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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2973/2009

SMT. VEENA

..... Petitioner
Through: Mr. Anupam S. Sharma,
Advocate.

versus

STATE NCT OF DELHI

..... Respondent
Through: Mr. Manoj Ohri, APP for State
with SI Radhey Shyam, PS
Subhash Place and SI Ram Pal
PS Uttam Nagar, Delhi.

% Reserved on: 01st October, 2012.
Date of Decision: 08th October, 2012

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J.

1. Present petition has been filed under Section 482 Cr.P.C. seeking setting aside of the order dated 10th August, 2009 passed by the trial Court whereby it allowed an application under Section 319 Cr.P.C. filed by the parents of the deceased and impleaded the petitioner, sister in law (Jethani) of deceased, as an accused in FIR bearing No.

381/2007 registered with Police Station Uttam Nagar, Delhi under Sections 498A/304B/34 IPC.

2. Mr. Anupam S. Sharma, learned counsel for petitioner submitted that the impugned summoning order had caused irreparable loss and injury to the petitioner and had taken away her right to live with dignity, honour and reputation. He contended that the trial Court failed to consider that the averments made in the application did not satisfy the conditions prescribed in Section 319 Cr.P.C.

3. Mr. Sharma further submitted that there was no legal evidence on judicial record for proceeding against the petitioner under Section 319 Cr.P.C. He stated that none of the prosecution witnesses had assigned any incriminatory role to the petitioner. He contended that even the examination-in-chief and cross-examination of the deceased's parents taken in its entirety did not satisfy the ingredients of any alleged offence and there was no justified and lawful ground for summoning the petitioner to face trial.

4. According to Mr. Sharma, as there was no reasonable prospect of the case against the petitioner ending in conviction for the offences concerned, the Court should have refrained from adding her as an accused. In this connection, he relied upon the judgments of the Supreme Court in *Michael Machado & Anr. vs. Central Bureau of Investigation & Anr.* 2000 Crl.L.J. 1706(1); *Palanisamy Gounder & Anr. vs. State Represented by Inspector of Police* (2006) 1 SCC (Cri.) 568; *Kailash vs. State of Rajasthan & Anr.*, AIR 2008 SC 1564 and

Sarabjit Singh & Anr. vs. State of Punjab & Anr., AIR 2009 SC 2792.

5. Mr. Manoj Ohri, learned APP for State pointed out that the deceased-wife Neha had died on 05th May, 2007 by hanging herself within two years of her marriage. He referred to the evidence on record to show that the deceased had been constantly mentally and physically harassed for dowry articles by not only her husband, but also by her husband's immediate family members including the present petitioner.

6. Having heard the learned counsel for parties, this Court is of the view that it is first essential to outline the scope and ambit of Section 319 Cr.P.C. The said Section 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 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 subsection (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."

7. Undoubtedly, Section 319 Cr.P.C. is an extraordinary power conferred on the Court which has to be used sparingly and only if compelling reasons exist for taking cognizance against a person against whom action had not been taken. An order under Section 319 Cr.P.C. is not 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 fact, the fulcrum on which invocation of Section 319 Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case, but also to secure conviction of the person summoned. (See : ***Brindaban Das and Ors. Vs. State of W.B., AIR 2009 SC 1248***).

9. The Supreme Court in ***Ram Singh and Ors. vs. Ram Niwas and Anr. (2009) 14 SCC 25*** has held as under:-

“11. An application under the aforementioned provision would be maintainable not only during pendency of an inquiry but also in the course of a trial. In the event, it appears from the evidence that any person, not being an accused, has committed any offence for which he could be tried together with the accused, the court may proceed against him for the offence which he appears to have committed. The provision of Section 319 of the Code confers an extraordinary power upon a court to summon a person who, at the relevant time, was not being tried as an accused, subject, of course, to fulfillment of the condition that it appears to the court that he had committed an offence. A finding to that effect must be premised on the evidence that had been brought on record.

12. Indisputably, the court must satisfy itself about the existence of an extraordinary situation enabling it to exercise an extraordinary jurisdiction. It is true that the court is not denuded of its power to exercise the said jurisdiction only because a person named as an accused in the FIR was not charge-sheeted as a result whereof no cognizance has been taken against him. What is necessary for the said purpose is that the person concerned was not being tried as an accused before the Court at that stage.

10. In the present case, PW1 Smt. Laxmi, mother of the deceased has deposed as under:-

".....My daughter was kept properly for about two months of the marriage. However, thereafter, the accused Rohit and accused Raju present in the court (correctly identified) and Vinod, the elder brother of Rohit & Beena, the wife of Vinod started harassing my daughter for demand of dowry. My daughter used to be harassed for not bringing a washing machine. My daughter told this fact to me when she came to

our house. She pleaded that washing machine be given otherwise she would be beaten up. I gave an amount of Rs. 10,000/- to my daughter Neha so that the demand of the accused regarding washing machine may be met. This had happened after about three months of marriage. There was peace in the family for two days after payment of Rs.10,000/-. However, thereafter they again started harassing my daughter and demanded motorcycle. My daughter used to be harassed by her husband Rohit, dewar Raju, jeth Vinod and jethani Veena. My daughter told me aboutu this fact. I had showed my inability.....I arranged a loan of Rs. 40,000/- from Jagdish, the nephew of my husband and gave the said amount to accused Rohit to meet the demand of the motorcycle. At that time, Rohit had told me that he was being pressurized by his brothers Vinod and Raju and sister-in-law Veena to ask for the motorcycle. Motorcycle was purchased by the accused and accused Rohit used to come on that motorcycle whenever he used to visit my house. There was a peace for about one month of payment of Rs.40,000/-. However, thereafter, Vinod, his wife Veena and accused Raju started demanding a car and started harassing my daughter. Threat was extended to my daughter Neha that unless the demand of the car was met she would not be allowed to live in the house. However, I could not fulfill the demand of the accused persons regarding car. I received the information regarding death of my daughter.

(emphasis supplied)

11. In the cross-examination, PW1 Laxmi mother of the deceased has stated as under::

"I had disclosed the name of Vinod and Beena to my husband as being disclosed to me by Neha as I wanted that couple should reside happily. It is incorrect to suggest that the name of Vinod and Veena has been included in order to falsely

implicate them..... I had disclosed to my husband that Vinod and Veena were also demanding motorcycle. We had not initiated any criminal action against Vinod and Veena at the time of demand of motorcycle.....I had disclosed to my husband that Rohit had told me that he was being pressurized by his brother Vinod Raju and Veena for motorcycle. (Vol. my husband replied "Sab Sudhar Jayaenge."). I had not asked my husband to lodge a police report for the demands of the accused party as the relationship was a new one between the deceased and the accused party and there chances of adjustments/reconciliations.....

Court question: Who were those accused persons who had demanded the car?

Ans. Rohit, Raju, Veena and Vinod had demanded the car."

(emphasis supplied)

12. In the present case, PW3 Mr. Chet Ram, father of the deceased as deposed as under:-

".....I told Vinod Ji and Veena who are jeth and jethani of my daughter Neha that I had given according to my capacity in the marriage and that I am paying Rs. 10,000/- to accused Rohit a washing machine and in future I will not able to meet any other demand.....I called Vinod and Veena on telephone and asked them to visit my house but they did not come. I told them on telephone many times that I am not in a position to meet their demands. Accused Rohit visited my house with his bhabhi Veena and demanded car from me. I refused for the same as I did not have means and I had told them that I have other daughter to marry. Accused Rohit left my daughter Neha at my house and went away. I again called Vinod and Veena on telephone and told them that I am

not in a position to meet their demands.....It is correct that my wife Laxmi told me that Neha had told her that her devar Raju and husband Rohit harass her too much to the demand of motorcycle and that they have abused her and beaten her many times for this demand..."

(emphasis supplied)

13. The trial court in the present case primarily on the aforesaid evidence has already convicted the husband and another brother in law of the deceased under Section 304B/498A/34 IPC. The relevant portion of the trial court judgment is reproduced hereinbelow:-

“39. xxx xxx xxx

(c) In the present case after going through the testimonies of various witnesses as examined by the prosecution, nothing has been placed on record if their versions suffer from any grave infirmities which go to the root of the matter and shake their basic versions.

In the present case, the accused persons have not whispered any motive at all regarding their false implication in the present case and as such no motive has even been suggested to the witnesses whose testimonies are creditable and who are the natural witness who had no motive whatsoever to implicate the accused falsely.” xxx

xxx xxx

43. To sum up, the prosecution has been able to prove on record:-

(1) That death of the deceased Ms. Neha was caused otherwise than in natural circumstances within seven years of her marriage with the accused Rohit; (2) the deceased had been subject to cruelty by her husband i.e. Rohit and her

dewar Rajesh in pursuance of their repeated demands of dowry and also over the demand of car who persistently pressed her and her parents for it till her death; (3) the cruelty and harassment was in connection with the demand of dowry; (4) the cruelty and harassment is established to have been meted out soon before her death; (5) both the accused persons Rohit and Rajesh are responsible for said death of Ms. Neha.”

14. Consequently, this Court is satisfied that the evidence adduced on behalf of the prosecution, if unrebutted, would lead to conviction of the petitioner now sought to be added as an accused in the case.

15. Accordingly, the present petition being bereft of merits, is dismissed. It is made clear that the observations made by this Court are only in the context of present petition and the observations made by this Court would not prejudice either of the parties at the stage of trial.

MANMOHAN, J

OCTOBER 08, 2012

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