

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1882 of 2015

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ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 27.08.2015 passed in CrI.M.P.No.163 of 2015 in S.C.No.596 of 2014 on the file of the XI Additional District and Sessions Judge, Tenali, wherein an application filed by the prosecution under Section 319 Cr.P.C. adding the petitioner as accused No.3 was allowed.

The facts in issue are as under:

On the basis of a report given by one Smt. Kareti Padmakumari, a case in Crime No.155 of 2013 of Duggirala Police Station came to be registered against three persons for the offences punishable under Sections 302 read with 34 IPC. The gist of the prosecution case is that a report came to be lodged on 07.10.2013 at about 1.30 p.m. in respect of an incident which is alleged to have been taken place on the intervening night of 06/07.10.2013. It is stated that the deceased by name Kareti Siva Rama Krishna received a phone call from Guntur that his brother's son is creating nuisance by consuming brandy. Immediately the deceased and the son-in-law of his brother went to Guntur on motor cycle, but the deceased did not return back home on the night. Next day morning an information was received that the deceased was killed and his body was lying near the house of one Meenaiah on main road of the village. Suspecting that the deceased was being killed by the accused because of the illicit intimacy of deceased with Kanneboina

Padmavathi (accused No.2), a report came to filed naming the proposed accused also as one of the accused in the crime. Police investigated in to the matter and filed a charge sheet deleting the name of the petitioner from the array of accused.

The averments in the charge sheet show that there was illicit intimacy between the deceased and accused No.2 and observing the same, accused No.1 warned the deceased not to come to their house in future. It is alleged that the deceased paid deaf ear to the warnings of the accused and continued to have his sexual lust with accused No.2. It is alleged that on 06.10.2013 at about 8.00 a.m. LW.4 and the deceased went to Guntur on the motor cycle of the deceased to settle a dispute pertaining to the cousin's son of the deceased. After completing the panchayat before the elders they returned to Chinapalem where LW.4 dropped the deceased at his house. At that time the deceased expressed his ambition to meet accused No.2, who is residing in the same village. LW.4 chastised the deceased not to go to the house of accused No.2 in future as her children are majors now and that they developed a grudge against him, but the deceased paid a deaf ear to his warnings. On the intervening night of 06/07.10.2013 at about 1.30 a.m. LW.4 met LW.5, woke him up in order to provide water to their agriculture fields. While they were going on the road and when they reached Panchayat Office, they noticed accused No.1 chasing the deceased in the company of his mother (accused No.2) and also witnessed accused No.1 hacking the deceased with a coconut cutter on his head indiscriminately at the instigation of accused No.2. It is alleged that the accused, who were armed with a sharp edged coconut cutter threatened them with dire consequences. Due to fear they

ran away from the scene. On the afternoon of 07.10.2013 when the mob gathered near the dead body they rushed to the spot and found the deceased lying in a pool of blood. In view of the statements of the witnesses, charge sheet came to be filed only against accused Nos.1 and 2. The said case was committed to the Court of Sessions and numbered as S.C.No.596 of 2014 on the file of the XI Additional District and Sessions Judge, Tenali.

During the course of trial, the prosecution examined PW.1, who is the wife of the deceased and in her evidence she deposed about the information received by her when she went to see the dead body of her husband. In her evidence she stated that on the date of incident when LWs.4 and 5 were going to the field to provide water to their lands, they found her husband running from the house of accused No.2. Accused No.2 and her sons who are accused No.1 and Gopal Krishna (proposed accused) were chasing her deceased husband with knives and when they reached the house of Meenaiah, the deceased slipped and fell down. Then accused No.1 and the proposed accused hacked her husband with knives and accused No.2 instigated them not to leave him. When LWs.4 and 5 tried to rescue the deceased they were threatened with dire consequences.

PW.2 (LW.4) who is examined as an eye witness to the incident speaks about the presence and participation of the petitioner in the commission of offence along with accused No.2. It has been specifically deposed by him that accused No.2 and the petitioner hacked the deceased Siva Rama Krishna and when they intervened, the accused threatened to kill them. After the chief evidence of PWs.1 and 2, the prosecution filed CrI.M.P.No.163 of 2015 to add the petitioner as accused No.3,

which was allowed on 27.08.2015. Challenging the order of adding the petitioner as accused No.3, the present revision is filed.

Learned counsel for the petitioner mainly submits that the allegations made against the petitioner in the evidence of PWs.1 and 2 are totally incorrect and false. He submits that the first information report is silent as to the role played by the petitioner and only during the course of trial the prosecution improved its case by adding the petitioner as an accused. He further submits that since there is no material against the petitioner, impleading the petitioner as an accused is un-warranted.

The learned counsel for the informant, who got herself impleaded as party respondent, strongly opposed the revision contending that the name of the petitioner is consistently mentioned in the first information report, 161 Cr.P.C. statement and also in the evidence given before the Court. Hence, it is contended that there is no illegality in the order passed by the trial Court.

Section 319 Cr.P.C. deals with the power of Court to proceed against other persons appearing to be guilty of the offence.

Section 319 Cr.P.C. 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 sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(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.

Section 319 Cr.P.C. allows the Court to proceed against any person who is not an accused in a case before it. Therefore, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. All that is required for the exercise of power under Section 319 Cr.P.C. is that, it must appear to the Court that some other person who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate must come to in order to take cognizance of the offence. In

Mohd. Shafi v. Mohd. Rafiq^[1] and ***Harbhajan Singh v. State of Punjab***^[2] the Apex Court held as under:

“All that is required for the exercise of power under Section 319 Cr.P.C. is that, it must appear to the Court that some

other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate come to in order to take cognizance of the offence. Therefore, there is no straightjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 Cr.P.C. and can proceed against such other persons.

The Apex Court further held that it is essential to note that the section also uses the words “such person could be tried” instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. It has been held that infact it is this mini trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 Cr.P.C. the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

Thus, it has been held that even on the basis of examination-in-chief, the Court or the Magistrate can proceed against a person as long as the Court is satisfied that the evidence appearing against such person is such that it *prima facie* necessitates bringing such person to face trial.

It has been categorically held by the Apex Court that there does not seem to be any logic behind waiting till the cross-examination of the witness is over for exercise of power under Section 319 Cr.P.C.”

Coming to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., a Constitution Bench of the

Apex Court in ***Hardeep Singh v. State of Punjab and others***^[3]

held that only a *prima facie* case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination. It requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

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

Coming to the first argument advanced by the learned counsel for the petitioner that the power under Section 319 Cr.P.C. cannot be extended to persons named in F.I.R. but not charge sheeted, I am not in agreement with the same. This question was directly answered by the Apex Court in Harideep Singh Case (3 supra) stating that only in cases where the accused has been discharged, the requirement of 300 and 319 Cr.P.C. has to be complied with, before he can be summoned afresh. It has been further held that in cases where a person is named in the first information report but not chargesheeted can be summoned under Section 319 Cr.P.C. provided it appears from the evidence that such person can be tried along with the accused already facing the trial.

As seen from the record, the first information report which was given by the wife of the deceased throws an element of suspicion against all the accused including the petitioner, in view of the illicit relationship with K.Padmavathi (accused No.2) and

the warnings received from her sons i.e. accused No.1 and the petitioner herein. During the course of investigation, the police examined LWs.4 and 5 as eye witnesses to the incident. The averments in the charge sheet refer to active participation of accused No.1 and 2 only, but however the very same eye witness when examined as PW.2 speaks about the active participation of the proposed accused in attacking the deceased along with accused No.1. From the chief examination of PW.2 coupled with the evidence of PW.1 and the contents of the first information report, it can be said that the prosecution was able to establish morethan a *prima facie* case against the petitioner. Hence, this Court is of the view that the material on record is sufficient to direct the petitioner to face trial along with accused Nos.1 and 2.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending, shall stands closed.

C.PRAVEEN KUMAR,J

31.03.2016
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[\[1\]](#) (2007) 14 SCC 544

[\[2\]](#) (2009) 13 SCC 608

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