

(2009) 11 MP CK 0044
In the Madhya Pradesh High Court

Rakesh Ranpuria and Another

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482

Citation : (2010) CriLJ 823 : (2010) ILR (MP) 749

Hon'ble Judges : Indrani Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indrani Datta, J.—With the consent of parties, matter is finally heard. Invoking the extraordinary jurisdiction of this Court conferred u/s 482 of Cr. P.C. the petitioners have filed this petition u/s 482 Cr. P.C. against order dated 6-4-2009 passed by Second ASJ Gwalior in Criminal Revision No. 327/08 dismissing the revision filed by petitioners.

2. Facts in a nutshell giving rise to petition are that on the report of respondent No. 2 at P. S. Mahila Thana Padav in Crime No. 65/06 u/s 498-A/34 IPC has been registered against co-accused Charan Singh and others and the case is pending in the Court of JMFC Gwalior. During the pendency of trial one application u/s 319 Cr. P.C. has been filed by the complainant /respondent No. 2 and the, trial Court has taken cognizance against the present petitioners and issued bailable warrant against them. Against that order revision was preferred which was dismissed by Second ASJ Gwalior. Hence this petition for setting aside the order of Court below.

3. It is contended on behalf of the petitioners that petitioner No. 1 was posted at Ashoknagar in Treasury Office from 21-8-2006 to 6-10-2006 and petitioner No. 2 was also present in Treasury Office Gwalior on 17-9-2006 and 18-9-2006. They are government servants and during investigation Police has found that present petitioners are in no way involved in the crime, therefore, charge-sheet was not

filed against them. Complainant has wrongly filed application u/s 319 Cr. P. C. and they are falsely implicated in the case. It is further contended that trial Court has not scrutinized the evidence produced in the case and complainant has maliciously implicated them. Therefore, proceedings initiated against them are to be vitiated as the order is perverse and contrary to law.

4. Learned Counsel for petitioners placed reliance in the case of Lal Suraj alias Suraj Singh and Anr. v. State of Jharkhand 2009 (1) CAR 105 in which it is held that even if a person had not been charge-sheeted he may come within the purview of description of such person as contained in Section 319 of the Code and it is further held that the principle of strong suspicion may be a criterion at the stage of framing of charge as all the material brought during investigation were required to be taken into consideration but for the purpose of summoning a person u/s 319 who did not figure as accused a different legal principle is required to be applied. A Court while framing a charge would have before it all material on record which was required to be proved by the prosecution. In a case where however Court exercises its jurisdiction u/s 319 of Code power has to be exercised on the basis of fresh evidence brought before the Court. Hence there lies a fine but clear distinction.

5. On the basis of above citation Learned Counsel urged that there is no evidence of commission of offence by petitioners and no overt act has been attributed against them showing their involvement in alleged offence, therefore, merely because complainant has mentioned their names Court should not have taken cognizance against them.

6. Learned Counsel for State opposed the petition and submitted that in FIR complainant has specifically mentioned that present petitioners have also harassed her with respect to demand of dowry and in FIR which was registered on the basis of application Ex.1 P/1 names of petitioners are specifically mentioned. It is further submitted that complainant's statement has been recorded in the trial Court and in her statement in paragraph 1 and 2, she has specifically narrated that present petitioners also harassed her with respect to demand of dowry, therefore, trial Court under discretionary power properly issued bailable warrants against petitioners holding that prima facie case u/s 498-A IPC and Section 4 of Dowry Prohibition Act is made out against the petitioners. That order is legal and proper and requires no interference.

7. Heard rival contention of both the counsel and perused the documents on record.

Section 319 of Cr. P. C. reads as under:

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 of 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 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 reheard;

(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.

A bare reading of Section 319 Cr. P. C. makes it clear that the provisions of this Section empowers the Court to proceed against any person not shown of mentioned as accused if it appears from evidence that such person has committed an offence for which he could be tried together with the main accused against whom an enquiry or trial is being held. This power is conferred on the Court to do real justice.

8. Perusal of record shows that the names of the petitioners have been specifically mentioned in the FIR and FIR corroborates the statement of complainant. Therefore, it is not an afterthought. Complainant has specifically stated that petitioners also harassed her with respect to demand of dowry. Statement of complainant on oath has got significant value at this stage.

9. In the case of *Rajendra Singh Vs. State of U.P. and Another*, it is held by Apex Court that exercise of power u/s 319 of Code is left to the Court trying the offence based on evidence that comes before it. The Court must be satisfied of the condition precedent for the exercise of power u/s 319. There is no reason to assume that a Court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. There is no rationale in fettering that power and discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises. It must appear to the Court from the evidence that someone not arrayed as an accused, appears to have committed an offence. The Court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction u/s 319 Cr. P. C.

10. Similarly in the case of *Ram Pal Singh and Others Vs. State of U.P. and Another*, it is observed by the Apex Court that ingredients of Section 319 are

unambiguous and indicate that where in the course of 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 he has committed.

11. In the case of Mahendra Yadav and Hansa alias Hansraj Yadav Vs. The State of U.P. and Sushil, it is held that u/s 319 Cr. P. C. word "evidence" includes statement recorded before the trial Court in examination-in-chief of witness, therefore, on the basis of examination-in-chief of witness if prima facie commission of offence is disclosed, additional accused can be summoned on its basis.

12. Thus, view taken by this Court finds support by the ratio of above judgments. Judgment which has been relied on by learned petitioner's counsel in my view does not help his cause.

13. Resultantly, considering the above legal position at this stage, it cannot be said that impugned order is illegal and improper which warrants any interference by this Court. So no ground is made out for setting aside the impugned orders passed in Criminal Case No. 14999/06 and Criminal Revision No. 327/08 while exercising the power conferred u/s 482 of Cr. P. C. Accordingly, the petition is dismissed.