran Devi got herself examined, wherein, she stated name of present applicants Smt. Meena and Smt. Usha, as the two accused persons, inter alia, who in connivance with other co-accused persons assaulted the complainant. At this stage, prosecution moved application under section 319 Cr.P.C. for summoning and prosecuting the present applicants under aforesaid offences. The Court

below after hearing the prosecution on merit of the application, allowed application under section 319 Cr.P.C. and summoned the present applicants to face the trial. This order resulted into presentation of this proceeding under section 482 Cr.P.C.

3. Learned Counsel for the applicant while assailing the aforesaid impugned order dated 16.4.2012 vehemently contended that the order impugned is erroneous and perverse because it is silent on the point of prima facie satisfaction of the Court that there is every likelihood of applicants being convicted for the offence alleged. Both the applicants are sisters-in-law (nanad) of the victim. Moreover, the applicant No. 1 Smt. Meena was admittedly minor on the date of alleged incident on 19.6.1995. Learned Counsel further placed reliance on the judgment of Hon''ble Apex Court in the case of Sabarjeet Singh and another v. State of Punjab 2009 ACC (66) SC 32.

4. Per contra, learned AGA argued that in this case the impugned order, as passed by the learned Magistrate is justified and the same has been passed on the merit of the case. The satisfaction of the Magistrate is based on material on record. Perusal of part of statement given by opposite party No. 2 the complainants she has made categorical statement in Court to the extent that she was beaten up by the applicants by kicks and fists. This particular statement itself justifies summoning of the applicants under section 319 Cr.P.C. Learned AGA further submitted that as per latest law it is not always obligatory and incumbent upon the Magistrate to specifically record finding that the evidence available on record if remained unrebutted against the person summoned under section 319 Cr.P.C. is reasonably sufficient to warrant his conviction. In this case, prima facie, material is available to summon the accused persons. The order impugned does not suffer from any illegality.

5. In view of above rival contentions, the moot point that arises for considerations in this case relates to fact as to whether it was obligatory on the part of the Trial Court to have recorded specific finding regarding possibility of conviction of the applicants on the strength of material on record. And the summoning order is not justified.

6. In this context, I perused the order impugned, wherein, both the applicants have been stated to be sisters-in-law (nanad) of the complainant. It has also been observed that charge-sheet was not submitted against the two applicants, however, after the statement of the complainant was recorded and she assigned specific role of assault being caused to her by the two applicants Smt. Meena and Smt. Usha., then application under section 319 Cr.P.C. was moved. In this view of the matter, the learned Magistrate found it reasonable to summon the aforesaid applicants. In this backdrop of case it may be observed that Hon''ble Apex has categorically laid down the law in the matter of Hardeep Singh Vs. State of Punjab and Others etc. etc., about the extent of satisfaction of the Court/Magistrate.

7. Now in so far as the satisfaction of Court, while exercising power under section 319 Cr.P.C. is concerned it should be of a degree greater than that of prima facie case as is required in the matter of framing of charge. The aforesaid judgment of the Hon"ble Apex Court is of 5 Judges Bench. The judgment of Hon"ble Apex Court in the case of Sabarjeet Singh and another v. State of Punjab, 2009 ACC (66) SC 32 lays down the law that satisfaction to the extent that in case the evidence on record if remained un rebutted will warrant conviction, has now been done away with the latest pronouncement in the case of Hardeep Singh Vs. State of Punjab and Others etc. etc., In aforementioned case of Hardeep Singh the relevant observation has been made in para 106 which is extracted herein below:--

"106. Thus, we hold the 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 Cr.P.C. In section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

8. In view of above, it is obvious that the satisfaction of the Court/Magistrate is to be exercised in a degree as directed by the Hon"ble Apex Court. Perusal of order impugned itself shows that there was sufficient material available on record for summoning the applicants. However, in view of the fact, that applicant No. 1- the sister -in-law of the opposite party No. 2 (the complainant) is stated to be the unmarried and the another applicant happens to be the married sister-in-law of the complainant, it is directed that in case both the applicants appear before the Court below and make an application for bail, their bail applications may be considered in accordance with law as law laid down the Full Bench of this Court in Amrawati's case. Accordingly this application under section 482 Cr.P.C. stands rejected.