

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL REVISION CASE No.969 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 23.04.2012 in Crl.M.P.No.5373 of 2011 in C.C.No.668 of 2008 on the file of the Court of the Additional Judicial Magistrate of First Class, Tiruvuru.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the C.C. before the trial Court.

3. The contention of the learned counsel for the petitioners is three fold: (1) the trial Court allowed the petition without assigning reasons much less cogent and valid reasons; (2) even if the testimony of PW.1 is *ex facie* taken to be true and correct, there is no possibility of conviction of the petitioners for the offence punishable under Section 498-A read with 34 I.P.C.; and (3) the order passed by the trial Court is not sustainable either on facts or in law.

4. *Per contra*, the learned Additional Public Prosecutor submitted that while deciding the petition under Section 319 Cr.P.C., the Court has to take into consideration whether there is any *prima facie* material against the proposed accused or not. He further submitted that the trial Court has assigned cogent and valid reasons while allowing the petition. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Sections 397 and 401 Cr.P.C.

5. A perusal of the record reveals that the marriage of the *de facto* complainant was performed with one Tullimalli Venkata Naga Murali Babu (accused) on 19.11.2003 as per Hindu Rites and Caste Custom. Immediately after the marriage, the *de facto* complainant joined accused at Tiruvuru to lead marital life. Out of lawful wedlock, the *de facto* complainant and accused were blessed with a daughter.

The accused and *de facto* complainant lived together at V.M.Banjar and Penuballi of Khammam District. The material placed before this Court establishes that accused filed a petition against the *de facto* complainant under Section 13(1) of the Hindu Marriage Act for dissolution of marriage and the same was allowed. For one reason or other, the *de facto* complainant having received the notice did not choose to contest the divorce petition and remained *ex parte*. Having no other alternative, the trial Court allowed the petition dissolving the marriage between accused and the *de facto* complainant in the year 2007. The *de facto* complainant lodged a complaint to the Station House Officer, Tiruvuru Police Station on 17.05.2008, who in turn registered a case in Crime No.52 of 2008 against the petitioners herein and accused. After completion of the investigation, the investigating officer deleted the names of the petitioners herein and laid charge sheet against accused for the offence punishable under Section 498-A I.P.C. The learned Additional Judicial Magistrate of First Class, Tiruvuru, after satisfying himself with the material placed before him, has taken the cognizance of the offence under Section 498-A I.P.C. against the accused and numbered it as C.C.No.668 of 2008. The *de facto* complainant was examined as PW.1 on 12.09.2011. Basing on the evidence of PW.1, the prosecution filed CrI.M.P.No.5373 of 2011 under Section 319 Cr.P.C. to implead the petitioners herein as A.2 to A5 and the trial Court allowed the said petition.

6. The investigating officer after satisfying himself that no case is made out against the petitioners herein deleted their names. The *de facto* complainant did not take any steps to file protest petition. For one reason or other, the *de facto* complainant kept quiet for a period of four years. In order to convict a person under Section 498-A I.P.C., the prosecution has to establish that the husband or his family members subjected the wife to cruelty of such a nature, which drives her to commit suicide, or the husband or his family members subjected the wife to harassment for unlawful demand for any property or valuable

security. I have carefully scanned the chief examination and cross examination of PW.1 in order to ascertain whether the petitioners herein *prima facie* committed the offence punishable under Section 498-A I.P.C. or not. It is clear from the evidence of PW.1 that petitioner No.1 is the mother-in-law, petitioner No.2 is the father-in-law and petitioner Nos.3 and 4 are the sister-in-laws of the *de facto* complainant. Even as per the version of the *de facto* complainant, petitioner No.4 has been working as an Excise Sub-Inspector much prior to her marriage. As per the testimony of PW.1, petitioner No.3 has been residing at her in-laws house at Vissannapeta. The fact remains that petitioner Nos.3 and 4 are not residing at the house of petitioner Nos.1 and 2. As per the testimony of PW.1, petitioner Nos.1 and 2 did not touch her daughter. She further deposed that the petitioners herein used to ill-treat her for silly reasons. For the reasons best known, the *de facto* complainant did not specify the alleged comments made by the petitioners. There is no whisper in the testimony of PW.1 that the petitioners herein subjected her to cruelty for additional dowry. Even assuming, but not admitting, that petitioner No.3 borrowed an amount of Rs.1,00,000/- from LW.3 and failed to repay the same, LW.3 can take appropriate steps for recovery of the amount. Borrowing of money by petitioner No.3 from LW.3 would not amount to demanding of additional dowry. Even if the testimony of PW.1 is *ex facie* taken to be true and correct, the possibility of convicting of the accused is too remote. Even as per the testimony of PW.1, she lodged a complaint against the petitioners herein and accused after obtaining of divorce from the accused. The trial Court has not considered this fact at all. The possibility of false implication of family members of the husband cannot be ruled out completely. For better appreciation, it is not out of place to extract the finding of the trial Court, which is as follows:

“However the evidence of petitioner after tested for cross examination also disclosing the *prima facie* involvement

of A2 to A5 proposed accused in the offence. As such this petition allowed and office is directed issue summons to proposed accused Nos.2 to 5. Accordingly this petition is allowed.”

7. The trial court allowed the petition as if there is a *prima facie* case against the petitioners. To substantiate the argument, the learned counsel for the petitioners has drawn my attention to the ratio laid down in **Hardeep Singh v. State of Punjab**^[1], wherein the Hon'ble Apex Court held at Paragraph Nos.92, 93, 94, 95, 96, 97, 98 and 99 as follows:

“92. Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

Question (iv) What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?

93. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word “appear” means “clear to the comprehension”, or a phrase near to, if not synonymous with “proved”. It imparts a lesser degree of probability than proof.

94. In Pyare Lal Bhargava v. The State of Rajasthan, (AIR 1963 SC 1094), a four-Judge Bench of this Court was concerned with the meaning of the word ‘appear’. The court held that the appropriate meaning of the word “appears” is “seems”. It imports a lesser degree of probability than proof. In Ram Singh & Ors. v. Ram Niwas & Anr., ((2009) 14 SCC 25), a two-Judge Bench of this Court was again required to examine the importance of the word “appear” as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore,

necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

95. *At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 Cr.P.C.](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judge Bench of this Court in [Vikas v. State of Rajasthan](#), ((2013) 11 Scale 23), held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.*

96. *In [Rajendra Singh v. State of U.P.](#) ((2007) 7 SCC 378), the Court observed:*

“16. Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under [Section 319](#) of the Code. Even then, it has a discretion not to proceed, since the expression used is ‘may’ and not ‘shall’. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression ‘appears’ indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under [Section 319](#) of the Code or not.”

97. *In [Mohd. Shafi v. Mohd. Rafiq](#) ((2007) 14 SCC 544)), this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of [Section 319 Cr.P.C.](#), it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.*

98. *In [Sarabjit Singh & Anr. v. State of Punjab & Anr.](#), (AIR 2009 SC 2792), while explaining the scope of [Section 319 Cr.P.C.](#), a two-Judge Bench of this Court observed:*

“21....For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned

22....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of [Section 227](#) of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.

23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under [Section 319](#) of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied.”

99. In [Brindaban v. State of West Bengal](#) ((2009) 3 SCC 329), a two-Judge Bench of this Court took a similar view observing that:

“25.....the court is also required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under [Section 319 Cr.P.C.](#) entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity.”

As per the principle enunciated in case cited supra, in order to allow the petition filed under Section 319 Cr.P.C., the Court has to give a specific finding that the evidence if unrebutted would lead to a judgment of conviction.

8. Having regard to the facts and circumstances and also the principle enunciated in the case cited supra, I am of the considered that the trial Court has not considered the scope of Section 319 Cr.P.C. in right perspective and allowed the petition. If the order of the trial Court is allowed to stand, certainly it would amount to abuse of process of law. Hence, it is a fit case to set aside the order dated 23.04.2012 in CrI.M.P.No.5373 of 2011 in C.C.No.668 of 2008 while exercising the jurisdiction under Sections 397 and 401 Cr.P.C.

9. In the result, the Criminal Revision Case is allowed, setting aside the order dated 23.04.2012 in CrI.M.P.No.5373 of 2011 in C.C.No.668 of 2008 on the file of the Court of the Additional Judicial Magistrate of First Class, Tiruvuru.

10. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 29.06.2016

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[\[1\]](#) (2014) 3 SCC 92