

(2003) 12 CAL CK 0008
In the Calcutta High Court
Case No : C.R.R. No. 845 of 2003

Uma Shankar Raipuria

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 190, 193(8), 319, 319(1)

Citation : (2004) 1 CHN 565

Hon'ble Judges : Rajendra Nath Sinha, J

Bench : Single Bench

Advocate : R.P. Bhattacharjee, for the Appellant; Milan Mukherjee, Sandipan Ganguly for opposite party Nos. 2 and 3 and Barin Roy, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Sinha, J.—This is to consider an application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973 in connection with Pandabeswar P. S. Case No. 36 of 2002 dated 4th May, 2002 u/s 498A/304B I. P. C. and with Sections 3 and 4 of the Dowry Prohibition Act, (G.R. Case No. 438 of 2002). Here in this instant petition the de facto complainant, the bereaved father of one Sabita who committed suicide in the marital home on 4.05.02.

2. In short the petition is that the de facto complainant Uma Sankar Rajpuria got his daughter married with one Ashok Agarwal, son of late Chabil Das Agarwal after defraying considerable expenses of marriage to the extent of Rs. 51,000/- in cash, gold ornaments, colour TV, air cooler and utensils of various kinds.

3. After marriage Sabita was taken to matrimonial home but her mother-in-law Chatu Devi Agarwal, the elder brother of her husband Paresh Agarwal, and her husband Ashok began to torture her demanding more money. A sum of Rs. 18,000/- was paid by him. Again on 15.03.02 Sabita informed her father that her husband Ashok has decided to purchase a house at Raniganj and demanding Rs. 3 lakhs. But he could not meet the same immediately. When on 4.5.02 he tried

to contact over telephone with his daughter at about 10 a.m. Ashok Agarwal, his son-in-law, informed that Sabita has committed suicide. He used to converse with his daughter Sabita over telephone.

4. Uma Sankar lodged a complaint with the Pandabeswar Police Station and on the basis of the same the aforesaid P. S. case was started against the mother-in-law, brother-in-law and husband.

5. It has further been stated that after investigation charge-sheet No. 55/02 dated 15.08.02 under the aforesaid sections was submitted but the opposite party Nos. 2 and 3 namely Anju Devi, wife of Paresh Agarwal and Suman Kumari, daughter of late Chabil Das Agarwal i.e., the unmarried sisters of the husband respectively were not sent up for trial.

6. The de facto petitioner on coming to know about the outcome of investigation filed an application before the learned SDJM; Durgapur praying for further investigation alleging neglect in conducting the proper investigation and also for non-inclusion of the aforesaid two opposite parties as an accused.

7. The petition filed by the learned SDJM, Durgapur by the de facto complainant is one u/s 173(8) Cr.P.C. praying for further investigation on the facts which may be summarised as follows. He has narrated the plight of his daughter Sabita who was married to Ashok Agarwal on 11.12.01. Considerable amount in cash and in kind were given as dowry. After marriage Smt. Chatu Devi Agarwal, elder brother of Ashok being the relative of the husband subjected her to torture both physically and mentally. Rs. 18 thousand was paid by him within 15 days of marriage. On 15.3.02 the deceased came to her father's place informing a demand of Rs. 3 lacs for purchase of a house by her husband. As he expressed his inability on 1.5.02 Sabita again informed him about the demand and to make payment within 2 days but on 4.5.02 he was informed that Sabita committed suicide. He has further stated in the petition that the case was investigated by S. I. Bireswar Bhattacharjee and S.I. Ramesh Chandra Biswas. Sri Biswas, however, did not bring out the truth but attempted to bolster up a defence story, Then it has been also stated narrating about some of the witness's statement u/s 161 about the dowry demands. He has stressed about I.Os. non-inclusion of Smt. Anju Devi, i.e, the wife of Paresh Agarwal and praying for her discharge from the case due to no sufficient evidence against her. He has also made a grievance against the I.O. Ramesh Chandra Biswas who had deliberately released one Anju Devi wife of Paresh Agarwal and Suman Kumari Devi daughter of late Chabil Das Agarwal, sister of the accused Ashok husband of the deceased. He has stated about his writing to the National Human Rights Commission to the Chief Minister of the State and so on and in the prayer portion it has been stated that for ends of justice further investigation u/s 173(8) be invoked and be entrusted to some other officers other than Sri R. C. Biswas, the I.O.

8. Learned SDJM by his order No. 21 dated 24.3.02 was pleased to reject the application for further investigation and held that there was necessity for further

investigation and if it so held that some other accused are to be tried for the said offences, u/s 319 of the Criminal Procedure Code may look after the same.

9. He has also held that as per law when the CD is not speaking the sufficient material in the statement u/s 161 of the witnesses on record the Court passed an order of discharge to the aforesaid accused Anju Agarwal. He has also held that the police may submit any further material under the provisions of law u/s 173(8) and there is no ambiguity on that point.

10. Learned SDJM, Durgapur by his order No. 21 dated 24.03.02 was pleased to reject the application for further investigation and held that there was no necessity for further investigation and if it is so found that some other accused are to be tried for the said offences Section 319 of the Criminal Procedure Code may look after the same.

11. Being aggrieved and dissatisfied with the aforesaid impugned order this petition has been filed. Affidavit of service of the petition in respect of the aforesaid opposite parties 2 and 3 namely, Anju Devi and Suman Kumari has been filed in Court and be kept in record.

12. The impugned order has been challenged by Mr. R. P. Bhattacharjee, learned counsel ably assisted by Mr. Amit Ranjan Roy for the petitioner submitted that naraji petition filed at learned SDJM and its consequent disposal in the manner as per Order 21 cannot be sustained keeping in view of the reported decision in 2001 C Cr LR (SC) 520 elucidating his submission relying on the aforesaid decision Sri Bhattacharjee goes on contending that the learned SDJM failed to discharge his power vested in him in accordance with law. It has been contended that at the stage taking cognizance of the offences u/s 190 Cr P. C. the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence and it is for the learned Magistrate at the stage issuing process to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. He goes on contending that in other words, the learned Magistrate is entitled to take cognizance of any offence u/s 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the Investigating Officer and independently applied his mind to the fact emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage there is no question of application Section 319 Cr. P. C.

13. The aforesaid dictum as has been laid down in the said case the facts of the case was in respect of a different context altogether and has no manner of application in this case. In that case the complainant/applicant a Public Limited Company having its registered office at Calcutta and branch at New Delhi lodging an FIR against M/s. Malabar Cashewnuts and Allied Products and its partners. During investigation it was revealed that respondent No. 2 J. Rajmohan Pillai, was the Managing Director of another sister company known as Pace

International Company, and two letter of credits given by the complainant/appellants were transferred by one of the accused. In course of investigation appellants issued notice u/s 160 to the said Mr. Pillai but for a stay order issued by the High Court of Kerala it was not possible to interrogate him, or to ascertain as to whether he was involved in the conspiracy. The charge-sheet was submitted showing his name in column 2 meaning thereby that he was not sent up for trial. It was also stated that accused has cheated, misappropriated and cause wrongful loss to the company. On the aforesaid the learned Metropolitan Magistrate issued summons to the respondent No. 2 as well against whom no challan was submitted. The High Court of Delhi held that the Court was totally justified in such summoning and relied on Section 319 Cr.P.C. that only after the evidence such inclusion may be made. That order was challenged before the Hon"ble Apex Court. The Apex Court held that reference to Section 319 does not arise provided in the case within the four corners of the record. The Magistrate can exercise his jurisdiction u/s 190 by taking cognizance of an offence and issuing process.

14. Mr. Barin Roy learned Counsel for the State has urged by filing the case docket of the aforesaid P. S. case supported the impugned order stating inter alia that in the FIR only three persons have been named who are stated to be the perpetrator of torture on the deceased victim Sabita. The case docket as apparent on perusal of the same was under the constant supervision of CI and the SDPO, Durgapur and on perusal of the same as I find that no overact has been attributed on the part of these opposite parties 2 and 3 i.e., Anju Devi and Suman Kumari.

15. Mr. Milan Mukherjee learned counsel appearing on behalf of the aforesaid two opposite parties, namely Smt. Anju Devi and Suman Kumari Agarwal, has urged that the petition filed before the learned SDJM as a naraji petition is of no sequence as it is premature to accept any further report u/s 173(8) as the time has not run out. Sri Mukherjee further goes on arguing that the provision u/s 190 is amply clear and there is no ambiguity in respect of the powers of the learned Magistrate in taking cognizance on receipt of bills/ challans i.e, charge-sheet submitted u/s 173(3). He has urged that if the conclusion drawn by the I.O. on the materials within the four corners of the CD i.e. the statements/documents/ reports etc., if any, learned Magistrate is perfectly within his right to make amends of the I.Os. conclusion as the dictum is that the learned Magistrate is not bound by the legal acumen of the I.O. But here in this instant case where the FIR is speaking an eloquent one as against the three accused and made by the petitioner himself the subsequent conduct of the petitioner to rope other family inmates of the household in the fray be discouraged. More so, where there is no material within the four corners of the charge-sheet.

16. Sri Bhattacharjee, learned Counsel for the petitioner has reiterated that the argument advanced on his behalf and urges that all the vehemence in his command that Anju Devi and Suman Kumari be brought to book and/or further

investigation be directed.

17. Chapter 12 of the Criminal Procedure Code provides the manner and mode of information to the police and their powers to investigate taking the Section 154 to Section 176 where the entire domain of investigation is in the hands of I.O. learned Magistrate who is supposed only to monitor the development i.e. necessitating speed in investigation so that the litigant/accused may not suffer. But nowhere Learned Court is empowered to interfere with the mode of investigation or directing the investigating agency to act in any particular way.

18. Keeping in view of the aforesaid and also the provisions provided u/s 190 Cr. P. C., I am of the view that in the instant case the learned SDJM has rightly rejected the petition and has taken note of the fact that, in any event, if it is so found that some other accused are to be tried together with this accused and there are materials in Section 319 Cr. P. C. which will take care of the same which we may reproduce here for the better appreciation of facts :

"Section 319. (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 the witness 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."

19. It is to be borne in mind that if the prosecution at any stage can produce evidence which satisfies the Court that a person should have been made an accused. The Court can take cognizance and try him alongwith other accused even if proceedings against him had been quashed by the High Court earlier as has been laid down in a reported decision (Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others,).

20. In other words, there is no escape route for any offenders against whom offence is apparent as apprehended by de facto complainant.

21. On perusal of the aforesaid order it transpires that the learned Magistrate considered the submissions made by the petitioner and as the charge-sheet did not contain the names of the opposite parties 2 and 3 and that they were not named in the FIR as well has rightly pointed out that if evidences go to show about their complicity and/or participation in torturing Sabita Section 319 of the Code of Criminal Procedure can take care of.

22. In the instant case, in the FIR there is no whisper about Anju and Suman Kumari. FIR is not supposed to be exhaustive, not in minute detail, but the salient features are supposed to be there.

23. Now, in the absence of any whisper about Anju and Suman's role in the FIR, learned Magistrate rightly held that Section 190 takes cognizance of the offences and not that of the offenders.

24. On perusal of the entire materials contained in the CD I am unable to persuade myself to accede to the contention raised by Mr. Bhattacharjee and held that the impugned order does not suffer from any infirmities/irregularities.

25. I have not decided anything on merit and/or evidence. Thus observations, if any, in this judgment won't deter the hands of the Trial Court.

26. The petition is accordingly dismissed.

27. Let a copy of this order be sent down to the learned Court concerned.

28. Urgent xerox certified copies be supplied, if applied for.