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**(2007) 12 AHC CK 0162**  
**In the Allahabad High Court**

Smt. Minakshi Gaur

APPELLANT

Vs

State of U.P. and Shaili

RESPONDENT

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**Date of Decision :** 04-12-2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482  
Penal Code, 1860 (IPC) — Section 406, 498A, 504, 506

**Citation :** (2007) 12 AHC CK 0162

**Hon'ble Judges :** Saroj Bala, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Saroj Bala, J.—By means of this application moved u/s 482 Cr.P.C. the applicant prays for quashing the order dated 30.7.2002 passed by the Additional Sessions Judge- Court No. 15, Agra in Criminal Revision No. 97 of 2002 whereby affirming the order dated 21.3.2002 passed by the Special Chief Judicial Magistrate, Agra in Criminal Case No. 2743 of 1998- State v. Chitranjan Gaur and Ors. and dismissing the application u/s 319 Cr.P.C.

2. The facts giving rise to these proceedings are:

The applicant was married to the brother of opposite party No. 2 on 25.1.1996. The F.I.R. was lodged by the applicant on 17.5.98 alleging that soon after the marriage her mother-in-law started taunting and abusing her for not bringing Yamaha motorcycle, solid silver and gold ornaments and utensils. She tolerated their inhuman behaviour for her family honour. It was alleged that she was subjected to assault by the opposite party No. 2 sister-in-law and father-in-law when she protested for their inhuman behaviour. Her husband went out of country obtaining passport showing himself as a bachelor and the house in which her husband and family members resided was sold. On 12.5.98 at about 7 P.M. the applicant was subjected to assault and turned out of the marital home. Stridhan and other valuable articles were fraudulently and dishonestly misappropriated by the father-in-law, mother-in-law and husband. After

investigation charge sheet was submitted against the husband, father-in-law and mother-in-law and cognizance was taken for the offence punishable under Sections 498-A, 406, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act. The trial commenced against the co-accused. The witnesses Shri Niwas Pathak (P.W.1) father of applicant and Minakshi Gaur (P.W.2), the applicant were examined by the prosecution. The applicant in her deposition stated that she was subjected to assault by father-in-law, mother-in-law and sister-in-law when their demand of dowry was not satisfied and her sister in law used to call her a bitch. An application u/s 319 Cr.P.C. was moved by the applicant for summoning the opposite party No. 2 as an accused to face trial alongwith co-accused. The application was rejected by the trial Court by an order dated 21.3.2002. The revision preferred against the said order was dismissed.

3. The impugned orders have been challenged on the grounds that the Courts below failed to consider that the opposite party was named in the F.I.R. and the applicant in her deposition made allegations of demand of dowry and harassment against her. According to the applicant there was sufficient evidence for taking cognizance against the opposite party and her application was wrongly rejected.

4. Heard Sri Rajesh Kumar Srivastava, learned Counsel for the applicant, Sri Rajeev Goswami, learned Counsel for opposite party No. 2, learned A.G.A. and have perused the record.

5. The learned Counsel for the applicant submitted that the opposite party is named in the F.I.R. and allegations of demand of dowry and harassment have been made against her in the F.I.R. and evidence of applicant (P.W.2). An order summoning a person can be made on fulfilment of the conditions stipulated u/s 319 Cr.P.C.

6. The learned Counsel for the opposite party argued that in the F.I.R. general allegations of subjecting the applicant to assault have been made. The opposite party was married on 16.11.97 and at that time her husband resided at Delhi and from Delhi he came to Allahabad on transfer with family including the opposite party. The incident is said to have taken place on 12.5.98 and at that time the opposite party resided separately with her husband. It was urged that the statement of applicant (P.W.2) was recorded in the year 2001 and no allegations of demand of dowry and misappropriation of Stridhan have been made against her. The marriage of applicant with the brother of opposite party has been dissolved by a decree of divorce. There is no medical report of applicant.

7. In the F.I.R. the allegation of assault whenever a voice of protest raised was made against the opposite party and father-in-law. In the testimony before the Court the applicant deposed that when the demands were not satisfied they-mother-in-law, father-in-law and sister-in-law started assaulting her and Shaili Sharma (Opposite party) used to call her a bitch. The specific allegations of demand of dowry and misappropriation of Stridhan have been made against the

mother-in-law, husband and father-in-law. The trial court having not found sufficient material declined to summon the opposite party as an accused.

8. Powers u/s 319 of the Code of Criminal Procedure (hereinafter referred to as the "Code") can be invoked in the appropriate cases. This section is extracted below for ready-reference:

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 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.

The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

But we would hasten to add that 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, cognizance against the other person against whom action has not been taken.

9. The power conferred u/s 319 of the Code is discretionary as evident from the words "the Court may proceed against such person". The discretionary power is to be exercised for administration of criminal justice. The Apex Court in the case of Michael Machado and Another Vs. Central Bureau of Investigation and Another, has held that the discretionary power so conferred

should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. It was further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court while examining an application u/s 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons.

10. In the *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, the Apex Court has struck a note of caution that 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 cognizance against the other person against whom action has not been taken.

11. In *Lok Ram Vs. Nihal Singh and Another*, the Apex Court while dealing with power conferred u/s 319 of the Code has held as under:

Power u/s 319 of the Code can be exercised by the court suo moto or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly it is 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 a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates the "evidence of witnesses given in court".

12. An order u/s 319 of the Code summoning a person can be made on satisfaction of the conditions mentioned therein. In the present case the Magistrate has held that in the F.I.R. no specific allegation about demand of dowry was made against the opposite party and opposite party was married six months before incident. The incident took place on 12.5.98. The opposite party was married on 16.11.97. The evidence of applicant commenced on 14.8.2001 and concluded on 22.2.2002. The opposite party resided with her husband in another district after her marriage. She was not present at her parental home on the date of incident i.e. 12.5.98. Having regard to these facts it can not be held that the discretion was illegally exercised by the trial Magistrate and the exercise of discretion by the Magistrate in refusing to summon the opposite party does not call for interference by this Court.

13. For the aforesaid reasons the application is dismissed.