
(2012) 01 AHC CK 0280
In the Allahabad High Court
Case No : Criminal Revision No. 5393 of 2011

Raghunandan Singh @ Guddu and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 319, 319(1), 319(4)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 342, 498A, 504, 506

Citation : (2012) 01 AHC CK 0280

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Naheed Ara Moonis, J.—Heard the learned counsel for the revisionists, the learned A.G.A. and perused the record.

2. A prayer has been made for quashing the order dated 26.9.2011, whereby the Chief Judicial Magistrate, Chitrakoot has passed the order on an application moved u/s 319 Cr.P.C. in case No. 1197/ix/2010, State Vs. Raghvendra Singh & others, summoning the revisionists under Sections 498A, 323, 504, 506, 342 IPC and Section 3/4 Dowry Prohibition Act in case crime No. 96 of 2008, P.S. Mau, District Chitrakoot.

3. The contention of the learned counsel for the revisionists is that the revisionist No. 1 is the brother in law and revisionist No. 2 is his wife and revisionist No. 3 is the sister in law of the opposite party No. 2. A first information report was lodged on 23.12.2008 that the revisionists and other in-laws of the opposite party No. 2 had tortured her on account of non fulfillment of demand of dowry. The revisionists are said to have been instructed by the husband to demand a car from the parents of the opposite party No. 2 and she was ill treated by all the in-laws of the family, they had brutally treated her and ousted her from her matrimonial house. The case was registered under Sections 498A, 323, 504,

506, 342 IPC and Section 3/4 Dowry Prohibition Act as case crime No. 96 of 2008. After lodging of the report police came in action and after investigation the charge sheet was submitted by the Investigating Officer only against the husband, father in law and mother in law, while exonerating the revisionists. After cognizance the charges were framed and the case was put for trial and the statements of the opposite party No. 2 and her father and mother were recorded, on the basis of which the complicity of the revisionists were found, and as such an application was moved u/s 319 Cr.P.C. The court below on the basis of the statements of the complainant and witnesses, arrived at the conclusion that prima facie offence is made out against the revisionists.

4. It is further contended that the revisionists are residing separately and they have nothing to do with the demand of dowry as alleged in the first information report, as such summoning order passed is unjust, illegal and is liable to be quashed.

5. It is next contended that there is great variation in the statements of the witnesses with the prosecution case. The court below has illegally arrived at the conclusion that prima facie offence is made out against the revisionists. The discretion u/s 319 Cr.P.C. has to be exercised very sparingly only when the court concern is satisfied that the offence has been committed by the accused. The court below has acted mechanically by placing reliance that the evidence on record is sufficient to summon the accused revisionists without arriving at its own satisfaction that there is great likelihood of their conviction.

6. Per contra the learned A.G.A. has supported the impugned order by contending that the court below has taken into consideration the statements recorded and found that there was sufficient evidence with regard to the involvement of the accused revisionists in the offence. There is no infirmity or illegality warranting any interference by this court.

7. I have considered the submission of the learned counsel at bar. Before considering the arguments the provision in respect of summoning the accused u/s 319 Cr.P.C. is being reproduced below;

319. 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 witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced.

8. From the perusal of the aforesaid provision to summon any other person other than accused who are facing trial is an extra ordinary power conferred on the court which is no doubt be exercised very sparingly and with caution and only when the concern court is satisfied that some offence has also been committed by such person. This power has to be essentially exercised only on the basis of the evidence. The term "evidence" as used in section 319 Cr.P.C. would mean evidence which is tested by cross examination. The question of testing the evidence by cross examination would arise only after addition of the accused. The word evidence mentioned in section 319 (i) includes the material collected by the investigating officer and the material or evidence which comes before the court on the basis of which court can prima facie comes to the conclusion that the person who has not been arrayed before is involved in the commission of the crime. The trial court had arrived at its satisfaction on the basis of the examination in chief of the witnesses. Different standards are required to be applied at different stages.

9. The Apex court in the case of Sarojben Ashwin Kumar Shah Vs. State of Gujarat and another 2011 (74) ACC 951 has diluted the principles laid down in Michael Machado and another Vs. C.B.I. and another 2000 (4) ACC 795 (SC) and reviewed the case law in respect of summoning an accused u/s 319 Cr.P.C. and has laid down parameters in this regard. In para 16 their Lordships of the Apex Court has held as under :-

16. The legal position that can be culled out from the material provisions of Section 319 of the Code and the decided cases of this court is this;

(i) The Court can exercise the power conferred on it u/s 319 of the Code suo motu or on an application by someone.

(ii) The power conferred u/s 319 (1) applies to all Courts including the Sessions Court.

(iii) The phrase "any person not being the accused" occurring in section 319 does not exclude from its operation an accused who has been released by the police u/s 169 of the Code and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the Court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement

in the offence comes before the Court.

(iv) The power to proceed against any person, not being the accused before the Court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in Section 319 contemplates the evidence of witnesses given in Court in the inquiry or trial. The Court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the Court must be satisfied that a case for addition of persons as accused, not being the accused before it has been made out on the additional evidence let in before it.

(v) The power conferred upon the Court's although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the Court is not enough. The Court must also be satisfied that circumstances justify and warrant that other person be tried with the already arraigned accused.

(vi) The Court while exercising its power u/s 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(vii) Regard must also be had by the Court to the constraints imposed in Section 319 (4) that proceedings in respect of newly - added persons shall be commenced afresh from the beginning of the trial.

(viii) The court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion.

10. In the instant case, the trial court was satisfied that that there exists a possibility that the accused so summoned in all likelihood would be convicted as there was sufficient evidence against them. From the aforesaid proposition of law the order passed by the court below suffers from no illegality.

11. In view of the above prolix discussions rendered in Sarojben (supra) the law has travelled further and the theory of probability in regard to summoning of an accused that there are chances of conviction stands diluted and the requirement has been found to be that there must be satisfactory and prima facie evidence to summon the accused u/s 319 Cr.P.C. I find that prima facie satisfaction expressed by the court below cannot be doubted at this stage and the evidence led against the revisionists certainly connect them with the crime. This court does not find any justifiable ground to set aside the impugned order. The revision is dismissed sans of having any merit.

12. However, the revisionists are directed to surrender before the court below within 30 days from today and apply for bail, which shall be heard and disposed

of by the court concerned, if possible, on the same day in view of the law laid down in *Amarawati and Another (Smt.) Vs. State of U.P.*, which has also been approved by the Apex Court in *Lal Kamendra Pratap Singh Vs. State of U.P.* 2009 (3) ADJ 322 (SC).