
(2010) 09 AHC CK 0378

In the Allahabad High Court

Case No : Application U/S 482 No. 21698 of 2007 and A.F.R

Pyari Devi

APPELLANT

Vs

State of U.P. & Another

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2010) 09 AHC CK 0378

Hon'ble Judges : Shri Kant Tripathi, J

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—Heard the learned counsel for the applicant and the learned counsel for the respondent no. 2 and the learned A.G.A. for the respondent no. 1 and perused the record.

2. This is an application under section 482 Cr.P.C. against the summoning order passed under section 319 Cr.P.C.

3. It appears that in case crime no. C16 of 2003, under sections 323, 504, 506, 498A and 3/4 Dowry Prohibition Act, P.S. Orai, District Sant Kabir Das Nagar, the applicant's name was disclosed in the F.I.R. The investigating agency did not file any charge sheet against her. During the trial P.W.1 Sudha Singh was examined in support of the prosecution case. She narrated the prosecution story and made statement in regard to the complicity of the applicant. On the basis of that statement, the learned Additional Chief Judicial Magistrate, Gyanpur passed the summoning order dated 13.6.2006 in criminal case no. 1462 of 2005, State Vs. Ram Bahal Singh and others, thereby summoned the applicant as an accused. Against the order of the learned Additional Chief Judicial Magistrate, criminal revision no. 90 of 2006 was filed, which was dismissed by the Additional Sessions Judge, Fast Track Court No. 2, Bhadohi on 4.8.2007.

4. The learned counsel for the applicant submitted that the applicant is a very old lady aged about 83 years. No specific role of the applicant has been alleged by

P.W.1, Sudha Singh. It was next submitted that when no evidence was found against the applicant during the investigation, the learned Additional Chief Judicial Magistrate was not justified in passing the summoning order only on the basis of the statement of P.W. 1 Sudha Singh. He should have recorded statements of other witnesses. Moreover, the said witness was not subjected to crossexamination. It was next submitted that neither the learned Additional Chief Judicial Magistrate nor the learned Additional Sessions Judge recorded any specific finding that the statement of P.W. 1 Sudha Singh, if uncontroverted, would be sufficient to record a valid conviction against the applicant. In absence of such finding the summoning order was not proper.

5. The learned counsel for the respondent no. 2, on the other hand, submitted that adequate evidence has been adduced in this case.

6. In the case of Sarabjit Singh and another vs. State of Punjab and another 2009 (66) ACC 32, the Apex Court held that indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. The Apex Court further observed that an order under section 319 CrPC, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person. Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. After making these observations, the Apex Court further held that the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

7. In Sarabjeet Singh's case, the Apex Court further observed that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the Court must be satisfied that there exists a strong suspicion. While framing charge in terms of section 227 CrPC, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under section 319 CrPC is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied.

8. Another Division Bench of the Apex Court in the case of Brindaban Das and others vs. State of West Bengal, 2009 (66) ACC 273, propounded the same

principle and held that in matters relating to invocation of powers under section 319 CrPC, the Court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the FIR has surfaced during the trial, but the Court is also required to consider whether such evidence would be sufficient to convict the person being summoned. The Apex Court further observed that the fulcrum on which the invocation of section 319, CrPC rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned.

9. In the case of Michael Machado & Anr. V. Central Bureau of Investigation & Anr., (2000) 3 SCC 262, the Apex Court propounded that power under section 319 CrPC vested in the Court should be used sparingly and the evidence on which the same was to be invoked should indicate a reasonable prospect of conviction of the person sought to be summoned.

10. The prospects of conviction as one of the requirement for summoning a person as accused under section 319 CrPC has been propounded even in the case of Krishnappa vs. State of Karnataka, 2004 (7) SCC 792. It has been held in that case that invocation of the power under section 319 CrPC should not have been resorted to, since the chances of conviction on the basis of the evidence on record was remote. Applying the principles laid down in the cases of Michael Machado & Anr.'s (supra), the Apex Court further ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

11. After considering the aforesaid case laws and few other decisions of the Apex Court, this Court in the case of Rajol and others vs.State of U.P. and another, 2010 (5) ADJ, Page 628, has observed in para 22 as follows:

"22. In the cases of Sarabjeet (Supra), Brindawan Das, Michael Machado (supra) and Krishnappa (supra), it has been clearly held that summoning order should be passed only when the evidence, if uncontroverted, is of such a nature as to reasonably lead to conviction of the person sought to be summoned. The standard of evidence required for summoning an additional accused should be higher than the evidence required for framing charges because the jurisdiction under section 319 CrPC is to be exercised sparingly in an extra ordinary situation. Whether or not any evidence is of such a quality as to record conviction if it remains uncontroverted, is a variable question depending upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard. However, the court considering the evidence for the purpose of section 319 CrPC is not legally required to evaluate the evidence as it is ordinarily done while rendering the final judgment but the court has to see whether or not, the evidence on record appeals to the reason for the purposes of section 319 CrPC and the story narrated by the witnesses against the person sought to be summoned is not improbable and absurd and a conviction is possible on such

statements, if uncontroverted. A non observance of this legal requirement would render the summoning order illegal. "

12. I have perused the impugned orders. The courts below have not recorded any finding to the effect that the statement of P.W. 1 Sudha Singh, if uncontroverted, would reasonably lead to the conviction of the applicant. In absence of such finding, the impugned order cannot be sustained.

13. The application is allowed. The impugned orders dated 4.8.2007 (annexure 2) and dated 13.6.2006 (annexure1) are quashed. The learned Additional Chief Judicial Magistrate is directed to reconsider the application under section 319 Cr.P.C. in the light of the observations made hereinbefore and pass afresh order in accordance with law.