
(1998) 04 MP CK 0044

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 47 of 1998

Narmadaprasad Pandey and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 191, 319, 397, 401
Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (1999) 2 DMC 353

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : K.G. Maheshwari, for the Appellant; G. Desai and R.P. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—This revision under Sections 397/401, Criminal Procedure Code is directed against the order dated 8.1.1998 of the 1st Addl. Sessions Judge, Dhar, passed in S.T. No. 239/97 allowing application filed u/s 319, Criminal Procedure Code by the complainant respondent No. 4 and directed the applicants to stand trial together with two other accused respondents No. 2 and 3, for offence u/s 304B, r/w Section 34, Indian Penal Code.

2. A married woman Sangitabai died on 13.4.1997 of burn injuries within 7 years of her marriage. Police Dhar after conducting inquest u/s 174, Criminal Procedure Code registered a Crime u/s 304B, Indian Penal Code and after usual investigation charge-sheeted respondent No. 2 Yogendra the husband of the deceased and his older brother Ashok the respondent No. 3. They stand trial on the charge u/s 304B, Indian Penal Code. The case was committed to the Court of Sessions. The learned Sessions Judge recorded evidence in the case. Respondent No. 4 Radheshyam the father of the deceased made an application u/s 319, Criminal Procedure Code for impleading applicants Narmadaprasad and Smt. Kusumadevi the parents of respondent No. 2 as co- accused of the case. The

learned A.S.J. on consideration of the evidence on record " came to the conclusion that the applicants herein have also committed the offence u/s 304B, Indian Penal Code for which they could be tried together with the accused-respondents No. 2 and 3. The Court below accordingly allowed the application vide order impugned, thus giving rise to the present revision.

3. I have heard Mr. K.G. Maheshwari, learned Counsel for applicants; Mr. Girish Desai, learned G A for respondent No. 1 - State; and, Mr. R.P.Shukla, learned Counsel for respondent No. 4.

4. Section 319, Criminal Procedure Code is a self-contained provision independent of Sections 190 and 191 of the Code and which authorises the Court in an enquiry or trial concerned, to proceed against a person not being the accused if he feels the character described u/s 319. The two conditions necessary for invoking Section 319, Criminal Procedure Code are that it should appear from the evidence that any person not being the accused has committed the offence and that he could be tried for such an offence together with the accused. Law on the point is made laculent by two decisions of the Supreme Court in Joginder Singh AIR 1979 SC 330, and Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . In Joginder Singh (supra) the Apex Court observed :

"A plain reading of Section 319(1), which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried alongwith the other accused."

5. In Ram Kishan (supra) the Apex Court after quoting with approval the aforesaid observations in Joginder Singh (supra) further held and cautioned :

"Section 319 of Criminal Procedure Code gives ample powers to any Court to take cognizance and add any person not being an accused before it and try him alongwith the other accused. In these circumstances, therefore, if the prosecution can at any stage produce 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 the other accused. But, this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against the other person against whom action has not been taken."

6. Mr. Maheshwari, learned Counsel for the applicants has strenuously urged that the present case is not one of those exceptional cases warranting exercise of jurisdiction u/s 319, Criminal Procedure Code. He took me through the papers filed with the charge-sheet and asserted that there was no ground whatsoever to proceed against the applicants. I am, however, not persuaded by the arguments.

7. The word "evidence" in Section 319 means evidence on record and power under the section cannot be exercised with reference to police papers. In the instant case the evidence led at the trial reveals that the applicants together with the accused - respondents No. 2 and 3 were responsible for harassing the deceased girl and had demanded dowry from her parents. Mr. Maheshwari was, however, at pains to explain that statement of witnesses in this regard are after-thought inasmuch as they have clearly improved over their earlier statements recorded by the police during investigation u/s 161, Criminal Procedure Code. I am afraid, it is not open for me nor necessary at this stage to go into the prose and cons of the evidence and undertake detailed appraisal thereof. Suffice to say, that the view taken by the learned trial Judge is possible. The learned Sessions Judge has taken into account the omissions and contradictions appearing in the evidence of prosecution witnesses while passing the order impugned. It is not possible to hold that the view taken by the Court below is wholly unfounded or unsupportable by evidence on record. No interference is, therefore, called for in revision by this Court.

8. The revision thus fails and is dismissed.