

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1924 of 2014

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ORDER:
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Aggrieved by the order dated 05.09.2014 passed in Crl.M.P.No.3382 of 2014 in C.C.No.2872 of 2013 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, the present revision is filed under Sections 397 and 401 Cr.P.C. wherein and whereunder an application filed under Section 319 Cr.P.C. was dismissed.

The facts in issue are as under:

The informant filed an application under Section 319 Cr.P.C. seeking issuance of summons to the proposed accused namely D.Hari Krishna, D.Mahalaxmi, K.Seetha and Y.Sridevi, on the ground that the evidence of PW.1 establish their participation in the commission of the offences.

On the basis of a report given by one Udaya Lakshmi a case in Crime No.350 of 2012 of KPHB Colony Police Station, was registered for the offences punishable under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961. The First Information Report was registered against accused Nos.1 to 5. The police investigated into the crime and filed a charge sheet only against accused No.1 for the above mentioned offences. The said charge sheet was taken on file as C.C.No.2872 of 2013 on the file of the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur. The prosecution filed charge sheet on 26.04.2013. The trial in the said case commenced on 28.07.2014 and PWs.1 to 3 were examined from 28.07.2014 to

27.08.2014. Thereafter, on 27.08.2014, the Public Prosecutor filed an application under Section 319 Cr.P.C. seeking addition of the proposed accused. A counter came to be filed opposing the same. After hearing both sides the trial Court dismissed the said petition on 05.09.2014. Challenging the same the present revision is filed.

Learned counsel for the petitioner mainly submits that the evidence of PWs.1 to 3 clearly establish the role played by the proposed accused in the commission of offence and in support of the same, he took me through the evidence of PWs.1 to 3.

The learned counsel appearing for the proposed accused opposed the same contending that the material on record as on the date of filing of application do not in any way connect the proposed accused with the crime.

In ***Michel Machado and another v. Central Bureau of Investigation and another***^[1] the Apex Court held that the basic requirements for invoking Section 319 Cr.P.C. 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 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. Firstly the other person has committed an offence and secondly such offence that other person could as well be tried along with the already arraigned accused. 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 Court held that the discretionary power so conferred should be exercised only to achieve criminal justice.

I n ***Municipal Corporation of Delhi v. Ram Kishan***

Rohtagi^[2] the Apex Court held that the Court has to 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. The Apex Court added 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.

Keeping in view the guidelines laid down by the Apex Court in the judgments referred to above, I shall now deal with the case on hand.

Admittedly as on the date of filing of the application by the Public Prosecutor under Section 319 Cr.P.C. the prosecution examined three witnesses. The proposed accused are the parents and married sisters of accused No.1. PW.1 in her evidence in chief stated that her engagement with accused No.1 took place on 24.08.2005 and the marriage⁴ was performed on 23.11.2005. At the time of marriage her parents gave cash of Rs.5.00 lakhs, 50 tolas of gold, 40 tolas of silver and household articles worth Rs.50,000/-. On the date of marriage, the two sisters-in-law are alleged to have quarrelled for dowry stating that the dowry amount given is very less and the arrangements made are not to their satisfaction. After marriage, PW.1 joined accused No.1 at Kukatpally, where he used to stay along with accused Nos.2 and 3 and grandmother of accused No.1. Both of them lived happily for a period of two months.

Thereafter, she was made to do all the household work. Her mother-in-law used to harass her by stating that the dowry given by the informant will not make her happy. It is alleged that accused No.1, his parents and sisters started demanding additional dowry of Rs.5.00 lakhs and Ford car. On 13.01.2006 PW.1 and accused No.1 went to USA. In the month of February, PW.1 conceived and accordingly in the month of May, 2006 accused No.1 is alleged to send her to the house of her in-laws for bed rest. At that time, the father and grand mother of accused No.1 were alone present in the house. The younger sister of accused No.1, who was residing in a nearby house used to prepare food for them. During that period her mother-in-law went to Dubai to attend on her elder daughter. PW.1 further deposed that she suffered a lot during that period as there was no support. She also deposed that her mother-in-law, father-in-law and sisters-in-law were harassing her by demanding additional dowry. It is stated that the store room of the house was locked and food was not available in the house. The food items sent by her mother were given to her sister-in-law. In the month of January, 2007 accused No.1 came back to India and took PW.1 and his daughter to U.S.A., there the accused No.1 started harassing the informant on the instigation of his sister. It is stated that accused No.1 used to eat non-vegetarian food though they belonged to Brahmin community and used to beat her by demanding additional dowry. In the month of April, 2007 she underwent a surgery for a Cyst. After discharge from the hospital, her mother-in-law is alleged to have telephoned to her and abused her in filthy language apart from demanding additional dowry.

PW.2 is the owner of the Flat No.307, Sai Durga Avenue, Nizampet, Kukatpally, Hyderabad. In his evidence he deposed that PW.1 used to tell him about some disputes with the accused, for

which he advised PW.1 to settle the same.

PW.3 is the brother of PW.1. He was examined on 27.08.2014. His evidence is to the effect that at the instigation of his mother and sister, accused No.1 used to demand additional dowry and Ford Car. The evidence of PW.3 would show that the act of harassment was mainly directed against accused No.1. Though the cross examination of PW.3 is placed on record, but the same was done after filing of the application under Section 319 Cr.P.C. Even PWs.4 to 8 were examined after filing of an application under Section 319 Cr.P.C.

The issue that falls for consideration is whether the evidence of PWs.1 to 3 do make out a case against the proposed accused. It is undisputed fact that PW.1, who is the victim herein was cross examined on 13.08.2014 ie. much prior to the presentation of the application under Section 319 Cr.P.C. Therefore, the evidence in chief of PW.1 needs to be tested with the admissions made in the cross examination. As seen from the record, PW.1 in her cross examination admits that she stayed in U.S.A. from 2005 to 2010 on dependent visa and she did not do any job in U.S.A. PW.1 admits that the father of PW.1 is a retired personnel officer and that she has not stated the specific dates about the accused beating her and also demanding additional dowry either in the complaint or in the statement made before the police. She also admits that within two months of her marriage she left India. She further admits that she was in U.S.A. from 2008 to 2010 continuously. The cross examination of PW.1 also discloses about accused filing O.P.No.757 of 2010 for restitution of conjugal rights. She also admits filing a divorce O.P. and attending the Court in the said case. She also admits about non-mentioning the demand for additional dowry of Rs.5.00 lakhs and also demand for Ford Car in the counter filed in

the said O.P. She also admits that she did not mention about the accused beating her in the said counter. Ex.D1 is the counter filed in O.P. She also admits that the contents of Ex.D1 are true and correct. While admitting sending of e-mails, she states that there is no reference to demand of additional dowry or Ford Car. From the answers elicited in the cross examination of PW.1 it is clear that the version set out by her with regard to demand of additional dowry and Ford Car by the proposed accused is in correct.

At this stage, the learned counsel for the petitioner submits that the answers elicited in the cross examination cannot be looked into in view of the judgment of the Apex Court in ***Harideep Singh vs. State of Punjab and others***^[3] Case. I am afraid the said argument cannot be accepted for the reason that the Apex Court in Harideep Singh case (3 supra) held that even if cross examination is not done the Court can proceed with invocation of Section 319 Cr.P.C. basing on the evidence in chief. When there is evidence in the form of cross examination of PW.1 nothing precludes the Court from looking into the said aspect. Apart from that the evidence in chief of PW.1 would disclose that after her return to India at the time of pregnancy she stayed in her in-laws house along with her father-in-law and grand mother of accused No.1 and the mother-in-law was in Dubai at that point of time. Sister-in-law, who was residing near by house was taking care of her by sending food daily. This piece of evidence has come on record in the chief of PW.1 itself. But, however, she again says that all the accused were harassing her by demanding additional dowry. As admitted by her in the cross examination, PW.1 never disclosed the dates and the period during which she was subjected to the harassment of beating and also the demand of additional dowry. Infact, her evidence itself discloses that she stayed only for a period of two months in India after the marriage,

thereafter went to U.S.A. and came back at the time of delivery, she again went back to U.S.A. in the month of February, 2008 and did not come back till 2010.

From the evidence in chief of PW.1 and her cross coupled with the evidence of PW.3 it is clear that specific instances of harassments are not alleged against the proposed accused, except stating that the mother-in-law used to telephone to her and demand additional dowry. One of the allegations in the evidence of PW.1 is that all the accused used to beat her and demand for additional dowry, but as seen from the above, in the cross examination she went back on the said statement. Absolutely no specific allegations are made against any of the proposed accused. As stated above, the only allegation made against the mother-in-law is that she used to telephone to PW.1 and demand for additional dowry. But her evidence is silent as to when her mother-in-law telephoned to her and demanded additional dowry and also when her sisters-in-law and father-in-law demanded additional dowry.

In **Neelu Chopra & anr. v. Bharti**^[4], the Apex Court was dealing with a case where the parents-in-law of the respondent were shown as accused for an offence punishable under Sections 406 and 498-A read with Section 114 of IPC. The Apex Court held that in order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. The Apex Court found that the allegations in the said complaint were vague, it does not show as to which accused has committed what offence and what is the exact role played by them in the commission of crime. Under these

circumstances, the Apex Court found that continuation of proceedings against the in-laws would be an abuse of process of law.

In **Geeta Mehrotra and another Vs., State of Uttar Pradesh and another**^[5] the Apex Court has categorically held that “casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify in taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding”.

In all the cases referred to above, the Apex Court was pleased to quash the proceedings against the petitioners as there were no specific instances of harassments except making omnibus and general allegations against all the family members. As stated above, even in the instant case, the allegations made are vague, general and omnibus in nature insofar as the proposed accused are concerned. In view of the judgments of the Apex Court referred to above and taking into consideration the nature of allegations made against the proposed accused in the evidence of PWs.1 to 3, I see no reason to interfere with the impugned order.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2015
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[\[1\]](#) AIR 2000 SC 1127

[\[2\]](#) 1983 (1) SCC 1

[\[3\]](#) (2014) 3 SCC 92

[\[4\]](#) 2009 (4) JCC 3021

[\[5\]](#) (2012) 10 SCC 741