
(2005) 01 RAJ CK 0070
In the Rajasthan High Court
Case No : Criminal Revision No. 735 of 2004

Vipin Anand and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 313, 319, 397, 401
Penal Code, 1860 (IPC) — Section 323, 406, 498A

Citation : (2005) 01 RAJ CK 0070

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : N.L. Joshi, for the Appellant; J.P.S. Chaudhary, Public Prosecutor and Mr. Sandeep Mehta, for Complainant-Respondent No.2, for the Respondent

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By this criminal revision petition u/s 397 read with Section 401 Cr.P.C., the petitioners have challenged the impugned order dated 4.10.2004 passed by the Sessions Judge, Sri Ganganagar (for short, "the revisional court" hereinafter) in Criminal Revision Petition No. 114/2004, by which the revisional court allowed the revision petition filed by complainant-respondent No.2 Smt.Anita; set-aside the order dated 24.4.2004 passed by the Additional Chief Judicial Magistrate, Sri Ganganagar (for short, "the trial court" hereinafter) in Criminal Case No.548/2001 and directed the trial court to take cognizance against the present petitioners for the offences u/s 406,496-A and 323 IPC and after procuring their presence by summons, proceed against them also.

2. The facts, relevant and necessary for the decision of this criminal revision, in a nut shell, are that complainant-respondent No.2 filed a criminal complaint against her husband Bharti Anand and the present petitioners for the offences under Sections 406, 498-A and 323 IPC before the trial court and the trial court sent the same to the police for investigation u/s 156(3) Cr.P.C. After investigation, the police filed challan only against Bharti Anand, the husband of

the complainant. The trial court took cognizance of the aforesaid offences against the husband of the complainant and proceeded with the matter. After the evidence of all prosecution witnesses, except the investigating officer, had been recorded, the complainant-respondent No.2 filed an application u/s 319 Cr.P.C. for impleading and arraigning the petitioners as accused and taking cognizance of the offences against the present petitioners also. After hearing the parties, the trial court, vide order dated 24.4.2004, dismissed the said application and refused to take cognizance of the offences against the present petitioners. Being aggrieved by the order dated 24.4.2004 passed by the trial court, the complainant-respondent No.2 preferred a criminal revision petition before the Revisional Court, which has been allowed vide impugned order dated 4.10.2004 with the aforesaid directions to the trial court.

3. Heard learned counsel for the petitioners and the learned Public Prosecutor assisted by the counsel for the complainant. Perused the orders passed by the courts below.

4. Assailing the impugned order passed by the revisional court, learned counsel for the petitioners have raised all those grounds which were agitated before the courts below and contended that there is no evidence against the petitioners for arraigning them as accused for the aforesaid offences, and be tried together with the accused. Learned counsel for the complainant has vehemently opposed the revision petition and stressed that the impugned order is in consonance with the settled proposition of law and does not suffer from any error, illegality or perversity.

5. There is no dispute that the evidence of almost all the prosecution witnesses, except the investigating officer, has been concluded. These witnesses have also been subjected to cross-examination. At such a juncture, the complainant-respondent No.2 filed the application u/s 319 Cr.P.C. for taking cognizance against the present petitioners also, which has been dismissed by the trial court.

6. The power u/s 319 Cr.P.C. is discretionary power of the trial court, therefore, the discretion exercised by the trial court cannot be lightly interfered with unless it is shown that the order refusing to implead the persons as accused has been made mechanically or it is arbitrary or perverse. The trial court, while refusing to take cognizance against the petitioner, has taken into account every aspect of the matter and the entire material placed before it and more particularly the chance of conviction of the petitioners who have been sought to be impleaded as accused. The trial court found the case of the complainant full of contradictions on material points. The trial court also arrived at the conclusion that the allegations made by the complainant-respondent against her father-in-law, mother-in-law, brother-in-law (Jeth) and his wife, and the married sister-in-law are not prima facie substantiated from the evidence on record. Likewise, the trial court also noticed that the allegations levelled against the present petitioners regarding demand of dowry, cruelty and beatings are not established even prima facie and as such the chance of their conviction would be remote.

7. In Michael Machado and Another Vs. Central Bureau of Investigation and Another, , the Hon"ble Supreme Court held that the power u/s 319 Cr.P.C. is discretionary and should be exercised only to achieve criminal justice. It is not that the court should turn against another person also with the offence. It was further held that 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 Apex Court further held that the Court, while examining an application u/s 319 Cr.P.C. has also to bear in mind that there is no compelling duty of the court to proceed against other persons. In a nut shell, it means that for exercise of discretion u/s 319 Cr.P.C., all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

8. In Krishnappa Vs. State of Karnataka, 2004(4) CCC 572 (S.C.) : AIR 2004 SCW 4809, the Hon"ble Supreme Court, while examining the case on identical facts and applying the test of the ratio laid down in Michael Machado (supra), held that the trial Magistrate is right in rejecting the application. In the case before the Hon"ble Supreme Court in Krishnappa (supra), the incident was of the year 1993 and 17 witnesses had been examined. The statement of accused u/s 313 Cr.P.C. had also been recorded. The role attributed to the persons sought to be impleaded was of instigation. In that case, the trial Magistrate dismissed the application filed u/s 319 of the Code. However, on revision to the High Court, the order of the Magistrate was set aside. The order of the High Court was carried to the Hon"ble Supreme Court and the Apex Court set-aside the order of the High Court and restored the order of the Magistrate by which the application, seeking impleadment of the persons sought to be added as accused, was rejected.

The Hon"ble Supreme Court, in Michael Machado (supra) held that the power conferred on the court u/s 319 Cr.P.C. is only a discretion as could be discerned from the words "the Court may proceed against such persons". It has further been held that unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction for the offence concerned, the Court should refrain from adopting such a course of action. Thus, it is clear that before the Court exercises the power conferred u/s 319 Cr.P.C., the court is required to satisfy (itself) that there is a reasonable prospect of the case as against the person sought to be arraigned as accused ending in conviction for the offence(s) concerned.

9. The power u/s 401 Cr.P.C. is to be exercised to correct miscarriage of justice. However, it depends upon the facts and circumstances of each case whether or not there is justification to exercise such discretionary power. In Jagannath Choudhary and Others Vs. Ramayan Singh and Another, the Hon"ble Supreme Court held that the object of revisional jurisdiction, as envisaged u/s 401 Cr.P.C. is to confer upon superior criminal courts a kind of paternal or supervisory

jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity or procedure, neglect of proper precaution or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and on the other hand, in some undeserved hardship to the individuals. Where the Court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. The jurisdictional sweep of the process of the High Court under the provision of Section 401 Cr.P.C. is very much circumscribed.

Section 319 of the Code provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person, not being an 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 offences which appear to have been committed by him. Thus, it is clear that at stage of inquiry into, or trial of an offence, the court would consider whether such person, not being an accused, has committed an offence and could be tried together with the accused who is already facing trial before the Court. Sub-section (4) of Section 319 of the Code provides that where the Court proceeds against any person under sub-section (1) then the proceeding in respect of such persons shall be commenced afresh and the witnesses re-heard. Thus, it is clear that if a person is arraigned as an accused, a de novo trial has to be held.

10. In the instant case, the complainant-respondent No.2 sought implication of the petitioners for the aforesaid offences. The learned trial court, by a detailed, speaking and well-reasoned order, dismissed the application u/s 319 Cr.P.C. filed by the complainant-respondent No.2. After considering the statement of various prosecution witnesses, the trial court arrived at the conclusion that from the oral evidence, it cannot be said that the present petitioners had indulged in the alleged offences of demand of dowry, cruelty or beatings and for want of evidence, the chances of their conviction would be remote. However, the revisional court, without meeting out the finding arrived at by the trial court, set-aside the order of the trial court. The revisional court has not assigned the reasons how the interference in the discretionary jurisdiction of the trial court was warranted. Further, it was the complainant-respondent No.2 (and not the State which is prosecuting the case) who filed the revision petition before the revisional court and in view of the law laid down by the Hon"ble Supreme Court in Harihar Chakravarty Vs. The State of West Bengal, the revisional jurisdiction is not to be lightly exercised when it is invoked by a private complainant.

11. In view of the aforesaid discussion, the revision petition is allowed; the impugned order dated 4.10.2004 passed by the revisional court is set-aside and the order dated 24.4.2004 passed by the trial court is restored.