

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14931 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the order passed on 20<sup>th</sup> July, 2016 in CrI.M.P.No.3898 of 2016 in C.C.No.145 of 2015 by the learned Judicial Magistrate of I Class, Special Mobile Court, Ongole.

Petitioners 1 and 2 are the brothers of husband of defacto complainant and petitioners 3 and 4 are sisters of husband of defacto complainant.

Initially, the defacto complainant lodged a complaint making serious allegations against all these petitioners who are A.3, A.4, A.5 and A.6 against whom summons were issued in the trial court. Police after due investigation deleted these petitioners as accused. While filing charge sheet and after examination of P.W.1, Public Prosecutor filed a petition under Section 319 Cr.P.C. on the ground that there is evidence to connect the accused for the offence punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act and the court below allowed the application and issued summons to the petitioners as additional accused to be tried along with original accused.

Present petition is filed challenging the order passed by the trial court mainly contending that when they were deleted from the charge sheet as accused after investigation, though crime was registered against them, they cannot be impleaded by exercising

jurisdiction under Section 319 Cr.P.C. and filing of application by Public Prosecutor without any strong evidence is erroneous. It is also contended that there is no material to try the petitioners along with the other accused and evidence on record i.e., examination-in-chief is not sufficient to issue summons to petitioners to proceed against them along with other accused on record for the offences punishable under Section 498-A of I.P.C. and other provisions.

The main contention is that the statement recorded during investigation under Section 161 (3) did not disclose involvement of the petitioners in the alleged crime but when P.W.1 was examined, she reiterated what she stated in 161 Cr.P.C. statement but based on such evidence, this court cannot implead the petitioners as accused by issuing summons to them to try along with original accused. Therefore, the order passed by the trial court is erroneous and prayed for dismissal.

During hearing, while reiterating the contentions raised in the petition, the learned counsel for the petitioners placed reliance on two judgments of Punjab and Haryana reported in *RANI ZAHIR AHMAD v. STATE OF HARYANA* <sup>(1)</sup> and *ASHOK KUMAR v. STATE OF HARYANA* <sup>(2)</sup> and contended that the order under challenge is erroneous and this court can exercise jurisdiction under Section 482 of Cr.P.C. when the order is erroneous and prayed to set aside the order impugned.

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<sup>1</sup> 2006 Lawsuit (P&H) 135

<sup>2</sup> 2008 LawSuit (P & H) 982

Whereas the Public Prosecutor who supported the order impugned contended that when P.W.1 was examined and testified about the involvement of proposed accused, the Court can try those persons along with other accused by exercising the inherent powers.

Considering rival contentions and material available on record, the point that would arise for consideration is:

Whether the petitioners be tried along with other accused based on the evidence of P.W.1 i.e., examination in chief of P.W.1 which is nothing but reiteration of statement made before police during investigation under Section 161 Cr.P.C. and the order impugned is liable to be set aside.?

Admittedly, petitioners were arrayed as accused at the crime stage and the police took up investigation after registering the complaint as crime but found no material against the petitioners to proceed against them for the alleged offence punishable under Section 498-A of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act and filed Charge Sheet only against the accused Nos.1 and 2 the husband and mother-in-law of defacto complainant.

Petition was filed by Public Prosecutor after recording examination of accused under Section 319 of Cr.P.C. and upon hearing the arguments of both the counsel, the court passed the order to issue summons to the additional accused herein to try along with other accused who are already on record i.e., A.1 and A.2 i.e., husband and mother-in-law, respectively by exercising power under Section 319 of Cr.P.C.

Section 319 of Cr.P.C. reads as follows:

*“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 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.”*

The scope of Section 319 Cr.P.C. is wide enough and it is a self contained one.

The language used in Section 319 Cr.P.C. is clear that if the witness testified against such person is an accused, the court can proceed with evidence recorded by a Magistrate or Sessions Judge, it

is not statement recorded under Section 161 Cr.P.C. as held in *HUKAMARAM v. STATE OF RAJASTHAN* (<sup>3</sup>).

The examination in chief which pointed out the participation of the petitioners and who are deleted at the stage of investigation, they can be tried together, along with the other accused who are already arrayed as accused in the charge sheet by exercising the inherent powers under Section 319 Cr.P.C. It includes the legal evidence including oral and documentary but not statement recorded under Section 161 (3) Cr.P.C.

Petitioners are blood relatives of husband and defacto complainant, against whom she made a serious allegation about their participation in the alleged offences but the reasons best known, they were deleted from the array of the accused but when she testified before the court below during trial, on application filed by Public Prosecutor, the Magistrate issued summons to the petitioners as additional accused to be tried along with the other accused and such order cannot be found fault since it is inconsonance with the power conferred on it under Section 319 Cr.P.C.

The main contention of the counsel for the petitioners is that when the evidence of P.W.1 i.e., examination in chief of P.W.1 is nothing but reiteration of statement under Section 161 (3) Cr.P.C. court cannot issue the summons to proceed against the third parties who are not arrayed as accused but statement recorded under Section 161 Cr.P.C. is not evidence and that would not form part of

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<sup>3</sup> 1982 CrL.J. 2341

evidence on record. Therefore, such statement cannot be looked into at this stage and even if the examination in chief of P.W.1 is nothing but reiteration of statement recorded under section 161 Cr.P.C. and if the Magistrate is satisfied when evidence is prima facie sufficient to proceed against the persons other than the accused arrayed, by exercising power under Section 319 Cr.P.C. the court can issue summons.

Learned counsel further contended that there is no material to issue process against the petitioners. As seen from the language used under Section 319 Cr.P.C. no material is required but if there is any evidence on record, during trial, the Magistrate can exercise jurisdiction under Section 319 Cr.P.C. and that it is sufficient to proceed against the persons who are not arrayed as accused under Section 319 Cr.P.C. Therefore, on this ground, the proceedings cannot be quashed.

The third contention urged before this court by the learned counsel for the petitioners is that there is no evidence which is relevant to convict the accused and the Judicial Magistrate of First Class recorded examination in chief of P.W.1 and satisfied that the petitioners also participated in commission of such offence and at this stage, it is difficult to conclude that whether there is material evidence to convict the accused or not at the threshold before completion of trial. Therefore, on this ground, this court cannot quash the order passed by the court below.

Learned counsel for the petitioners drawn the attention of this court to the judgments of Punjab and Haryana reported in *RANI ZAHIR AHMAD v. STATE OF HARYANA* (1<sup>st</sup> cited) where the court held that when the petitioners are residing at far of places, they were deleted at the crime stage and no charge sheet was filed against them, they cannot be impleaded by exercising jurisdiction under Section 319 of Cr.P.C. and similarly it is expressed in *ASHOK KUMAR v. STATE OF HARYANA* (2<sup>nd</sup> cited) already referred above but these two judgments are not binding.

Again a similar case reported in *HARDEEP SINGH v. STATE OF PUNJAB AND OTHERS* (<sup>4</sup>) the apex court more particularly discussed about the scope of Section 319 Cr.P.C. and held that the object of Section 319 Cr.P.C. is to have fair trial and to see that the real culprit should not get away from any punishment.

But here the accused are being tried by judicial Magistrate of First Class not by Sessions Court. However, power under Section 319 Cr.P.C. can be exercised only when there is evidence on record to proceed against them, try along with the accused already arrayed and the apex court also interpreted the word used under Section 319 Cr.P.C.

Similarly in a case reported in *BABUBHAI BHIMABHAI BOKHIRIA & ANOTHER v. STATE OF GUJARAT & OTHERS* (<sup>5</sup>) held that “newly added accused could be tried after conclusion of trial of

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<sup>4</sup> (2014) 3 SCC 92

<sup>5</sup> A.I.R.2013 SC page 3648

other accused and does not prevent prosecution of newly added accused after trial of others.”

But here, the trial court intend to proceed against the petitioners during pendency of the trial only and try the additional accused along with the original accused who are already arrayed.

But if the judgment referred above is applied even after completion of trial, the accused can be tried separately but that is not a situation in the present case.

In a decision reported in *SUMAN v. STATE OF RAJASTHAN & ANR* <sup>(6)</sup>, an identical question regarding impleading of a sister-in-law came up for consideration in an offence punishable under Section 498 A I.P.C. and came up for proceeding before apex court and apex court held at paragraph 17 which reads as follows:

*“In the light of the above, we shall now consider whether the learned Judicial Magistrate was justified in taking cognizance against the appellant under Section 498-A IPC or the satisfaction recorded by him for issuing process against the appellant under Section 319 Cr.P.C. is vitiated by any legal infirmity and the learned Sessions Judge and High Court committed an error by refusing to quash the order passed by him. In the complaint filed by her, respondent No.2 alleged that after one week of the marriage, her mother-in-law - Rukmani Devi and nanad - Suman (the appellant herein) told her that in the marriage, items like scooter, fridge, air- conditioner etc. have not been given and the marriage party was not served well; that mother-in-law - Rukmani Devi and nanad - Suman forcibly took the*

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<sup>6</sup> A.I.R.2010 SC 518

*complainant to a lady doctor and got implanted Copper-T so that she may not give birth to any child; that nanad - Suman started instigating the husband of the complainant either on phone or otherwise and thereupon, he not only used to assault, but also humiliate and torture the complainant; that on 7.4.2002 the husband gave beating with the belan and nanad - Suman snatched her hair and forcibly removed the rings. In her statement made before the police under [Section 161](#) Cr.P.C., respondent No.2 reiterated all the allegations. The father and mother of respondent No.2 and 4 other persons, whose statements were recorded under [Section 161](#) Cr.P.C., clearly spelt out the role played by the appellant in harassing respondent No.2 and instigating her husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass respondent No.2 because she was living with her husband, Mahendra Pal at Bikaner. In her statement recorded under [Section 164](#) Cr.P.C., respondent No.2 again made specific allegations against the appellant. While deciding the application filed under [Section 319](#) Cr.P.C., the learned Judicial Magistrate noticed the allegations made by respondent No.2 in the complaint that her mother-in-law, Smt. Rukmani Devi and sister-in-law, Suman had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated her husband to inflict physical torture, which were supported by the statements recorded by the police under [Section 161](#) Cr.P.C. The learned Judicial Magistrate further noted that in her statement under [Section 164](#) Cr.P.C., the complainant has clearly spelt out the role played by the appellant in the matter of demand of dowry, physical and mental harassment and the fact that the complainant had made a specific mention about this in the letters written to her parents*

*and opined that prima facie case was made out for issuing process against the appellant. Therefore, it must be held that the learned Judicial Magistrate had objectively considered the entire matter and judiciously exercised discretion under [Section 319 Cr.P.C.](#) for taking cognizance against the appellant. Although at one stage, the learned Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in [Section 468 Cr.P.C.](#), the learned Judicial Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the learned Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under [Section 498-A IPC](#). Therefore, it is not possible to agree with the learned senior counsel for the appellant that issue of summons against the appellant amounts to abuse of the process of the Court."*

In view of the law declared by the apex court and in view of law laid down by *RANI ZAHIR AHMAD v. STATE OF HARYANA* and *ASHOK KUMAR v. STATE OF HARYANA* (1<sup>st</sup> and 2<sup>nd</sup> cited) , the present case has no bearing on the issue since this court being the highest court in the state bound by judgment of the apex court. If the principles laid down in the above judgments are applied to the present case, when there is evidence which includes examination in chief and cross examination of any witness, pointing out the participation of any other persons other than the accused who are arrayed as accused, the Magistrate can exercise its power under

Section 319 Cr.P.C. and pass appropriate orders to proceed along with the accused by issuing summons and such order cannot be found fault in a petition filed under Section 482 of Cr.P.C. since jurisdiction of this court is limited.

On an overall consideration of entire material available on record, I find no illegality in the order to interfere by this court and hence, the petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed while confirming the order impugned.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.



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JUSTICE M.SATYANARAYANA MURTHY

Dated 22-11-2016

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.14931 OF 2016

Dated 22-11-2016

Dvs