

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14538 OF 2016

ORDER.

This petition is filed under Section 482 of Cr.P.C. to quash the docket order dated 24-8-2016 passed in CrI.M.P.No.1125 of 2016 in C.C.No.198 of 2013 on the file of Additional Judicial Magistrate of First Class, Miryalguda on the ground that the Judicial Magistrate of First Class, Miryalguda on the application filed by the Public Prosecutor under Section 319 of Cr.P.C. to add the petitioner No.2 and 3 as accused who were deleted in the Charge sheet by the Sub-Inspector of Police without affording any opportunity to the petitioners before issuing summons and the second ground is that there is no evidence either oral or documentary to proceed against the petitioners 1 and 2 for the offence punishable under Section 498 A of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act.

Learned counsel for the petitioners while contending that an opportunity is required to be afforded to the petitioners before issuing summons, drawn the attention of this court to the decision of the apex court reported in *HARDEEP SINGH v. STATE OF PUNJAB AND OTHERS* ⁽¹⁾ and another decision of the apex court reported in *JOGENDRA YADAV AND OTHERS v. STATE OF BIHAR AND ANOTHER* ⁽²⁾, *ASHA; VANITHA; D.KIRAN; SOMASHEKAR v. STATE OF KARNATAKA* ⁽³⁾.

Public Prosecutor opposed the petition on the ground that after examining P.W.1, evidence was found in examination-in-chief against

¹ (2014) 3 SCC 92

² (2015) 9 SCC 244

³ 2016 LawSuit(kar)446

these petitioners though they were deleted by the police at the time of filing Charge Sheet and supported the order passed by the trial court.

The first and foremost contention raised before this court is that when the petitioners who received summons will have no opportunity to file a petition for discharge, an opportunity must be given to the petitioners before issuing summons, otherwise it amounts to violation of principles of natural justice.

The apex court in a decision reported in *HARDEEP SINGH v. STATE OF PUNJAB & OTHERS* (1st cited) discussed about the powers under Section 319 of Cr.P.C. and held as follows:

"Section 319 Cr.P.C. is a discretionary and extraordinary power is vested in the court and should be exercised sparingly and only if the circumstances so warrant. The relevant law explained by the Hon'ble Supreme Court is found in paragraphs 105 and 106 of the Judgment and are reproduced below:

105. *Power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.*

106. *Thus, we hold that though 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing it "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted." There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."*

In *JOGENDRA YADAV AND OTHERS v. STATE OF BIHAR AND ANOTHER* (2nd cited) the apex court while deciding similar situation held as follows:

“Four persons had been added as accused in terms of Section 319 Cr.P.C. in a criminal case in Sessions Trial No.446/02 registered for the offence punishable under Section 302 read with Sections 149 and 323 I.P.C. and Section 27 of the Arms Act, 1959. Trial was held in respect of the murder of one Saryug Yadav and first information was lodged against eight persons and charge sheet was filed on 23-4-2001 only against four persons. Later on, a supplementary charge sheet was submitted on 31-1-2003 by which one Bhankhar Yadav was included. In the final report submitted, the names of the appellants therein, i.e., Jogendra Yadav, Kailash Yadav, Kusum Pahalwan and Brijendra Yadav had been left from the array of parties. On 18-2-2003, the Magistrate accepted the charge sheet and took cognizance and the case was committed to the court of sessions.”

By following decision reported in *JOGENDRA YADAV AND OTHERS v. STATE OF BIHAR AND ANOTHER* (2nd cited) in *ASHA; VANITHA; D.KIRAN; SOMASHEKAR v. STATE OF KARNATAKA* (3rd cited), it is held in para 15 which reads as follows:

*“Suffice to state that it is always incumbent upon criminal courts to issue prior notice to a person calling upon him or her to show cause as to why he/she should not be made an additional accused. Only on giving an opportunity of being heard, a suitable order should be passed. If the order is passed summoning a particular person in terms of [Section 319, Cr.P.C.](#) without giving prior notice, such an order would not withstand the legal scrutiny. Hence all criminal courts are expected to keep in mind this aspect of the matter as explained by the Hon'ble apex court in the case of *JOGENDRA YADAV*.”*

During hearing, learned counsel for the petitioners not pressed the ground of regarding the issue of prior notice before summoning.

In view of the endorsement made by the learned counsel on the bundle, this contention needs no further examination and finding thereon.

The other contention raised before this court is that the Magistrate did not record satisfaction about the evidence available which is more than strong evidence as held in *HARDEEP SINGH v. STATE OF PUNJAB & OTHERS* (1st cited).

Therefore, the order under challenge cannot be sustained. However, it is for the Magistrate to record satisfaction and it appears from the record only contention raised before this court about failure of Magistrate to record satisfaction. .

Taking into consideration of the facts, I deem it appropriate to set aside the order and remand the petition to Additional Judicial Magistrate of First Class, Miryalaguda and the learned Magistrate is directed to pass appropriate orders within one month from the date of receipt of a copy of this order keeping in mind the principles laid down in the decision reported in *HARDEEP SINGH v. STATE OF PUNJAB & OTHERS* (1st cited) at paragraphs 105 and 106 respectively.

Accordingly, this Criminal Petition is disposed of.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 28-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 28-11-2016.

Dvs