

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

+ CRL.REV.P. 782/2010 & CrI. M.A. No. 18672/2010 (Stay)

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Reserved on: 27th January, 2012

Decided on: 7th February, 2012

RAKESH KANOJIA

..... Petitioner

Through: Mr. Anurag Ahluwalia and Mr. Rahul
Dhankar, Advocates.

versus

STATE GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Manoj Ohri, APP for the State
with SI Ranjeev, PS Dabri.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioner in the present petition is aggrieved by the order dated 20th November, 2010 passed by the learned Additional Sessions Judge in Sessions Case No. 2/2009 summoning the Petitioner as an accused in the case under Section 319 Cr.P.C.

2. The contention of the learned counsel for the Petitioner is that an order under Section 319 Cr.P.C. can be passed only during the pendency of the trial. Once the judgment is dictated/pronounced the trial comes to an end and the Court has no jurisdiction to summon an additional accused under Section 319 Cr.P.C. It is contended that the impugned order dated 20th November, 2010 summoning the Petitioner was passed after the learned

Additional Sessions Judge dictated and pronounced the judgment in the abovementioned Sessions Case convicting the other family members of the Petitioner, that is, Munni Devi, Archana and Rajesh for offences under Sections 307/498A/34 IPC. In this regard reference is made to Section 353 Cr.P.C. which states that the judgment in every trial shall be pronounced by the Presiding Officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleader. Reliance in this regard is placed on *Michael Machado and another vs. Central Bureau of Investigation and another*, AIR 2000 SC 1127; *Prasanna Das and another vs. State of Orissa*, 2004 (13) SCC 30; *Gopal Krishna vs. State of Bihar*, 1987 CRI. L.J. 1487; and *Samartha Ram vs. State of Rajasthan and others*, 2002 (2) Crimes 536.

3. It is further stated that the statement of the Complainant completely exonerates the Petitioner who is the husband and hence the Petitioner could not have been summoned even on merits. The Complainant had filed another FIR under Sections 498A/406 IPC at PS Patel Nagar, Dehradun. The proceedings therein have been stayed by the Hon'ble High Court of Uttaranchal at Nainital.

4. Learned APP for the State on the other hand contends that the application for summoning the Petitioner under Section 319 Cr.P.C. was filed by the public prosecutor on 21st October, 2010 when the trial was going on. However, the learned Magistrate directed that this application will be decided along with the main case. The learned Trial Court thus while pronouncing the judgment of conviction of the other family members of the Petitioner on the same day passed the order summoning the Petitioner under Section 319 Cr.P.C. Since the two orders were passed simultaneously it cannot be said that the impugned order passed after the trial was concluded. It is thus contended that there is no merit in the petition and the petition be dismissed.

5. I have heard learned counsel for the parties.

6. The impugned order dated 20th November, 2010 reads as under: -

“Vide separate judgment dictated and announced in Open Court, all the four accused Bishan Lal, Munni Devi, Archna and Rajesh are convicted U/s 498-A read with Section 34 IPC. Besides that, accused Munni Devi, Archna and Rajesh are also convicted u/s 307/34 IPC.

Accused Archna and Rajesh be taken into custody. Since accused Munni Devi is also liable to be taken into custody, but keeping in view her age and ill health, she is not taken into custody at present.

I have also considered the application filed by Ld. APP on 21.10.10 U/s 319 Cr.P.C. with the prayer for summoning Rakesh, husband of Complainant Renu as accused in this case.

While dictating the judgment against the aforesaid accused, I have found that there is sufficient evidence against the husband of the Complainant Sh. Rakesh also. Therefore, summons be issued to Sh. Rakesh, son of Sh. Bishan Lal, R/o 1134, Gali No. 5/6, Main Sagarpur, New Delhi, for the next date of hearing.”

7. Thus it is evident that this order on the application was passed after the pronouncement of judgment in Sessions Case No. 2/2009 convicting Munni Devi, Archana and Rajesh, though the application had been filed on 21st October, 2010 by the Public Prosecutor when the trial was still pending.

In *Michael Machado* (Supra) their Lordships held that:

“10. Powers under Section 319 of the Code can be invoked in appropriate situations. This section is extracted below:

“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.

11. The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, had committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". 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 in the Court to proceed against other persons.

13. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, (1983) 1 SCC 1: (AIR 1983 SC 67: 1983 Cri L J 159) this Court has struck a note of caution, while considering whether prosecution can produce evidence to satisfy the Court that other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the Court to take cognizance against them and try them along with the other accused. This was how learned Judges then cautioned:

“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.”

14. The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of Sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where It had reached earlier. If the witnesses already examined are quite a large in number the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action.”

8. Further Section 353 Cr.P.C. states that after the arguments are heard the trial comes to an end and pronouncement of judgment is a post culmination trial procedure. Though the application was filed prior to the conclusion of the trial, there is no doubt that the impugned order was passed after the pronouncement of the judgment of conviction of the other family members of the Petitioner though on the same day. In any case the judgment having been pronounced, the trial had come to an end and the trial Court had become functus officio. The trial Court could not have passed order on the application under Section 319 Cr.P.C. after pronouncing the judgment.

9. In the present case the Complainant in her statement to the SDM clearly exonerated the Petitioner. To reproduce the words of the Complainant it was stated “in all this there was no hand of my husband Rakesh, he used to remain quite. My husband Rakesh never troubled me for anything”. Thus the SDM directed registration of FIR only against Munni Devi, Rajesh and Archna, that is, the mother, brother and sister of the Petitioner. When the Complainant appeared in the witness box on 28th August, 2009 she implicated the Petitioner also stating that on the first day her husband, sister-in-law, brothers-in-law, father-in-law and mother-in-law commented that car and cash of Rs. 1 lakh had not been given though all the

articles were given as per their choice. The further allegations in the statement against the Petitioner are that in the second week of December her husband had gone to Dehradun when he told her father that they have to sell the old house and purchase a new one and asked him to give Rs.5 lakhs for the purchase of new house, which the father of the Complainant refused. It is further stated that when they reached Delhi, her husband, father-in-law, mother-in-law, brothers-in-law and unmarried sister-in-law stated that the Complainant had not brought car and cash. The Complainant further stated that her husband, that is, the Petitioner did not utter any word and kept mum though he had told her father that she would not be harassed. On 13th March, 2003 the Complainant's father-in-law, mother-in-law, husband, brothers-in-law and sister-in-law created an atmosphere of lawlessness and her father-in-law after directing her to get the demand fulfilled from her father left the house to attend his duties. Thereafter her other in-laws excluding her father-in-law in the presence of her husband gave beatings to her and taunted her. At about 9.00-9.30 P.M. on 13th March her mother-in-law, sister-in-law caught hold of her hand forcibly and Rajesh, the brother-in-law forcibly administered her the bottle and forced her to drink harpic. Her husband, the Petitioner herein instead of saving her started closing the doors and

windows. She fell unconscious and regained consciousness in the hospital where her husband and brother-in-law Rajesh were present who extended threats that on arrival of SDM she should not name them or otherwise they will kill her.

10. A perusal of the allegations before the Court also shows that the grievance of the Complainant was that the Petitioner was a silent spectator and did nothing. This is what she stated to the SDM in her first statement. There is no overt act of the Petitioner in causing injury to the Complainant. Further the demand of a loan of Rs. 5 lakhs for purchasing the new house, as held in catena of judgments, is not demand of dowry. I find that the evidence on record against the Petitioner in view of improvements would not entail conviction of the Petitioner. A perusal of the impugned order dated 20th November, 2010 does not even spell out the offence for which the Petitioner has been summoned.

11. In view of the law laid down by the Hon'ble Supreme Court, since the proceedings before the learned Trial Court had come to an end and even on the merits no case for summoning is made out, I find merit in the contention of the learned counsel for the Petitioner.

12 In view of the aforesaid discussion, the impugned order dated 20th November, 2010 summoning the Petitioner is hereby quashed. The petition and the application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

FEBRUARY 07, 2012
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