

Court No. - 53

Case :- MATTERS UNDER ARTICLE 227 No. - 10074 of 2023

Petitioner :- Smt. Rakhi Mishra

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- R.C. Maurya

Counsel for Respondent :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

This petition under Article 227 has been filed against the judgment and order dated 03.08.2023 passed by Additional Sessions Judge, Court No.1 Agra in Criminal Revision No.833 of 2022, which was preferred against the order dated 19.10.2022, passed by Judicial Magistrate, Civil Judge (Junior Division) Fast Track Court No.1, Agra, rejecting the application under Section 319 Cr.P.C. filed by the petitioner-informant in Criminal Case No.528 of 2018 (State Vs. Piyush Sharma and others), the revisional Court has dismissed the revision.

It appears that the petitioner lodged an F.I.R. Case Crime No.21 of 2018 registered under Sections 498A, 323, 504 I.P.C., and Section 3/4 D.P. Act against her husband Piyush Sharma, father-in-law Rakesh Sharma, mother-in-law Sudesh Sharma, sister-in-law (nanad) Pooja Sharma and her husband Jitendra Rawat, making allegations of demand of dowry and torture etc. After investigation, charge-sheet was submitted only against Piyush Sharma, Rakesh Sharma and Sudesh Sharma. During course of trial, an application under Section 319 Cr.P.C. dated 08.09.2022, was filed by the informant to summon Pooja Sharma and Jitendra Rawt. This application was rejected by the learned Magistrate and revision preferred against that order has also been dismissed.

The learned counsel for the petitioner submitted that Smt. Pooja Sharma and Jitendra Rawat are named in the F.I.R. and their roles are also identical to other co-accused. They also have committed the offence and there are allegations against them. But the Investigating Officer without any sufficient cause has exonerated them. During course of trial, informant Smt. Rekha Mishra was examined. In her statement, she has again reiterated the version of the F.I.R., and has implicated both Jitendra Rawat and Smt. Pooja Sharma for participating in the offence. It is further submitted that although Pooja Sharma is married but she lives on the same address. It is rather contended that the learned Magistrate simply on the ground that there are general allegations against them, has rejected the application under Section 319 Cr.P.C. The learned Magistrate has failed to exercise his jurisdiction in a judicious manner. The learned Revisional Court has also failed to appreciate the evidence and material on record and has committed manifest error in dismissing the revision.

It is correct that Pooja Sharma and Jitendra Rawat are named in the F.I.R. It is also not disputed that Pooja Sharma is married and Jitendra Rawat is her husband. After investigation, charge-sheet was submitted only against three of the accused, namely, husband Piyush Sharma and parent-in-law Rakesh Sharma and Sudesh Sharma. The Investigating Officer exonerated Pooja Sharma and Jitendra Rawat, observing that their involvement was not found in the offence.

The learned Magistrate in his order has elaborately discussed all the facts, evidence and other material and has come to the conclusion that Pooja Sharma is married and the informant, she has stated that the Pooja Sharma and her husband used to live with her husband separately in a rented accommodation. On these

grounds, the learned Magistrate has rejected the application under Section 319 Cr.P.C.

It is settled law that the trial Court has ample power to summon any person under Section 319 Cr.P.C., if he is of the view that there is sufficient ground to proceed against them. But it is also settled that powers under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant and not in a casual and cavalier manner. In the light of the settled law, it appears that there is no illegality in the order passed by the learned Magistrate. The revisional Court has also considered and with an elaborate order has rejected the revision, there is no illegality in the order of the revisional Court also.

The petition under Article 227 is devoid of merits and is hereby **dismissed.**

Order Date :- 24.11.2023
SP/-